

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69562; File No. SR-DTC-2013-01)

May 13, 2013

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Modify Its Practice Regarding the Collection of Participants' Required Participants Fund Deposits

I. Introduction

On March 20, 2013, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2013-01 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published in the Federal Register on April 8, 2013.³ This order approves the Proposed Rule Change.

II. Description

DTC filed the Proposed Rule Change to accelerate DTC's collection of a Participant's required deposit to DTC's Participants Fund in certain circumstances from two business days to the same day that the Participant is notified of the requirement, as described below.

A. Participants Fund

Pursuant to Rule 4 of its Rules, By-laws, Organization Certificate ("DTC Rules"), DTC maintains resources funded by its Participants that is a liquidity resource and is available to satisfy any uninsured loss incurred by DTC, including a loss resulting from a Participant's failure

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Release No. 34-69276 (Apr. 2, 2013), 78 FR 20999 (Apr. 8, 2013).

to settle its transactions (“Participants Fund”).⁴ Each Participant’s required deposit to the Participants Fund (“Required Participants Fund Deposit”) is calculated daily pursuant to an established formula.⁵ While the minimum deposit is \$10,000, each Participant is required to make a deposit to the Participants Fund based upon a formula that takes into account the Participant’s six largest intraday net debit peaks over a rolling 60 business-day period.⁶ Typically DTC collects new Participants Fund deposits once per month for each Participant.⁷ However, if the Participant’s newly calculated Required Participants Fund Deposit is greater than its prior day’s Required Participants Fund Deposit, and the difference thereof (i) equals or exceeds \$500,000 and (ii) represents 25 percent or more of that Participant’s newly calculated required fund deposit (“Threshold Amount and Percentage”), the Participant currently must deposit the difference, to the extent any excess amount of the Participant’s Actual Participants

⁴ See DTC Rules (http://dtcc.com/legal/rules_proc/dtc_rules.pdf).

⁵ Id., Rule 4(a).

⁶ See DTC Settlement Service Guide (<http://dtcc.com/downloads/products/learning/Settlement.pdf>). DTC may also require an additional deposit to the Participants Fund in the event that DTC becomes concerned with a Participant’s financial soundness. See DTC Rules, supra note 4, Rule 9(A). Separately, a Participant may make a voluntary deposit to the Participants Fund (“Voluntary Participants Fund Deposit”) in excess of the amount required. See id., Rule 4(c). These two provisions are not impacted by the Proposed Rule Change.

⁷ See DTC Rules, supra note 4, Rule 4(b).

Fund Deposit⁸ does not already satisfy the new requirement, in the Participants Fund within two business days.⁹

B. Proposed Rule Change

In order to enhance its liquidity and risk coverage, DTC is accelerating the collection of Participants' Required Participants Fund Deposits, in the circumstances where DTC currently collects it within two business days, to the same day the Participant is notified of the requirement. In other words, for both the daily and monthly calculations that trigger collections, as described above, increased deposit requirements will be collected by DTC on a same-day basis, instead of within two business days.

To account for this rule change, DTC is revising the text of its Settlement Services Guide to provide that where a Participant's calculated Required Participants Fund Deposit meets the Threshold Amount and Percentage, the increased amount must (to the extent any excess amount of the Participant's Actual Participants Fund Deposit does not already satisfy the new requirement) be deposited with DTC on the same business day as (i) the calculation of the increase, and (ii) a report or other notification of the change is made available to the Participant.

As mentioned above, in order to harmonize the Participants Fund collection processes, monthly increases will also be collected on a same-day basis and DTC is adding language to the Settlement Service Guide in this regard. In addition, DTC is adding language to the Settlement Service Guide to clarify that the relevant Guide provisions shall apply only to the calculation and

⁸ See DTC Rules, supra note 4, Rule 4(b). "Actual Participants Fund Deposit" means the actual amount the Participant has deposited to the Participants Fund, including both its Required Participants Fund Deposit and any Voluntary Participants Fund Deposit. Id., Rule 1.

⁹ See DTC Settlement Service Guide, supra note 6.

collection of DTC Participants Fund deposits, as described in the Guide, and do not supersede or limit any provisions of the DTC Rules or any rights of DTC in accordance with applicable law and DTC’s Rules and Procedures, including but not limited to transactions in securities and money payments.

Finally, DTC is making certain clarifying and technical changes to the language as set forth in the “Participants Fund” section of its Settlement Service Guide, including (i) updating the description of the purpose of the Participants Fund, (ii) updating the use of defined terms, such as “Participant,” and (iii) updating and adding subject headings.

III. Discussion

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹⁰ Section 17A(b)(3)(F) of the Act requires that, among other things, “[t]he rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and... to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.”¹¹ Furthermore, Commission Rule 17Ad-22(d)(11) regarding default procedures, adopted as part of the Clearing Agency Standards,¹² requires that registered clearing agencies “establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:... establish default procedures that ensure that the clearing agency can take timely action to contain losses

¹⁰ 15 U.S.C. 78(s)(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

and liquidity pressures and to continue meeting its obligations in the event of a participant default.”¹³

Here, as described above, DTC’s proposed rule change to accelerate collection of increases in Participants’ Required Participants Fund Deposits in certain circumstances from two business days to the same day that the Participant is notified of the increase should, generally, help further safeguard the securities and settlement process as a whole, as required by Section 17A(b)(3)(F) of the Act,¹⁴ since DTC will have access to the required funds, which are calculated by an established formula, more quickly. More specifically, this rule change should help improve DTC’s ability to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a Participant default, as required by Commission Rule 17Ad-22(d)(11),¹⁵ by providing DTC with funds likely necessary to contain such losses and liquidity pressures in the event of a defaulting Participant.

IV. Conclusion

On the basis of the foregoing, the Commission finds the Proposed Rule Change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act,¹⁶ and the rules and regulations thereunder.

¹³ 17 CFR 240.17Ad-22(d)(11).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(d)(11).

¹⁶ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change SR-DTC-2013-01 be and hereby is APPROVED.¹⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ In approving the Proposed Rule Change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).