

SECURITIES AND EXCHANGE COMMISSION
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November 30, 2020

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Allow for the Deposit of Electronic Certificates of Deposit and Technical Changes

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 20, 2020, 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 the clearing agency. 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 change³ consists of amendments to the Procedures⁴ of DTC. Specifically, the proposed rule change would amend the OA and Underwriting Service

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf, the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>, and the DTC Underwriting Service Guide (“Underwriting Service Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf>.

⁴ The OA and the Underwriting Service Guide constitute Procedures of DTC. Pursuant to the Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from

Guide to implement a new application and secured electronic vault (“E-vault”) for requests for eligibility, execution, Delivery and storage of certificates of deposit (“CDs”) that are issued by state and federal chartered banks that are Eligible Securities⁵ in electronic form. Technical changes with respect to spelling, punctuation and spacing of text would also be made. The use of the new application and E-vault would replace an existing legacy platform and paper-based model for Delivery and storage of CDs maintained in DTC’s secured physical vault, as more fully described below.

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

In its filing with the Commission, the clearing agency 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. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

time to time. See Rule 1, Section 1, supra note 3. DTC’s Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, supra note 3. The OA is also binding on each issuer and agent of an Eligible Security. See OA, supra note 3 at 5, supra note 3. DTC also maintains service guides that constitute Procedures relating to services it offers. Available at <http://www.dtcc.com/legal/rules-and-procedures?subsidiary=DTC&pgs=1>.

⁵ Generally, Eligible Securities must have been issued in a transaction (i) registered with the Commission pursuant to the Securities Act; (ii) exempt from registration pursuant to a Securities Act exemption without transfer or ownership restrictions; or (iii) pursuant to Rule 144A, 17 C.F.R. 230.144A, or Regulation S, 17 C.F.R. 230.901-230.905, under the Securities Act. See OA, supra note 3 at 2-3.

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

1. Purpose

The proposed rule change of DTC would amend the Procedures of DTC. Specifically, the proposed rule change would amend the OA and Underwriting Service Guide to implement a new application and secured E-vault for requests for eligibility, execution, Delivery and storage of CDs that are (i) Eligible Securities and (ii) issued by state and federal chartered banks in electronic form. The use of the new application and E-vault would replace an existing legacy platform for Delivery and storage of CDs maintained in DTC's secured physical vault, as more fully described below.

Background

DTC (i) makes eligible for Deposit, processes and holds physical retail CDs issued by various U.S. banks and Deposited by Participants and (ii) credits interests in those CDs to Participant's Securities Accounts.⁶ As described below, the use of physical certificates presents operational concerns to Participants and to DTC and DTC has undertaken efforts to promote dematerialization of Securities. To address operational concerns relating to processing of physical CDs, DTC has developed a system that would eliminate the need for physical certificates for certain issue types of CDs by allowing them to be issued and held in electronic form, as described below.

Upon implementation, the proposed rule change would address operational concerns of Participants relating to the amount of time and manual effort currently required for the issuance and redemption of physical CDs by allowing for a fully

⁶ See OA, supra note 3, at 9-10.

electronic process for the execution and Delivery of the affected CD certificates. As such, the proposed rule change would also reduce the need for DTC to (i) perform manual processing relating to CD Deposits and (ii) reserve space in its secure physical vault currently used for CDs by allowing for the storage of CDs in electronic form in a secure E-vault.

The proposed electronic process would also address concerns relating to potential disruptions in the physical transport of paper CDs to DTC currently made using courier and overnight delivery services. Such disruptions may be caused by weather-related issues, such as Superstorm Sandy which impacted physical securities processing in 2012, and other previously unforeseen circumstances, such as the COVID-19 pandemic. Although, DTC has been able to maintain securities eligibility and processing operations during such circumstances, including by utilizing a letter of securities possession⁷ (“LOP”) process that enables DTC to accept Delivery of securities represented in physical form even if the circumstances prevent physical delivery at that time, such disruptions could delay the Deposit of CDs and impact the timely closing of issuances and otherwise affect liquidity in the marketplace for CDs.

Current DTC Eligibility Process for CDs

Only Participants can request that DTC make a Security eligible for Deposit.⁸ It is therefore incumbent on an issuer to have a relationship with an underwriter or other financial institution that is a Participant, or is directly associated with a Participant, that is

⁷ See Underwriting Service Guide, supra note 3 at 17.

⁸ See id. at 1.

willing to sponsor the eligibility process for the issuer’s Securities.⁹ A Participant may submit a Deposit eligibility request for a CD through the underwriting services of DTC at the time a security is initially being offered and distributed to the marketplace or at a later time for already issued and outstanding securities.¹⁰

Participants must provide an eligibility request for the specified securities to Underwriting by submitting all required issuer and securities data and all related offering documents, at a minimum, through the online Securities Origination, Underwriting and Reliable Corporate Action Environment (“UW SOURCE”) system.¹¹

CDs are book entry-only (“BEO”) Securities¹² registered to DTC’s nominee, Cede & Co. BEO Securities are DTC-eligible Securities for which (i) physical certificates are not available to investors and (ii) DTC, through its nominee, Cede & Co., will hold the entire balance of the offering, either at DTC (in physical form) or through a FAST Agent in DTC’s Fast Automated Securities Transfer (“FAST”) program. Issuers of BEO Securities must submit to DTC a Letter of Representations (“LOR”) among the issuer, its agent (as applicable) and DTC, prior to such issue being determined to be eligible. For corporate and municipal securities, there are two acceptable forms of LOR: a Blanket Issuer Letter of Representations (“BLOR”) or an Issuer Letter of Representations (“ILOR”). A BLOR is issuer specific and applicable to all DTC-eligible securities (debt and/or equity) of the same issuer. Once a BLOR is on file for an issuer, a

⁹ Id.

¹⁰ Id.

¹¹ Id. at 2.

¹² Id. at 4.

new BLOR is not required for future issuances unless the issuer's name changes (in which case an opinion of counsel may also be required). An ILOR may be used for discrete issuances, and is applicable only to that issue of securities, such as trust issuances. Each issuer of a BEO Security must submit to DTC a fully executed LOR on DTC's preprinted form. This LOR represents the issuer's agreement to comply with the requirements set forth in the OA, as amended from time to time.¹³

Once DTC has determined to make a Security eligible, a Participant may Deposit the Security at DTC for crediting to its Securities Account. For a CD issuance, the issuing bank and Depositing Participant must coordinate the execution and Delivery of the physical certificate to DTC in order for the Participant to timely receive credit by the anticipated closing date.¹⁴ Once DTC receives an acceptable Deposit of an eligible CD from a Participant, DTC credits a Security Entitlement¹⁵ in the CD to the Participant's

¹³ Id.

¹⁴ See DTC Deposits Service Guide (“Deposits Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Deposits.pdf>, at 8. The closing date is the date on which Underwriting will distribute an issue to the underwriter's Participant account at DTC for book-entry delivery and settlement upon notification by both the underwriter and the issuer that an issue has closed (i.e., the distribution date). See Underwriting Guide, supra note 3, at 6. On the closing date, when an issuer or its agent and the underwriter confirm with DTC that the issue has closed and verifies pertinent data, DTC releases the position from an internal DTC account and credits the underwriter's Participant account, provided that DTC received the certificates. See id. at 9.

¹⁵ Pursuant to Rule 1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8-102 of the New York Uniform Commercial Code (“NYUCC”). See Rule 1, supra note 3. See also NYUCC 8-102. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See Rule 1, supra note 3.

Securities Account¹⁶ and DTC holds the original paper certificate in its secure vault for the duration of the term of the CD.

Proposal

Pursuant to the proposed rule change, DTC is proposing to launch a new program to support Deposit of electronic CDs that would be issued by banks (“E-CDs”). The program would allow E-CDs to be electronically generated, signed, delivered to DTC and held in electronic form in a secure E-vault.

Upon implementation of the proposed rule change, CDs of state and federally chartered banks containing certain standard terms that conform to one of four proposed templates (“System E-CD Templates”) would be eligible for the new program, as described below. The System E-CD Templates were developed with input from DTC Participants that act as underwriters of CD. The templates would cover four basic types of CDs, specifically (i) Fixed Rate Non-Callable, (ii) Fixed Rate Callable, (iii) Step Rate Non-Callable and (iv) Step Rate Callable.¹⁷

After implementation, in order to facilitate needs of issuers and underwriters, DTC may, at its own discretion, (i) edit the System E-CD Templates and/or (ii) add additional templates for use in the E-CD program as published via Important Notice that

¹⁶ See Deposits Guide, supra note 14, at 8.

¹⁷ A Fixed Rate CD pays a fixed interest rate over the entire term of the CD. A Step Rate CD allows for increases in the interest rate at specific, intervals that are pre-defined by the issuer. A Callable CD contains a call feature that gives the issuing bank the ability to redeem the CD prior to its stated maturity, usually within a given time frame and at a preset call price as set forth in the “call provision” in the master certificate. A certificate without such a provision cannot not be called by the issuer prior to maturity date (Non-Callable).

would also be deemed System E-CD Templates. Any edits to the System E-CD Templates would not affect E-CDs that were previously issued into DTC.

More complex CDs that do not conform to the System E-CD Templates, including those referred to as structured CDs, would be excluded from the proposed new process, because they typically contain terms that are not amenable to the creation of fixed templates in the format proposed herein.

Upon implementation, Participants would request eligibility for E-CDs that conform to the System E-CD Templates through a new system referred to as Underwriting Central (“UWC”). UW SOURCE would continue to remain available for other types of issuances, including the issuances of CDs in physical form.

In order to request eligibility of a CD to be issued in electronic form, the Underwriter would provide all required information relating to the CD through UWC, including but not limited to offering documentation and the terms to be populated in the electronic certificate. The relevant data (e.g., interest rate(s) and maturity date) will be populated into the templates as entered by the underwriter into the UWC application. It would be the responsibility of the Underwriter to disseminate the electronic master certificate to the issuer for electronic signature via UWC. The issuer would be required to electronically sign and Deliver the master certificate to DTC prior to closing.

For CDs that do not conform to the System E-CD Templates, eligibility request would continue to be entered by the Underwriter through UW SOURCE and a physical certificate delivered to DTC prior to closing.

Whether issued in electronic or physical form, securities should be delivered to DTC by no later than noon Eastern Time on the business day prior to the Closing Date as currently specified in Exhibit B of the OA.

In addition, each issuer that opts to issue E-CDs would be required to provide a new BLOR designed for use with the E-CD program, as described below.

Legal Framework Supporting Issuance of Electronic CDs

The following discussion is provided by DTC and includes its own analysis of applicable state law provisions that DTC believes supports the validity of the issuance and Deposit of E-CDs at DTC pursuant to the proposed rule change. Based on its analysis, DTC believes that the proposed rule change would allow E-CDs to be electronically generated, signed, Delivered to DTC and held in electronic form in a secure E-vault within a legal framework that supports the validity of E-CDs in a manner comparable to that of physical issuance and Deposit of CDs that are eligible for DTC services pursuant to the Rules and Procedures. This analysis is not part of the proposed rule, but a separate, analysis of applicable law. DTC emphasizes that neither the following, nor any aspect of the proposed rule change, is intended by DTC to be legal advice by DTC to any Participant, issuer or other third party, and should not be considered to be legal advice by DTC to any Participant, issuer, or other third party.

DTC's Rules are Governed by the Law of New York

DTC's activities and its Rules are structured in accordance with the laws of New York and the United States, and provide that they shall be governed by, and construed in accordance with, the law of New York.¹⁸ A principal law comprising the legal

¹⁸ See Rule 2, supra note 3.

framework under which DTC operates includes, but is not limited to, the NYUCC, which among other things, supports a legal framework for the issuance of Securities and the indirect holding system, under which DTC credits in Securities to its Participants.

NYUCC and Electronic Signature Laws; and Impact Regarding E-CDs

CDs are “negotiable instruments” under Article 3 of the Uniform Commercial Code (the “UCC”),¹⁹ which has been adopted in New York under the NYUCC,²⁰ and, depending on how they are structured, may also be “securities” and/or “financial assets,” as defined in Article 8 of the UCC, which has been adopted in New York under the NYUCC.²¹ In addition, because the CDs are held in DTC through the indirect holding system, the rights and duties of DTC, as a securities intermediary, and its Participants, as entitlement holders, are governed by Part 5 of Article 8 of the UCC,²² also adopted in New York under the NYUCC. In this regard, the rights and obligations associated with CDs held at DTC are governed by the relevant provisions of the NYUCC.

Section 8-110 of the UCC provides that only the law of the issuer’s jurisdiction will govern the “validity” of a “security” – the laws of another jurisdiction cannot be selected to govern validity issues. The term “validity” is not defined in the UCC. DTC believes that laws governing the creation and existence of an electronic record as a

¹⁹ Unless otherwise specified, citations in this proposed rule change to provisions of the UCC are to the UCC as adopted in New York under the NYUCC.

²⁰ See NYUCC 3-102 and 3-104 (defining CDs as negotiable instruments).

²¹ See NYUCC 8-102 (for NYUCC definitions of “financial asset” and “security”).

²² See NYUCC 8-501-8-508.

substitute for a written instrument may be viewed as laws that govern the “validity” of an instrument.²³

An E-CD that is both a negotiable instrument and a security, will be governed as to its validity by the law of the issuer’s jurisdiction, by virtue of Section 8-110 of the UCC. If the validity of a security is determined to include its electronic nature, then the electronic signature and record laws of each individual issuer’s jurisdiction would apply to each E-CD. Therefore, requiring an E-CD to be a security could adversely impact the valid issuance of the E-CD if the laws of the issuer’s jurisdiction do not contemplate the electronic signature of a security.

However, as discussed below, Article 3 negotiable instruments allow for a choice of law. In this regard, DTC believes that requiring E-CDs to be issued as negotiable instruments would facilitate the valid issuance of E-CDs regardless of an issuer’s jurisdiction, so long as the law of a jurisdiction that contemplates the use of electronic signatures as part of a valid issuance is chosen to govern the E-CD.

As more fully described in the discussion of electronic signature laws provided by DTC below, DTC proposes to apply New York law for this purpose, but also proposes to design the E-CD program such that E-CDs issued into DTC would be valid under the

²³ See Comment 2 to Section 8-110 of the UCC (explaining that the law of the issuer’s jurisdiction governs the validity of a security in order to ensure that a single body of law governs the questions addressed in Part 2 of Article 8). Part 2 of Article 8 of the UCC describes the circumstances in which an issuer can and cannot assert invalidity as a defense against purchasers, including lack of genuineness, unauthorized signatures and incomplete certificates. This implies that the term “validity” in Section 8-110 of the UCC refers to a broader set of issues than just the validity of issuance of the security under the issuer’s governing documents and local law.

laws of all states that allow the use of electronic records and signatures in any transaction that would otherwise require a paper document and/or wet-ink signature.

Discussion of Electronic Signature Laws

The New York Electronic Signatures and Records Act

The New York Electronic Signatures and Records Act²⁴ (“ESRA”) governs the validity of electronic records and signatures in New York. ESRA is like UETA in that it accords the same power and effect to electronic records and signatures as would otherwise be accorded to writings under New York law.

ESRA does not apply to negotiable instruments, such as CDs, unless an electronic record of such instrument is created, stored or transferred in a manner that meets the Uniqueness Standard. If the Uniqueness Standard is met, then CDs that are issued, created and signed electronically have the same power and effect as paper CDs under New York law.

The Uniform Electronic Transactions Act

The Uniform Electronic Transactions Act²⁵ (“UETA”), has been adopted in various forms by 47 U.S. states.²⁶ UETA generally allows parties to agree to use electronic records and signatures in any transaction that would have otherwise required a paper document and/or wet-ink signature.

²⁴ N.Y. State Tech. Law §30[●] (McKinney 2012).

²⁵ Unif. Electronic Transactions Act (Unif. L. Comm’n 1999).

²⁶ Illinois, New York and Washington have not adopted UETA. Although it has adopted UETA, California has not adopted Section 16 of UETA, which, as described in further detail below, is the section of UETA that provides for the electronic creation, signature and storage of negotiable instruments such as CDs.

Section 16 of UETA²⁷ provides legal support for the creation, transferability and enforceability, of, among other things, negotiable instruments such as CDs, if they meet the following standards:

- The E-CD must be a “transferable record,” which is defined, in part, as an electronic record that would be a note under Article 3 of the UCC (CDs are notes in all relevant UETA jurisdictions), and the issuer has expressly agreed that it is a transferable record.
- The E-CD must initially be created as an electronic record, and not as a paper document that is converted to one.²⁸
- Each E-CD must be stored in a system that meets the following standards (the “Section 16 Safe Harbor”):
 - The E-CD is created, stored and assigned in a manner that a single authoritative copy of the transferable record exists which is unique, identifiable and, subject to certain exceptions, unalterable (the “Uniqueness Standard”).
 - The authoritative copy must (i) identify the person claiming control (i.e., the person to which the transferable record was issued or transferred), (ii) be maintained by the person claiming control or its designee and (iii) be unalterable except with the permission of the person claiming control.

²⁷ Unif. Elec. Transactions Act §16 (Unif. L. Comm’n 1999).

²⁸ See Comment 2 to Section 16 of UETA (explaining that Section 16 is not intended to cover the conversion of a paper note to an electronic record; instead, transferable records must be electronic at the time they are created).

- Copies of and authorized revisions to the authoritative copy must be clearly marked as such.

DTC believes that any E-CD that is a transferable record and is stored in a system that falls within the Section 16 Safe Harbor will have the same rights and obligations of an equivalent writing under the UCC.²⁹

Because the Section 16 UETA provisions are more robust than ESRA and the guidance in Section 16 of UETA is more developed, the E-CDs that would be made eligible by DTC would be structured to meet the requirements of UETA, including the Section 16 Safe Harbor, even though, as discussed below, the E-CDs will also be structured so that they are governed by New York law (including ESRA).³⁰ This construct will help ensure that an E-CD also will remain valid in the jurisdictions that have adopted Section 16 of UETA, in the unlikely event that a court of competent jurisdiction would determine not to recognize the selection of New York law.

²⁹ Because Section 16 of UETA only contemplates a transferable record that has been electronic since its creation and requires that the transferable record comply with the Section 16 Safe Harbor, including the Uniqueness Standard, at all times, DTC believes that the legal issues relating to the electronic signature of a negotiable instrument such as a CD are necessarily intertwined with its electronic creation and storage. Thus, an electronic negotiable instrument cannot be created outside of an appropriate system that complies with the Section 16 Safe Harbor even if electronically signed.

³⁰ Although Section 307 of ESRA does not provide the same robust provisions and commentary as Section 16 of UETA, it is still sufficiently clear that E-CDs that meet the Uniqueness Standard are valid.

E-Sign

The federal Electronic Signatures in Global and National Commerce Act³¹ (“E-Sign”) generally provides for the legal effect, validity and enforceability of electronic signatures and records relating to transactions in interstate or foreign commerce and preempts state law with respect to such transactions except to the extent the state has enacted UETA or other alternative procedures or requirements that are consistent with E-Sign. E-Sign generally tracks the provisions of UETA but ***does not apply to transactions that are governed by the UCC, such as the issuance of CDs***. E-Sign’s equivalent of Section 16 of UETA expressly limits the use of transferable records to debt obligations secured by an interest in real property (i.e., mortgage notes). Instead, state law must provide for the electronic creation and signature of a CD for it to be valid.

Others

In addition to New York, Illinois and Washington also did not adopt UETA. Illinois adopted an electronic records and signatures law that is similar to UETA and contains a section that is analogous to Section 16 of UETA. Washington adopted an electronic records and signatures law that is very different than UETA and does not clearly contemplate or provide for the issuance of electronic negotiable instruments such as CDs. As noted above, California has not adopted Section 16 of UETA. Therefore DTC is unable to conclude whether CDs that are created, signed and stored electronically would be valid under Washington or California law because it has not identified a legal framework under those laws whereby an issuer could issue a valid E-CD that could in turn be Deposited at DTC in accordance with the proposed rule change.

³¹ Electronic Signatures in Global and National Commerce 15 U.S.C. §70[●].

Proposed Rule Changes

Pursuant to the proposed rule change, DTC would amend the OA and Underwriting Service Guide, and create a new BLOR and the System E-CD Templates to be used exclusively for the issuance of E-CDs, in order to implement the proposed UWC system and E-vault for the issuance Delivery and Deposit of E-CDs and put in place the Procedures and a framework that conforms to the legal requirements for the maintenance of valid E-CDs, as described above.

Each issuer that opts to participate in the E-CD program would sign a new BLOR.

Pursuant to the proposed rule change, the OA would require each E-CD issuer to submit a new BLOR (“E-CD BLOR”) to DTC through UWC prior to its first issuance of E-CDs. In order to minimize the additional provisions in the Electronic Master Certificate (as defined below), the E-CD BLOR would contain supplemental terms related to the E-CD program (in addition to the representations that are currently included in a BLOR). The new E-CD BLOR would provide that all E-CDs issued in connection therewith and under one of the base CUSIP numbers set forth on the face of the E-CD BLOR would be part of the same transaction in which the E-CD BLOR was executed.³²

Pursuant to Section 3-119 of the UCC, a holder in due course of a negotiable instrument must have notice of any separate agreement in order to be subject to its

³² Section 3-119 of the NYUCC provides that a negotiable instrument may be “modified or affected by any other written agreement executed as part of the same transaction.”

limitations. Therefore, the Electronic Master Certificate (as defined below) would contain a reference to the new E-CD BLOR.³³

Each issuer issuing E-CDs would electronically sign and issue an Electronic Master Certificate.

E-CDs would be issued on a new form of master electronic certificate (“Electronic Master Certificate”) that has been specially created for the E-CD program. A separate electronic Master Certificate would be issued by the issuer for each broker that participates in an E-CD offering. Because E-CDs must necessarily be created, signed and thereafter maintained in electronic form using a system that complies with the Section 16 Safe Harbor, including the Uniqueness Standard, DTC would only make eligible E-CDs that have been initiated by the related broker/dealer through UWC, then created, signed and submitted to DTC through an electronic signature system designed by DTC for this purpose. UWC would allow Participants to initiate a new E-CD issuance by creating a draft Electronic Master Certificate using the applicable System E-CD Template that would be sent to an issuer for verification and signature. The issuer will verify and affix its electronic signature to the Electronic Master Certificate created by the Participant in a manner that creates an executed Electronic Master Certificate that complies with the Uniqueness Standard.

Once issued, each original Electronic Master Certificate would be automatically stored in an electronic vault repository.

Once an issuer verifies and affixes its electronic signature to an Electronic Master Certificate, the Electronic Master Certificate would be automatically stored in an E-vault

³³ While a CD cannot expressly be made subject to the terms of an additional agreement, Section 3-105(1)(c) of the UCC permits the CD to refer to or state that it arises out of a separate agreement.

repository that complies with the Section 16 Safe Harbor, and the Electronic Master Certificate would immediately be deemed “Delivered” to DTC. The E-vault will identify Cede & Co. as the person to which the Electronic Master Certificate was issued. The E-vault will maintain an audit trail that will track all events that occur with respect to the Electronic Master Certificate, including any authorized changes, such as notations to reflect withdrawals, which will be noted in the audit trail instead of on the body of the Electronic Master Certificate. The audit trail will be incorporated as part of the Electronic Master Certificate in accordance with the BLOR.

E-CDs would be governed by New York Law.

The parties would select New York law as the governing law for all E-CDs, as described below. Because there are variations between the electronic record and signature laws (including in the provisions of UETA, as adopted) across the various U.S. jurisdictions, the selection of New York law (including ESRA) as the law governing the E-CDs would allow DTC to structure a single E-CD program that will be valid for issuers in all U.S. jurisdictions.

DTC believes that the System E-CD Templates for the E-CDs and the proposed BLOR to be used for E-CD issuances have been structured in a manner that complies with the applicable rules governing jurisdiction selection, as follows:

- Each BLOR would provide that the laws of New York would govern the terms of the E-CD, which is issued and payable to DTC in New York.

The jurisdiction selection rule in Section 1-301 of the UCC, which applies to CD issuances under Article 3 of the UCC, allows parties to a transaction

that bears a reasonable relation to a state to select the laws of that state to govern their rights and duties.

- Each Electronic Master Certificate would have a minimum denomination of \$250,000. The jurisdiction selection rule in Section 5-1401 of the New York General Obligations Law allows parties to any transaction that results in an obligation of at least \$250,000 to select New York law to govern their rights and obligations.
- Each Electronic Master Certificate would expressly provide that it is payable in New York. The general rule in New York (and in most other jurisdictions) is that a note (such as a CD) that is executed in one state and payable in another, is governed as to its nature, validity, interpretation and effect by the laws of the state where it is made payable.

E-CDs would be structured as “financial assets” – but not as “securities” – under Article 8 of the UCC.

Section 8-110 of the UCC provides that only the law of the issuer’s jurisdiction will govern the “validity” of a “security” – the laws of another jurisdiction cannot be selected to govern validity issues. The term “validity” is not defined in the UCC. DTC believes that laws governing the creation and existence of an electronic record as a substitute for a written instrument may be viewed as laws that govern the “validity” of an instrument.³⁴

³⁴ See Comment 2 to Section 8-110 of the UCC (explaining that the law of the issuer’s jurisdiction governs the validity of a security in order to ensure that a single body of law governs the questions addressed in Part 2 of Article 8). Part 2 of Article 8 of the UCC describes the circumstances in which an issuer can and cannot assert invalidity as a defense against purchasers, including lack of genuineness, unauthorized signatures and incomplete certificates. This implies

CDs may be both “negotiable instruments” under Article 3 of the UCC and “securities” under Article 8 of the UCC, in which case the provisions of Article 8 will govern the CD.³⁵ This means that an E-CD that is both a negotiable instrument and a security, will be governed as to its validity by the law of the issuer’s jurisdiction, by virtue of Section 8-110 of the UCC. If the validity of a security is determined to include its electronic nature, then the electronic signature and record laws of each individual issuer’s jurisdiction would apply to each E-CD, and the selection of New York’s ESRA would not be valid. As a result, any jurisdiction that has not enacted a law that clearly provides for electronic negotiable records would necessarily have to be excluded from the E-CD program.³⁶

In order to ensure that the parties can properly choose New York law, including ESRA, to govern the E-CDs, E-CDs would be structured so that they are not Article 8 Securities. To do this, each Electronic Master Certificate would provide that it can be transferred only by delivery and indorsement. A “security,” as defined in Section 8-

that the term “validity” in Section 8-110 of the UCC refers to a broader set of issues than just the validity of issuance of the security under the issuer’s governing documents and local law.

³⁵ See Section 3-103(1) of the UCC (providing that Article 3 does not apply to investment securities); Comment 2 to Section 3-103 of the UCC (explaining that if an instrument is negotiable in form under Article 3, but is, because of its manner of use, a “security” under Article 8, Article 8 and not Article 3 applies); and Section 8-103(d) of the UCC and Comment 5 to Section 8-103 of the UCC (providing that a writing that is a security certificate is governed by Article 8, even though it also meets the requirements of Article 3).

³⁶ In particular, as noted above, if the E-CDs are Article 8 securities, then DTC would be unable to conclude that E-CDs would be valid under the laws of California and Washington, and issuers in California and Washington would likely be excluded from the E-CD program.

102(a)(15) of the UCC, must be in “bearer” or “registered” form. “Bearer form” requires that the security be payable to bearer. Because each Electronic Master Certificate would be payable to Cede & Co., as nominee for DTC, it would not be in bearer form.

“Registered form” requires that transfers of a security be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate must so state. Because E-CDs would be transferrable only by delivery and indorsement and not on the books of the issuer, they will not be in registered form and therefore will not fall within the definition of “security” in Article 8 of the UCC.

Although the E-CDs would not be Article 8 securities, under Section 8-103(d) of the UCC they will still be “financial assets” if held in a securities account.³⁷ DTC Rule 6 provides, among other things, that DTC will accept Securities for deposit and may offer such other services as are consistent with its purposes and powers.³⁸ “Securities” are defined in the DTC Rules as anything that would be a “financial asset” under Section 8-102 of the UCC. The DTC Rules further provide that any item credited to a securities account will be deemed a Security under the DTC Rules and treated as a financial asset under Article 8 of the UCC. Accordingly, E-CDs, each of which will be a financial asset under Article 8 of the UCC, may be made eligible by DTC, credited by DTC to the

³⁷ Section 8-103(d) of the UCC provides, in part, “a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.” See also, the definition of “financial asset” in Section 8-102(a)(9) of the UCC, which provides that any property held by a securities intermediary for another person in a securities account will be a financial asset if the securities intermediary has expressly agreed with the other person that the property is to be treated as such.

³⁸ DTC’s corporate powers are listed in its Organization Certificate, which include, among other things, the receipt on deposit for safe-keeping money, securities, papers of any kind and any other personal property for the account of its participants in connection with DTC’s acting as a clearing corporation.

securities accounts of its participants, and treated as a “Security” for all purposes, in each case under the DTC Rules.

The rules relating to the indirect holding system, security entitlements and the rights and duties of securities intermediaries (e.g., DTC) and entitlement holders, which are specified in Part 5 of Article 8 of the UCC, apply to all financial assets.³⁹ Thus, although the E-CDs would not be securities, because they would be financial assets, they may be issued and deposited with DTC, and DTC can credit security entitlements therein to its Participants, as it currently does with respect to paper CDs.⁴⁰ E-CDs would be maintained as fungible bulk by DTC, in accordance with the requirement in Section 8-504 of the UCC that a securities intermediary maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established therein.⁴¹

³⁹ See Comment 5 to Section 8-103 of the UCC (explaining that the indirect holding rules apply to any Article 3 negotiable instrument that is held through a securities intermediary; Comment 9 to Section 8-102 of the UCC (explaining that the indirect holding rules in Part 5 of Article 8 may apply to financial assets even where the rules in Parts 2, 3 and 4 of Article 8 do not apply); and Comment 1 to Section 8-104 of the UCC (explaining that Article 3 and not Article 8 specifies how one acquires a direct interest in a bankers’ acceptance, which is a negotiable instrument under Article 3 and a financial asset under Article 8, and Part 5 of Article 8 governs the rights of a clearing corporation’s participants with respect to a bankers’ acceptance that is held by the clearing corporation on account for its participants).

⁴⁰ DTC currently accepts for deposit bankers’ acceptances, which are not Article 8 securities, and proposes to do the same with respect to the E-CDs.

⁴¹ Comment 1 to Section 8-504 of the UCC explains that Section 8-504 recognizes the reality that these items are held as fungible bulk and are not identified to a customer. The language in Section 8-504 of the UCC applies to all financial assets (not just securities) and would therefore provide the basis for holding E-CDs as fungible bulk, even if they are not Article 8 securities.

Summary of Selected E-CD Terms

Section 3-104 of the UCC provides that a negotiable instrument may only contain an unconditional promise to pay a sum certain, a prescribed set of other obligations and powers, and no other promise, order, obligation or power. Because it is unclear exactly what would constitute an additional obligation or power, only those provisions that are necessary to ensure that a holder can ascertain all of the E-CDs essential terms⁴² would be included in the Electronic Master Certificate, either directly, or by reference to the issuer's E-CD BLOR.

Selected terms contained in the Master Electronic Certificate:

The following terms would be included in each System E-CD Template:

- The E- CD would be payable in New York – this ensures that the E-CD will be governed by New York law.
- The E-CD is issued in connection with a BLOR between the issuer and DTC – this allows for the additional terms contained in the BLOR to modify or affect the terms of the E-CD and puts any holder of the E-CD on notice of the existence of such additional terms.
- The E-CD is an electronic record created in accordance with ESRA, and a transferable record under UETA – this makes clear the issuer's intent that the E-CD be a valid electronic instrument under both ESRA and UETA.⁴³

⁴² See Comment 8 to Section 3-105 of the UCC (“an instrument is not negotiable unless the holder can ascertain all of its essential terms from its face”).

⁴³ Section 16 of UETA requires that the issuer expressly agree that the E-CD is a transferable record. Comment 2 to Section 16 of UETA explains that it is likely that this agreement will be set forth in the body of the electronic record.

- The E-CD would be stored in the E-vault – this is necessary to understand how the notation and transfer provisions in the Electronic Master Certificate will work.
- The E-CD may be transferred only by delivery and indorsement – this ensures that the E-CD would not be an Article 8 security and, therefore, not subject to the limitation on jurisdiction selection with respect to validity.

Selected terms contained in the BLOR:

- Paper out provision – this allows DTC to convert the E-CD to a paper CD, if deemed necessary, without further action from the issuer.
- Selection of New York governing law and jurisdiction– included in the BLOR to minimize additions to the Electronic Master Certificate.
- No contravention representation by the issuer – the issuer is responsible for ensuring that the issuance of an E-CD complies with applicable local law and regulation and the issuer’s governing documents.

Other Proposed Changes to the OA

In addition to the proposed changes described above, the OA would be amended as follows:

- a. Section I.A.1. would be amended to add a reference to UWC, in addition to UW SOURCE, as a system that may be used by Participants to submit eligibility requests. Additionally, the hyperlink to the website of DTC’s parent, The Depository Trust & Clearing Corporation (“DTCC”) for information on UW SOURCE will be amended to refer to the

Underwriting section of DTCC's website. The proposed changes in this section would facilitate Participants' ability to access DTC's systems for eligibility requests.

- b. Section 1.B.1 relating to the documentation requirements for BEO Securities would be amended to add a new subsection c. with the following text under a new heading titled "Electronic Certificates for Retail CDs":

Issuers leveraging the use of electronic master certificates for Retail CDs must submit to DTC on DTC's form, a fully executed BLOR and its associated Rider, for each base CUSIP issuing Retail CDs through the electronic process.

For the current form of the E-CD BLOR please refer to <https://www.dtcc.com/legal/issue-eligibility>.

In addition, subsection a. of this Section, which describes the current Letter of Representation requirements for BEO Securities, would be amended in order to clarify that the requirements described in that subsection apply to BEO Securities other than E-CDs, namely FAST securities or securities where a physical master certificate is delivered to DTC.

The proposed changes to this section would facilitate Participants' and issuers' access to documentation used in connection with eligibility requests.

- c. Section 1.C.1., which relates to considerations relating to eligibility of CDs, would be amended to add a subsection c. that would be titled “Electronic Master Certificates,” to provide for issuance and Delivery of E-CDs and a legal disclaimer as follows:

In lieu of issuing and delivering physical master certificates to DTC, the Underwriter can facilitate issuance of Retail CDs for state and federally chartered banks in electronic form by using specific master certificate templates (“System E-CD Templates”) provided by DTC through UWC.

The relevant data (e.g., maturity date) will be populated into a System E-CD Template as entered by the Underwriter into the UWC application. It is the responsibility of the Underwriter to disseminate the populated electronic master certificate to the Issuer for electronic signature via UWC. The Issuer must electronically sign the electronic master certificate prior to closing.

Each electronic master certificate is stored in a secure electronic vault maintained by DTC.

For Retail CDs that do not conform to the System E-CD Templates, a physical master certificate must be delivered to DTC prior to closing.

Note: Whether issued in electronic or physical form, securities should be delivered to DTC by no later than noon

ET on the business day prior to the Closing Date as outlined in Exhibit B.

IMPORTANT LEGAL NOTICE:

DTC DOES NOT VALIDATE, CERTIFY, REPRESENT OR SEEK TO CONFIRM (i) THE VALIDITY OF THE DATA ELEMENTS ENTERED BY A PARTICIPANT, ITS CORRESPONDENT UNDERWRITERS AND OR VENDORS INTO UWC (TOGETHER WITH ANY OTHER PERSON USING UWC, "UWC USERS") OR (ii) THE FITNESS OF THE ELECTRONIC MASTER CERTIFICATES FOR ANY PURPOSE. USE OF UWC AND/OR ELECTRONIC MASTER CERTIFICATES BY ANY UWC USER SHALL BE DEEMED TO CONSTITUTE A WAIVER OF ANY AND ALL CLAIMS (WHETHER DIRECT OR INDIRECT) AGAINST DTC AND ITS AFFILIATES, AND AN AGREEMENT THAT DTC AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, COST, EXPENSE OR LIABILITY IN RELATION TO THE USE OF UWC AND/OR DISSEMINATION OR USE OF RELATED DOCUMENTATION, INCLUDING MASTER CERTIFICATES OF DEPOSIT, WHICH ARE PROVIDED "AS IS."

EACH PARTICIPANT AGREES TO INDEMNIFY AND HOLD HARMLESS DTC AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, COSTS, JUDGMENTS, CHARGES AND EXPENSES ARISING OUT OF OR RELATING TO ANY USE OF UWC BY THE PARTICIPANT AND/OR ANY UWC USER, INCLUDING BUT NOT LIMITED TO ANY ISSUANCES OF CERTIFICATES OF DEPOSIT AND RELATED TRANSACTIONS BY SUCH PERSON OR ITS AFFILIATES, AGENTS, CUSTOMERS OR DESIGNEES.”

This proposed change would facilitate the implementation and use of System E-CD Templates, as described above, and set forth a disclaimer by DTC and indemnification consistent with the requirements of DTC’s current Rule and Procedures which allocate the responsibility to Participants for the accuracy of information and instructions provided by them to DTC and the indemnification of DTC by Participants in this regard.⁴⁴

- d. Exhibit B, which sets forth timeframes for submission of documents by Participants to DTC Underwriting in connection with eligibility requests, would be revised to reflect that the timeframes described in the exhibit relate to documents and information submitted through UWC, in addition

⁴⁴ See OA, supra note 3 at ii-iii and Rule 6, supra note 3

to UW SOURCE. The proposed change to Exhibit B would align timeframes for submissions through UWC with those that apply to submissions to UWSOURCE.

- e. Technical changes with respect to spelling, punctuation and spacing of text would also be made. The proposed technical changes to the OA would provide enhanced clarity for Participants and Issuers with respect to Procedures relating to eligibility processing and the Deposit of CDs.

Proposed Changes to the Underwriting Service Guide

- a. A glossary description provided for BLOR in the Underwriting Guide currently describes a BLOR as an agreement between DTC and an issuer of municipal securities. As described above, a BLOR or LOR is required to be submitted with respect to any issue of BEO Securities which also includes corporate Securities. Pursuant to the proposed rule change, the text would be clarified so that the description of the term BLOR is not described as limited to applying only to municipal Securities. The proposed change to this glossary description would provide enhanced clarity for Participants and Issuers with respect to Procedures relating to eligibility documentation required for BEO Securities.
- b. Pursuant to the proposed rule change, DTC would eliminate references to the Participant Terminal System (“PTS”) functions ART and PUND as these functions have become obsolete. ART related to inquiries about transactions of a Participant processed by DTC and PUND related to inquiries relating to issues and certificates for issues held by a Participant.

Participant inquiries may now be directed to the Client Center available on dtcc.com.⁴⁵ The proposed rule change would update the Underwriting Service Guide to provide clarity for Participants on how to submit inquiries relating to DTC's services.⁴⁶

- c. Pursuant to the proposed rule change, a reference to the IMPP function in PTS would be deleted. The IMPP function allowed Participants to view Important Notices about underwriting, transfer agents, and money market instruments ("MMI"). This function is not being widely used by Participants. All DTC Important Notices are accessible on dtcc.com.⁴⁷
- d. The Section titled "Packaging Inquiries" provides information and requirements relating to the delivery of securities to DTC. Pursuant to the proposed rule change, DTC would add the following text under a subheading titled "Retail (brokered) Certificates of Deposit" to note the existence of the proposed process for E-CDs with a reference to the OA for additional information:

In lieu of issuing and delivering physical master certificates to DTC, the Underwriter can facilitate issuance of Retail CDs for state and federally chartered banks in electronic form by using available master certificate templates through

⁴⁵ See Securities Exchange Act Release No. 88050 (January 27, 2020), 85 FR 5728 (January 31, 2020) (File No. SR-DTC-2020-002).

⁴⁶ Id.

⁴⁷ See <https://www.dtcc.com/legal/important-notices>.

the Underwriting Central system (“UWC”), in accordance with the provisions of the OA.

Each electronic master certificate deposited at DTC is stored in a secure electronic vault maintained by DTC.”

This Section would also include use, waiver of liability and indemnification provisions as follows:

IMPORTANT LEGAL NOTE:

DTC DOES NOT VALIDATE, CERTIFY, REPRESENT OR SEEK TO CONFIRM (i) THE VALIDITY OF THE DATA ELEMENTS ENTERED BY A PARTICIPANT, ITS CORRESPONDENT UNDERWRITERS AND OR VENDORS INTO UWC (TOGETHER WITH ANY OTHER PERSON USING UWC, “UWC USERS”) OR (ii) THE FITNESS OF THE ELECTRONIC MASTER CERTIFICATES FOR ANY PURPOSE. USE OF UWC AND/OR ELECTRONIC MASTER CERTIFICATES BY ANY UWC USER SHALL BE DEEMED TO CONSTITUTE A WAIVER OF ANY AND ALL CLAIMS (WHETHER DIRECT OR INDIRECT) AGAINST DTC AND ITS AFFILIATES, AND AN AGREEMENT THAT DTC AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, COST, EXPENSE OR LIABILITY IN RELATION TO THE USE OF UWC AND/OR

DISSEMINATION OR USE OF RELATED DOCUMENTATION, INCLUDING MASTER CERTIFICATES OF DEPOSIT, WHICH ARE PROVIDED “AS IS.”

EACH PARTICIPANT AGREES TO INDEMNIFY AND HOLD HARMLESS DTC AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, COSTS, JUDGMENTS, CHARGES AND EXPENSES ARISING OUT OF OR RELATING TO ANY USE OF UWC BY THE PARTICIPANT AND/OR ANY UWC USER, INCLUDING BUT NOT LIMITED TO ANY ISSUANCES OF CERTIFICATES OF DEPOSIT AND RELATED TRANSACTIONS BY SUCH PERSON OR ITS AFFILIATES, AGENTS, CUSTOMERS OR DESIGNEES.

The proposed changes to this section would facilitate the implementation and use of System E-CD Templates, as described above, and set forth a disclaimer by DTC and indemnification consistent with the requirements of DTC’s current Rule and Procedures which allocate the responsibility to Participants for the accuracy of information and instructions provided

by them to DTC and the indemnification of DTC by Participants in this regard.⁴⁸

System Access and Information Security Considerations

A Participant controls access to its account and transaction information relating to its holdings and activity in DTC's systems through DTCC's access coordinator program.⁴⁹ This program includes, but is not limited to, controls on access to UWSOURCE, and would also encompass UWC access upon implementation of the proposal. DTC may provide to the issuer of any security, including but not limited to CDs, at any time credited to the Account of a Participant the name of the Participant and the amount of the issuer's securities so credited, and the Corporation is authorized to provide similar information to any appropriate governmental authority.⁵⁰ An issuer must provide authorization annually for a third party agent to obtain access to an position information with respect to Securities of such issuer.⁵¹

DTCC, for itself and on behalf of its subsidiaries, including DTC, maintains a privacy policy, which among other things, states that DTCC maintains an information security program setting forth standards for maintaining administrative, technical and physical safeguards to protect the personal information provided by users of services, which would include personal information provided through the E-CD program, against

⁴⁸ See Underwriting Service Guide at 2-3, supra note 3 at ii-iii and Rule 6, supra note 3.

⁴⁹ <https://www.dtcc.com/client-center/access-coordinators>

⁵⁰ See Rule 2, supra note 3.

⁵¹ See OA, supra note 3 at 55.

accidental, unlawful or unauthorized destruction, loss, alteration, access, disclosure or use. DTCC periodically tests the security protections of its information systems and monitors the effectiveness of its information security controls, systems and procedures.⁵²

Implementation Timeframes

The proposed rule change would be implemented by DTC in two phases, with the first phase beginning after approval of the proposed rule change by the Commission and prior to the end of January 2021.

Initially, underwriters would be invited to participate, on a voluntary basis. The underwriters that would participate in this initial phase are those that expressed interest in participating after outreach by DTC to those Participants that participated in the development of the proposed E-CD program. The Participants that would participate during the first phase are those Participants that expect to be able to submit an issuance during this phase that would meet the requirements of the proposed E-CD program, as those requirements are described above. This phased approach to implementation would facilitate a smooth transition, from an operational perspective, for ultimately making UWC available for all E-CD offerings of state and federally chartered banks that conform to the System Templates.

Subsequently, the E-CD program would be made available to all underwriters in early 2021, with the implementation date of such availability to be announced via Important Notice. Upon approval of the proposed rule change, a legend would be added to the OA and Underwriting Service Guide indicating that the applicable provisions

⁵² See Privacy Policy on DTCC website, available at <https://www.dtcc.com/privacy>.

relating to E-CDs would apply only to (i) issuers whose issuances are submitted to DTC through UWC and (ii) Participants that submit and/or hold eligible issuances submitted through UWC, during this first phase, until a date to be announced by DTC via Important Notice when the E-CD program would become available, on a voluntary basis, for all eligible issuances. This legend would read as follows:

Applicable provisions relating to UWC and Electronic Master Certificates for Certificates of Deposit, as described herein, apply only to (i) Issuers whose issuances are submitted to DTC through UWC, and (ii) Participants that submit and/or hold eligible issuances submitted through UWC during an initial phase of the electronic CD program, until a date to be announced by DTC via Important Notice when the E-CD program would become available, on a voluntary basis, for all eligible issuances of state and federally chartered banks. This legend will be removed upon full implementation of the E-CD program on a date to be announced via Important Notice.

Issuers and underwriters that choose not to use the new E-CD program could continue to use the existing process through UW SOURCE, including making Deposits using physical certificates.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act

The Clearing Agencies believe that the Framework is consistent with Section 17A(b)(3)(F) of the Act,⁵³ for the reasons described below.

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

Section 17A(b)(3)(F) of the Act⁵⁴ requires, inter alia, that the rules of a 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. As described above, the proposed rule change would provide for the issuance of Electronic Master Certificates for E-CDs which would be stored in a secure E-Vault, as described above. Therefore, by providing for the storage of E-CDs in a secure electronic vault, the proposed rule change is designed to assure the safeguarding of securities which are in the custody or control of DTC.

Section 17A(b)(3)(F) of the Act also 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 DTC believes that the proposed E-CD program would reduce closing delays caused by disruptions to physical delivery of certificates by eliminating the need for DTC to receive original paper master certificates in advance of CD issuances that would be eligible for issuance through the new program. Therefore, by facilitating the potential reduction of closing delays for issuances of CDs that utilize the E-CD program, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

DTC also believes that the proposed rule changes are consistent with Section 17A(b)(3)(F), cited above, because by making technical changes with respect to spelling, punctuation and spacing of text within the Procedures, as described above, the proposed rule change would provide enhanced clarity for Participants and Issuers with respect to

⁵⁴

Id.

Procedures relating to eligibility processing and the Deposit of CDs. By providing Participants and Issuers with enhanced clarity with regard to the Procedures relating to, and therefore facilitating eligibility processing and the Deposit of CDs that may be the subject of transactions processed through the DTC system, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

Rule 17Ad-22(e)(1)

Rule 17Ad-22(d)(1) promulgated under the Act⁵⁵ requires that each registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As described above, DTC believes that requiring E-CDs at DTC to be negotiable instruments governed by New York law would allow for the valid issuance into DTC of E-CDs of issuers in all relevant jurisdictions. Therefore, by providing for E-CDs to be deemed negotiable instruments governed by New York law, as described above, DTC believes that DTC's Rules and Procedures, as amended by the proposed rule change, would provide for a well-founded, clear, transparent, and enforceable legal basis for the valid issuance of E-CDs into DTC from issuers domiciled in any relevant jurisdiction.

Also, as described above, because DTC believes the Section 16 UETA provisions are more robust than ESRA and the guidance in Section 16 of UETA is more developed, the proposal provides would provide that E-CDs that would be made eligible by DTC would be structured to meet the requirements of UETA, including the Section 16 Safe

⁵⁵ 17 CFR 240.1717Ad-22(d)(1)

Harbor, even though, as discussed above, the E-CDs would also be structured so that they are governed by New York law (including ESRA).⁵⁶ DTC believes that this construct will help ensure that an E-CD also would be valid in the jurisdictions that have adopted Section 16 of UETA, in the unlikely event that a court of competent jurisdiction would determine not to recognize the selection of New York law. Therefore, DTC believes that structuring E-CDs to meet the requirements of UETA would allow DTC's Rules and Procedures to provide additional support for a well-founded, clear, transparent, and enforceable legal basis for the valid issuance of E-CDs into DTC from issuers domiciled in jurisdictions that have adopted Section 16 of UETA.

DTC believes that with respect to all jurisdictions, including those that have not adopted Section 16 of UETA or ESRA, the Procedures, as amended pursuant to the proposed rule change, would continue to facilitate the issuance of CDs in physical form into DTC. As indicated above, the validity of a physical security does not depend on the provisions of electronic signature laws. DTC believes that Article 8 of the UCC as adopted in all relevant jurisdictions allows for the physical issuance of CDs as securities. Therefore, an issuer from any relevant jurisdiction would continue to be able to issue valid CDs in physical form that meet DTC's eligibility requirements into DTC. Therefore, DTC believes that DTC's Procedures, as amended pursuant to the proposed rule change, would continue to provide a well-founded, clear, transparent, and enforceable legal basis for the valid issuance of CDs into DTC from issuers domiciled in any relevant jurisdiction.

⁵⁶ Although Section 307 of ESRA does not provide the same robust provisions and commentary as Section 16 of UETA, it is still sufficiently clear that E-CDs that meet the Uniqueness Standard are valid.

Rule 17Ad-22(e)(10)

Rule 17Ad-22(d)(10) promulgated under the Act⁵⁷ requires that each registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed, inter alia, to, as applicable, establish and maintain operational practices that manage the risks associated with such physical deliveries. As mentioned above, the proposed rule change would eliminate the requirement for the delivery of a physical master certificate for a CD offering to the extent it is eligible for, and processed through, the electronic process established through UWC, and stored in the E-Vault. DTC believes the proposed electronic process for Delivery of E-CDs to DTC would reduce risks of loss related to the physical CDs that would otherwise be physically transported to DTC for Deposit and later returned to issuers or their agents for redemption upon maturity of the CD. Therefore, by reducing the risk of loss of physical master certificates by allowing their replacement with Electronic Master Certificates, DTC believes that the proposed rule change would establish and maintain operational practices that manage risks associated with eligible offerings of CDs, as described above.

Rule 17Ad-22(e)(11)

Rule 17Ad-22(e)(11) promulgated under the Act⁵⁸ requires that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, when the covered clearing agency provides central securities depository services: (i) Maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities

⁵⁷ 17 CFR 240.1717Ad-22(d)(10)

⁵⁸ 17 CFR 240.1717Ad-22(d)(11)(i)(ii) and (iii).

issues, and minimize and manage the risks associated with the safekeeping and transfer of securities; (ii) , inter alia, prevent the unauthorized creation or deletion of securities; and (iii) Protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.

DTC believes the proposed rule change is consistent with the provisions of Rule 17Ad-22(e)(11)(i), cited above, because (i) by providing for the Deposit of Securities in the name of Cede & Co. to be deposited in electronic form and stored in an electronic vault, the proposed rule change would provide for the immobilization and dematerialization of master certificates for the transfer of CDs by book entry, (ii) the integrity of E-CDs would be maintained by such storage in the secure electronic vault and (iii) it would minimize the risks associated with the safekeeping and transfer of securities by providing for purely electronic processing of the certificates and therefore preventing potential of loss of certificates if the applicable issues were to be issued and processed in physical form.

DTC believes the proposed rule change is consistent with the provisions of Rule 17Ad-22(e)(11)(ii), cited above, because it would provide for a process allowing the issuance and Deposit of the related Securities through the use of UWC and associated System Templates for creation of E-CDs, signature of E-CDs and Delivery of the E-CDs to DTC for storage in the E-Vault. Through the use of this centralized process for issuance and processing of CDs, the proposed rule change would facilitate the prevention of the unauthorized creation or deletion of securities processed through the E-CD program.

DTC believes the proposed rule change is consistent with the provisions of Rule 17Ad-22(e)(11)(iii) because, as discussed above, it would provide for Procedures for the issuance of E-CDs, Deposit of E-CDs, and custody of E-CDs in the E-Vault in a manner consistent with the requirements applicable to the validity of electronic negotiable instruments under the NYUCC and the e-signature laws, as discussed above. The applicable Procedures would be established through proposed rule changes to the Underwriting Service Guide and the OA, and the utilization of Electronic Master Certificates in the forms of System E-CD Templates issued under the applicable E-CD BLOR, as discussed above. Therefore, DTC believes that E-CDs issued, Deposited and stored in accordance with the proposed rule change would be Financial Assets that constitute Eligible Securities under the Rules, and would be valid and binding negotiable instruments under applicable law, and therefore protect the applicable assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where DTC operates.

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

Once the proposed rule change is fully implemented as described above, DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because the proposed rule change provides for an additional method under which Participants may request eligibility of, process, and Deliver CDs on a voluntary basis. The new method would be available to all Participants through UWC, on a date to be announced by Important Notice.

The existing method for Deposit of CDs at DTC, that includes the use of a physical master certificate, would continue to remain available to all Participants even after the new E-CD process was implemented.

DTC does not believe that the aspect of the proposed rule change to initially make the proposed E-CD process available to a subset of Participants prior to full implementation, as described above, would have any impact, or impose any burden on competition. Participants not participating in the initial phase described above would be able to continue to Deposit eligible CDs in physical form. However, to the extent the proposed rule change could cause a burden because certain Participants would continue to be able to Deliver electronic certificates during an interruption of Participants' ability to make physical delivery of securities to DTC, and/or DTC's ability to accept physical deliveries of securities, DTC does not believe the burden have a significant impact on competition because Participants could utilize the LOP process, mentioned above, to effect Delivery of a security represented in physical form to DTC despite any such interruption of physical delivery services.

DTC does not believe that the proposed rule change to make technical changes with respect to spelling, punctuation and spacing of text within the Procedures, as described above, would have any impact, or impose any burden, on competition because the technical changes would merely provide enhanced clarity with respect to the Procedures and not have an effect on the rights or obligations of Participants and/or Issuers with respect to eligibility processing and Deposit of Eligible Securities at DTC.

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

DTC has not solicited or received any written comments relating to this proposal.

DTC will notify the Commission of any written comments received by the DTC.

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
- (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-2020-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2020-017. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-DTC-2020-017 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.⁵⁹

J. Matthew DeLesDernier
Assistant Secretary

⁵⁹ 17 CFR 200.30-3(a)(12).