

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76510; File No. SR-DTC-2015-011)

November 23, 2015

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Acknowledgment of End-of-Day Net-Net Settlement Balances by Settling Banks

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2015, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2)³ of the Act thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the DTC Settlement Service Guide (“Guide”) to provide that any Settling Bank that does not affirmatively acknowledge by the Acknowledgment Cutoff Time (as defined below) its end-of-day net-net settlement balance⁴ or notify DTC of its refusal to settle for one or more Participants for which it is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(2).

⁴ The end-of-day net-net settlement balance for each Settling Bank reflects (i) a net credit amount due to the Settling Bank from DTC, (ii) a net debit amount due from the Settling Bank to DTC, or (iii) a zero balance so that no payment is due to or from the Settling Bank. In accordance with the timeframes set forth in the Guide, DTC’s end-of-day funds settlement process begins with the posting by

the designated Settling Bank, would be deemed to have acknowledged its end-of-day net-net settlement balance.⁵ DTC would also make other changes to the Guide as set forth below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to mitigate a risk to DTC in settlement relating to a Settling Bank's failure to take the action required to acknowledge its end-of-day net-net settlement balance, or notify DTC of a refusal to settle for any Participant for which it is the designated Settling Bank, by the Acknowledgment Cutoff Time (as defined below).

Background

The DTC end-of-day net settlement structure depends upon the use of Settling Banks.⁶ Each Participant must designate a Settling Bank to settle on its behalf. Any

DTC of "final settlement figures" at approximately 3:45 p.m. each Business Day unless extended.

⁵ Terms not otherwise defined herein have the meaning set forth in the DTC Rules (the "Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

Participant that is a bank may settle for itself.⁷ Today, a Settling Bank that settles for other Participants must acknowledge its end-of-day net-net settlement balance for the group of Participants for which it settles, or notify DTC if it refuses to settle for any Participant for which it is the designated Settling Bank, by the later of 4:15 p.m. and the time that is 30 minutes after the Settling Bank end-of-day net-net settlement balances are first made available by DTC (“Acknowledgment Cutoff Time”).⁸

If a Settling Bank notifies DTC that it refuses to settle for a Participant, DTC would recalculate the Settling Bank’s net-net settlement balance by excluding the net settlement balance of the Participant for which the Settling Bank refused to settle.⁹ DTC would then provide the Settling Bank with its adjusted net-net settlement balance (“Post-Refusal Adjusted Balance”). The Settling Bank may not refuse to settle for any other Participant on that day and must immediately respond to DTC to acknowledge its Post-Refusal Adjusted Balance.

After the Acknowledgment Cutoff Time and any adjustments, DTC will prepare and submit to the National Settlement Service (“NSS”) provided by the Federal Reserve Banks (individually and collectively, the “Fed”) a file (“NSS File”) reflecting the net

⁶ See the Guide at pp. 17-18, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf> for an overview of the end-of-day net settlement process.

⁷ See Rule 9(B), supra note 5.

⁸ Currently, a Settling Bank that settles only for itself may opt out of the requirement to acknowledge its balance, but it cannot refuse to settle for itself.

⁹ Any Participant for which its designated Settling Bank has refused to settle on its behalf remains obligated to DTC for the payment of any net debit balance and must make another arrangement to timely pay that amount by Fedwire.

debits or credits from and to all Settling Banks. NSS will process a debit or credit of each Settling Bank's Fed account ("Fed Account"), as applicable.¹⁰

Today, failure of a Settling Bank to timely respond to DTC after posting of final settlement figures creates uncertainty with respect to timely completion of settlement at DTC. The proposed rule change is intended to address this issue as discussed below.

Proposal

To promote settlement certainty, DTC is proposing to treat a Settling Bank that fails to timely provide its affirmative acknowledgement of its end-of-day net-net settlement balance or notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, as having been deemed to acknowledge its end-of-day net-net settlement balance.

DTC proposes to modify the Guide to provide that a Settling Bank that (i) fails to affirmatively acknowledge its end-of-day net-net settlement balance, or (ii) does not notify DTC of its refusal to settle on behalf of a Participant or Participants for which it is the designated Settling Bank, by the Acknowledgement Cutoff Time, would be deemed to have acknowledged its end-of-day net-net settlement balance.¹¹ The Settling Bank's balance would then, in the ordinary course of settlement processing, be debited from or

¹⁰ The Guide currently provides that if NSS is unavailable then, if instructed by DTC, Settling Banks in a net-net debit balance must remit payments to DTC via Fedwire by the later of 5:00 p.m. or 1 hour after net settlement balances are first made available. This provision would be clarified to note an operational detail that all such payments must be remitted prior to the close of Fedwire.

¹¹ DTC would provide reminders to Settling Banks when they have not affirmatively acknowledged their settlement balance. Notwithstanding delivery of reminders, once a Settling Bank is deemed to have acknowledged its balance, it may not notify DTC of a refusal to settle for a Participant for which it is the designated Settling Bank.

credited to its Fed Account through the NSS process. Likewise, DTC proposes that the Guide provide that a Settling Bank that fails to acknowledge immediately upon receipt its Post-Refusal Adjusted Balance, if any, would be deemed to have acknowledged its Post-Refusal Adjusted Balance and the Post-Refusal Adjusted Balance would then, in the ordinary course of settlement processing, be debited from or credited to its designated Fed Account through the NSS process.

DTC would continue to maintain flexibility and allow for a Settling Bank to request extra time if the Settling Bank has a reason that it cannot affirmatively acknowledge or refuse its net-net settlement balance so long as the Settling Bank notifies DTC accordingly at or before the Acknowledgement Cutoff Time, or, in the case of a Post-Refusal Adjusted Balance, it notifies DTC immediately where it is unable to affirmatively acknowledge its Post-Refusal Adjusted Balance. In this regard, the Guide would be updated to clarify that the Settling Bank is required to notify DTC of its request for extra time via a dedicated DTC Settlement phone “hotline” prior to the Acknowledgment Cutoff Time. In the event that DTC provides the Settling Bank with a Post-Refusal Adjusted Balance, the Settling Bank would be required to notify DTC of its request for extra time immediately via the hotline. Any Settling Bank that timely complies with this notification requirement would not be deemed to have acknowledged its net-net Settlement Balance or its Post-Refusal Adjusted Balance.¹²

If, after the initial release of final settlement figures, a Settling Bank’s net-net settlement balance is adjusted for any reason, other than as a result of the Settling Bank’s

¹² If the problem is due to a connectivity issue with DTC, DTC may then direct the Settling Bank to submit its acknowledgement/refusal instruction via e-mail or as otherwise specified by DTC at that time.

refusal to settle, then the Acknowledgment Cutoff Time for that Settling Bank would be extended to 30 minutes after DTC advises the Settling Bank of the adjusted net-net settlement balance.

DTC would attempt to contact the Settling Bank if DTC does not receive a response in the form of (i) an acknowledgment or refusal prior to the Acknowledgment Cutoff Time, (ii) an immediate acknowledgment of a Post-Refusal Adjusted Balance, or (iii) a notification from the Settling Bank that it cannot acknowledge or refuse, as described in the preceding paragraph.¹³ If DTC is able to contact the Settling Bank and the Settling Bank notifies DTC that it cannot, at that time, acknowledge or refuse its net-net settlement balance, or Post-Refusal Adjusted Balance, as applicable, then the Settling Bank would not be deemed to have acknowledged its net-net settlement balance. However, if the Settling Bank cannot be reached, the Settling Bank would be deemed to have acknowledged its net-net settlement balance or Post-Refusal Adjusted Balance, as applicable.

DTC would update the Guide to clarify that each Settling Bank must ensure that it maintains accurate contact details with DTC so that DTC may contact the Settling Bank regarding settlement issues. Settling Banks must update any contact details by contacting their DTC Relationship Manager.

The Fed's cutoff for NSS processing, unless extended, is 5:30 p.m. In order to facilitate timely processing of the NSS File, DTC would maintain discretion to exclude a Settling Bank's balance from the NSS File if the Settling Bank (i) (A) does not

¹³ DTC uses the most recent contact information provided by the Settling Bank to its DTC Relationship Manager for this purpose.

acknowledge its net-net settlement balance by the Acknowledgment Cutoff Time, or (B) does not immediately acknowledge its Post-Refusal Adjusted Balance; and (ii) is not deemed to have acknowledged its net-net settlement balance or Post-Refusal Adjusted Balance because it has notified DTC that it is unable to affirmatively acknowledge its net-net settlement balance or to refuse to settle on behalf of a Participant. If DTC proceeds to process the NSS File excluding the Settling Bank's debit balance, then the Settling Bank must pay the debit balance via Fedwire. If DTC proceeds to process the NSS File excluding the Settling Bank's credit balance, then DTC would pay the credit balance via Fedwire after the Settling Bank acknowledges its settlement balance.

The text of the Guide would also state that a Settling Bank which settles on behalf of others that timely notifies DTC that it cannot acknowledge or refuse its end-of-day net-net settlement balance would not be assessed a flat fee for failure to acknowledge or notify DTC of its refusal to settle. However, such a Settling Bank would be charged interest with respect to any borrowing DTC is required to make to complete settlement that day for any Participant that the Settling Bank settles on behalf of, if the Settling Bank has not timely refused to settle for that Participant.

Additionally, DTC would revise the Guide to:

- (i) clarify that it is DTC's Settlement Operations group that controls and coordinates the settling of Participant and Settling Bank accounts on DTC's systems;
- (ii) define the Federal Reserve Banks individually and collectively within the Guide's text as the "Fed" unless indicated otherwise;

- (iii) clarify text for descriptive purposes, and consistent with the Rules, that Participants make formal arrangements for a Settling Bank to be designated as the Settling Bank to settle with DTC on the Participant's behalf;
- (iv) clarify that certain online reports DTC provides Participants and Settling Banks through the processing day reflect "intraday" gross debits and credits, and net debit and credit balances;
- (v) clarify that a Settling Bank's end-of-day net-net settlement balance includes the Settling Bank's own settlement obligations as a Participant if it settles for itself;
- (vi) add text for the purpose of context, consistent with the Rules, that each Participant is obligated to settle timely with DTC and if its Settling Bank refuses to settle for it then it must make alternative arrangements to make payment to DTC via Fedwire, [sic]
- (vii) add text for the purpose of context, consistent with the Rules, that a Participant that acts as its own Settling Bank may not refuse to settle for itself and that it will be in default if it does not fund its settlement obligation;
- (viii) for clarity, change the heading to an existing example of how a Settling Bank's settlement balance is calculated from "Settlement Example" to "Example of the Calculation of a DTC Settling Bank's Net-Net Settlement Balance";

- (ix) remove the provision from the Guide indicating that that a Settling Bank that settles only for itself would need to affirmatively opt out in order to not be required to affirmatively acknowledge its settlement balance, and add text simply stating that a Settling Bank that settles only for itself would not be required to acknowledge its settlement balance;
- (x) clarify the interest charged to Participants for a failure to settle;
- (xi) delete references to a Settling Bank’s failure to timely settle its settlement balance from being referred to as a “failure to settle” and remove references to related procedures as being “failure-to-settle” procedures, as the terminology could be confused with an individual Participant’s failure to meet its settlement obligation;
- (xii) rewrite text in the Guide in light of the proposed changes, as applicable, including Addendum A of the Guide, to incorporate proposed changes, consolidate text, clarify text for readability and eliminate duplication;
- (xiii) clarify certain Settling Bank and settlement processing timeframes;
- (xiv) apply initial capitalization as appropriate for the terms “Participant” and “Settling Bank” where they are used as defined terms;
- (xv) remove references to Participant Terminal System (PTS) functions, which are no longer used for DTC settlement processing; and
- (xvi) insert the title of the Guide on the Guide’s front page.

Implementation

The effective date of the proposed rule change would be announced via a DTC Important Notice.

2. Statutory Basis

Section 17A(b)(3)(F)¹⁴ of the Act requires that the rules of the clearing agency be designed, inter alia, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act because the proposed rule change would reduce delays in the settlement process by allowing DTC to collect net debits and release net credits within scheduled timeframes despite the failure of a Settling Bank to affirmatively acknowledge its end-of-day net-net settlement balance or notify DTC of its refusal to settle for a Participant for which it is the designated Settling Bank on a timely basis.

Rule 17Ad-22(d)(5)¹⁵ promulgated under the Act requires, inter alia, that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and require funds transfers to the clearing agency to be final when effected. DTC believes the proposed rule change is consistent with this provision because it would reduce DTC's credit and liquidity risk by mitigating the risk that end-of-day net-net debit

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(d)(5).

settlement balances would not be paid due to the failure of a Settling Bank to respond to DTC after posting of final settlement figures.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because the proposed rule change applies to all Settling Banks and would not have an impact on Settling Banks' current ability to timely acknowledge their net-net settlement balances or notify DTC of a refusal to settle on behalf of a Participant.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC filed a substantially similar proposed rule change on April 15, 2015 ("April Rule Filing"),¹⁶ which was subsequently withdrawn.¹⁷

The Commission received a favorable written comment to the April Rule Filing.¹⁸ DTC also received written comments in connection with the April Rule Filing from a Participant that is a Settling Bank for other Participants. The Participant commented to the effect that it was expecting, but the April Rule Filing did not clearly state, that a Settling Bank (i) will be granted an extension to acknowledge its net-net settlement balance whenever it is requested prior to DTC processing the NSS File, and (ii) will not

¹⁶ Securities Exchange Act Release No. 74830 (April 29, 2015), 80 FR 25727 (May 5, 2015) (File No. SR-DTC-2015-003).

¹⁷ Securities Exchange Act Release No. 74380 (July 7, 2015), 80 FR 40116 (July 13, 2015) (File No. SR-DTC-2015-003).

¹⁸ Letter from Suzanne Shatto (May 3, 2015), available at <https://www.sec.gov/comments/sr-dtc-2015-003/dtc2015003.shtml>.

be charged a fee in situations where such an extension has been requested. In order to fully consider these comments DTC withdrew the April Rule Filing.

With respect to (i) above, in order to avoid wider disruption to the DTC settlement process and the industry, DTC must have the discretion to promptly complete settlement for the Settling Banks that have timely acknowledged or have been deemed to have acknowledged their respective net-net settlement balances. Therefore, although DTC can grant limited extensions, DTC cannot grant an indefinite extension to a Settling Bank to acknowledge its balance prior to DTC processing the NSS File.¹⁹

With respect to (ii) above, the proposed rule change adds text to the Guide so that a Settling Bank that timely notifies DTC that it cannot acknowledge or refuse its net-net settlement balance will not be charged a flat fee for failure to acknowledge its balance. However the Settling Bank may be charged interest.

To the extent any additional written comments are received by DTC on the proposed rule change, DTC will forward them to the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

¹⁹ As stated above, DTC would maintain flexibility to allow for a Settling Bank to request extra time if the Settling Bank cannot affirmatively acknowledge or refuse, so long as the Settling Bank promptly notifies DTC at or before the Acknowledgement Cutoff Time or upon receipt of an Adjusted Balance.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2015-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2015-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2015-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).