

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82662; File No. SR-DTC-2017-024)

February 8, 2018

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Amend Procedures in the DTC Settlement Service Guide Relating to the Intra-Month Collection of Required Participants Fund Deposits

On December 22, 2017, the Depository Trust Corporation (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2017-024, 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 for comment in the Federal Register on January 9, 2018.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend DTC’s Settlement Service Guide (“Guide”)⁴ to (1) codify more completely DTC’s current practices regarding when a DTC participant (“Participant”)⁵ must deposit cash at DTC to satisfy an intra-month deficiency

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 82434 (January 3, 2018), 83 FR 1046 (January 9, 2018) (SR-DTC-2017-024) (“Notice”).

⁴ Available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

⁵ “Participant” is defined in the DTC Rules, Bylaws, Organization Certificate (“Rules”) as an entity to which DTC offers its services pursuant to the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures?pgs=1>.

in the Participant's required contribution to DTC's Participants Fund⁶ ("Deficiency"), and (2) make technical and clarifying changes to the Guide, as more fully described below.

A. Background

DTC requires Participants to contribute an aggregate amount of \$1.15 billion to the Participants Fund.⁷ That amount is collected through two components of the Participants Funds, the Core Fund and the Liquidity Fund, to which Participants must contribute, as applicable.⁸

DTC sets the total value of the Core Fund at \$450 million, which is collected through two underlying funds: the Base Fund and the Incremental Fund.⁹ Each Participant is required to contribute a minimum of \$7,500 to the Base Fund.¹⁰ Meanwhile, the Incremental Fund makes up the difference, if any, between the aggregate amount collected in the Base Fund and the total \$450 million of the Core Fund. If there is a difference, DTC allocates the difference proportionally among all Participants.¹¹

⁶ The Participants Fund is the fund in which DTC collects and holds cash from Participants in order to maintain sufficient liquidity resources in the event of a Participant default. Notice, 83 FR at 1047.

⁷ Guide, supra note 4 at 48; Notice, 83 FR at 1047.

⁸ See Guide, supra note 4 at 48-50 (explaining the components of the Participants Fund); see also Notice, 83 FR at 1047.

⁹ See Guide, supra note 4 at 48.

¹⁰ Id.; Notice, 83 FR at 1047.

¹¹ Guide, supra note 4 at 48. A Participant's contribution to the Incremental Fund is based on the average of the Participant's six largest intra-day liquidity exposures at DTC, over a rolling 60-business-day period. Id.; Notice, 83 FR at 1047.

DTC sets the total value of the Liquidity Fund at \$700 million.¹² The Liquidity Fund is allocated proportionately among Participants with affiliated families,¹³ where the affiliated families have been authorized by DTC to have over \$2.15 billion in intraday debits.¹⁴

The aggregate amount that a Participant is required to contribute to the Participants Fund is the Participant's Required Participants Fund Deposit (hereinafter, "Required Deposit").¹⁵ In addition, Participants may make voluntary deposits to the Participants Fund, which DTC refers to as Voluntary Participants Fund Deposits (hereinafter, "Voluntary Deposit").¹⁶ A Participant may choose to make a Voluntary Deposit in anticipation of potential increases to its Required Deposit.¹⁷

A Participant's deposits to the Participants Fund, including both Required

¹² Guide, supra note 4 at 49.

¹³ The Rules define an "affiliated family" as each Participant that controls (or is controlled by another Participant that has) direct or indirect ownership of more than 50 percent of the voting securities (or voting interests) of another Participant, and each such Participant is under the common control of the same entity. Supra note 5 at 2.

¹⁴ Guide, supra note 4 at 49; Notice, 83 FR at 1047.

¹⁵ Guide, supra note 4 at 47-48; Notice, 83 FR at 1047.

¹⁶ Guide, supra note 4 at 47; Notice, 83 FR at 1047.

¹⁷ Notice, 83 at 1047. A Participant's Required Deposit may fluctuate based on the liquidity exposure associated with the Participant's settlement activity. See Guide, supra note 4 at 51. The Guide provides that when a Participant's Required Deposit has decreased, the Participant may choose to leave excess cash in the Participants Fund to reduce the level of administration that would otherwise be necessary should the Participant's Required Deposit later increase. Id. DTC also accepts Voluntary Deposits for such administrative purposes. Id.

Deposits and Voluntary Deposits, if any, are considered the Participant’s Actual Participants Fund Deposits (hereinafter, “Actual Deposits”).¹⁸ DTC can use a Participant’s Actual Deposits to cover losses associated with the Participant’s default.¹⁹

DTC calculates the Required Deposit of each Participant on a daily basis.²⁰ However, DTC states that Required Deposits generally do not materially change on a daily basis because the calculation uses a 60-business-day rolling average.²¹ Therefore, DTC generally only collects funds to cover a Deficiency, if any, on a monthly basis – specifically, on the last business day of the month.²²

Notwithstanding the above, DTC will require a Participant to satisfy an intra-month Deficiency if, when considering the Reference Amount, described below, the Deficiency meets or exceeds either the Standard Threshold or the Watch List Threshold, also described below.

The Reference Amount is the most recent Required Deposit amount that the Participant deposited to the Participants Fund, as compared to the Required Deposit amount that DTC calculates on a daily basis but does not necessarily require an intra-month deposit.²³ More specifically, the Reference Amount is the amount that the

¹⁸ Notice, 83 FR at 1047.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ See Guide, supra note 4 at 50-51 (explaining daily calculations of the Required Deposit); see also Notice, 83 FR at 1048.

Participant deposited to the Participants Fund based upon a Required Deposit as calculated on (1) the last business day of the prior month, (2) the most recent intra-month business day when the Participant's Deficiency met or exceeded the Standard Threshold or the Watch List Threshold, as described below, or (3) the most recent intra-month business day when DTC collected an "adequate assurance" charge under Rule 9(A) of the Rules.²⁴

The Standard Threshold for determining when a Participant must satisfy an intra-month Deficiency is when (1) the difference between the Participant's current Required Deposit calculation and the Reference Amount equals or exceeds \$500,000 and (2) the difference is at least a 25 percent increase over the Reference Amount.²⁵

The Watch List Threshold for determining when a Participant must satisfy an intra-month Deficiency is when (1) the Participant is on DTC's "Watch List"²⁶ and (2) the difference between the Participant's current Required Deposit calculation and the

²⁴ Notice, 83 FR at 1048. Pursuant to Rule 9(A) of the Rules, if DTC is concerned with a Participant's operational or financial soundness, DTC may require adequate assurances of financial or operational capacity from the Participant. Id.; see also Rules, supra note 5, Rule 9(A), Section 2 (stating "At the request of [DTC]," a Participant "shall immediately furnish [DTC] with such assurances as [DTC] shall require of the financial ability of the Participant ... including deposits to the Participants Fund").

²⁵ Notice, 83 FR at 1048.

²⁶ Notice, 83 FR at 1048. The Watch List is a list of Participants with credit risk rating of "5," "6," or "7," as calculated by DTC's Credit Risk Rating Matrix, as well as Participants that, based on DTC's consideration of relevant factors, are deemed by DTC to pose a heightened risk to DTC and its Participants. Id. at 1047. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. Id.

Reference Amount is at least a 10 percent increase over the Reference Amount.²⁷

B. Proposed Changes to the Guide

The Guide currently does not define the Reference Amount used for the purpose of determining the Standard Threshold and Watch List Threshold, nor does the Guide describe the Watch List Threshold.²⁸ As such, DTC proposes to codify in the Guide its current processes for (1) determining the Reference Amount for each Participant and (2) applying the Watch List Threshold, as described above.²⁹

DTC also proposes to modify the Guide to (1) revise and re-order text for enhanced readability and flow of content, (2) add subheadings, (3) revise informal references to terms already defined in the Rules to use the actual defined terms, and (4) make grammatical corrections.³⁰

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act³¹ 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 rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with

²⁷ Id. at 1048-49.

²⁸ Id. at 1047.

²⁹ Id.

³⁰ Id. at 1049.

³¹ 15 U.S.C. 78s(b)(2)(C).

Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(e)(23)(ii) under the Act.³²

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the clearing agency be designed 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.³³ As described above, the proposed rule change would codify DTC's practices regarding the Reference Amount and the Watch List Threshold. By adding these provisions to the Guide, the Guide would provide greater transparency to Participants regarding the criteria DTC uses to determine whether a Participant must increase its Required Deposit on an intra-month basis because of a Deficiency.

By providing Participants with such enhanced transparency, the proposal is designed to enable Participants to better anticipate when an intra-month deposit may be necessary. This increased foresight would help improve the likelihood that Participants are ready and able to make the deposit. As such, the proposal would help ensure that the Participants Fund is adequately funded and, thus, the appropriate amount of Actual Deposits is available to DTC, if it should need to manage a Participant default. Therefore, the Commission finds that the proposed rule change would help assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.³⁴

³² 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(e)(23)(ii).

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ Id.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.³⁵ As described above, the proposed rule change also includes technical and clarifying changes to the text of the Guide that would enhance readability, make grammatical corrections, and add new section headings. These changes would increase the precision and clarity of the Guide. This increased precision and clarity would help facilitate Participants' ability to better understand their respective rights and obligations regarding DTC's clearance and settlement of securities transactions. Accordingly, the Commission finds that the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.³⁶

Rule 17Ad-22(e)(23)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable Participants to identify and evaluate the risks and material costs they incur by participating in DTC.³⁷ As described above, the proposed rule change would (1) increase the Guide's transparency regarding DTC's procedures for the intra-month calculation of Required Deposits and (2) make other technical and clarifying changes to increase the Guide's readability. Increased transparency around a Participant's required intra-month deposit to the Participants Fund to satisfy a Deficiency, as well as the increased clarity in the readability of the Guide, are each changes that are

³⁵ Id.

³⁶ Id.

³⁷ 17 CFR 240.17Ad-22(e)(23)(ii).

designed to provide Participants with sufficient information to identify and evaluate risks and material costs in connection with their Required Deposit as participants of DTC.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(23)(ii).³⁸

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act³⁹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-DTC-2017-024 be, and hereby is, APPROVED.⁴⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

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Assistant Secretary

³⁸ Id.

³⁹ 15 U.S.C. 78q-1.

⁴⁰ In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴¹ 17 CFR 200.30-3(a)(12).