

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91635; File No. SR-DTC-2021-006)

April 22, 2021

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Remove the Security Holder Tracking Service

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 April 16, 2021, 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. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ 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 change⁵ consists of modifications to the Procedures⁶ of DTC to remove a service that allows issuers of Securities, either themselves or through an issuer-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (“Rules”), available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁶ Pursuant to the Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from

designated administrator, to track and limit the number of beneficial owners for an individual Security (“Security Holder Tracking Service”), as described in greater detail 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.

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

1. Purpose

The proposed rule change consists of modifications to the Procedures of DTC to remove the Security Holder Tracking Service, as described in greater detail below.

Background

In 2008, DTC established the Security Holder Tracking Service to allow issuers, either themselves or through an issuer-designated administrator, to track and limit the

time to time. See Rule 1, Section 1, id. DTC’s Procedures are filed with the Commission, and are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, id.

number of beneficial owners for an individual Security.⁷ Related fees were also added to the Guide to the 2021 DTC Fee Schedule (“Fee Guide”).⁸

DTC developed the Security Holder Tracking Service after it was approached by a group of Participants who were interested in providing greater liquidity and access to capital for closely held issuers in the private equities market for Securities that are transferable pursuant to Rule 144A under the Securities Act of 1933.⁹ The proposal contemplated the development of a system that would allow the Securities to be made eligible for DTC services while allowing the issuer of the Securities, typically through an agent, to control the number and character of the beneficial owners of its Securities. The need to control the number of beneficial owners was so that the issuer did not trigger certain regulatory reporting requirements.

In order to facilitate the settlement and asset servicing of these securities within DTC without exceeding the issuer’s limit of beneficial owners, DTC was asked to build a mechanism that would allow issuers to track and limit the number of beneficial owners of its Securities (“Tracked Securities”).

⁷ See Securities Exchange Act Release No. 59102 (December 15, 2008), 73 FR 78411 (December 22, 2008) (SR-DTC-2008-11).

⁸ Available at <https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>.

⁹ Rule 144A is a safe harbor exemption from the registration requirements of Section 5 of the Securities Act of 1933, 15 U.S.C. 77e, for certain offers and sales of qualifying securities by certain persons other than the issuer of the securities. See 17 CFR 230.144A.

The eligibility process for a Tracked Security to be made and remain DTC-eligible is the same as other Securities,¹⁰ except, in addition to the traditional process, DTC must be instructed in writing to set up a specific CUSIP for tracking.¹¹ At the same time, the issuer must instruct DTC as to whom will perform the function of the administrator for the CUSIP within the Security Holder Tracking Service.¹²

Pursuant to the Procedures, as set forth in the Settlement Service Guide¹³ and the Underwriting Service Guide,¹⁴ once the Security becomes eligible for DTC services, DTC will activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC will perform asset servicing for the issue.

The administrator appointed by the issuer (the “Administrator”) will control movements of the issues for which it has been appointed. Once the tracking indicator has been activated in the DTC system and the Administrator has been appointed, no transfer of a Tracked Security may take place without the approval of the Administrator through

¹⁰ See Rule 5, supra note 5, and the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), available at <https://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

¹¹ This instruction would be provided to DTC by the underwriter of the Security at the time of the initial distribution at DTC.

¹² It was anticipated that the administrator would typically be the transfer agent for the issue.

¹³ See Settlement Service Guide, available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>, at 69-71.

¹⁴ See Underwriting Service Guide, available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf>, at 18-20.

DTC's Inventory Management System ("IMS"). The Administrator, based on requirements of the issuer, shall be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the Administrator, DTC may perform centralized book-entry settlement.

IMS only allows an Administrator access to view and approve transactions for Securities for which they have been appointed Administrator as reflected in DTC's records.

As DTC is relying solely on the instructions of the Administrator in order to effect settlement in Tracked Securities and has no knowledge of the number or character of the underlying beneficial owners, use of the Security Holder Tracking Service by any party constitutes an agreement that DTC shall not be liable for any loss or damages related to the use of the Security Holder Tracking Service. Any user of the Security Holder Tracking Service agrees to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the Security Holder Tracking Service.

The following fees relating to the service are included in the Fee Guide:

- \$25,000 per CUSIP for Security Holder Tracking Services¹⁵
- \$5 per delivery and receive for Tracked Securities¹⁶
- \$5 per receive and delivery for reclaims of Tracked Securities¹⁷

¹⁵ See Fee Guide, supra note 8, at 25.

¹⁶ Id. at 19.

¹⁷ Id.

The Security Holder Tracking Service was never used by any party, and no fees have been charged for the service. There has never been and there are currently no Securities signed up for this service, and DTC does not believe that any party will ever use the service. As a result, DTC would like to remove the Security Holder Tracking Service from the Procedures and the related fees from the Fee Guide.

Proposed Rule Change

In order to implement the proposal above, DTC would delete the provisions describing the Security Holder Tracking Service from the applicable Procedures, specifically the provisions relating to the Security Holder Tracking Service contained in the Settlement Service Guide¹⁸ and the Underwriting Service Guide,¹⁹ respectively. DTC would also remove the above-described fees from the Fee Guide.²⁰

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²¹ DTC believes that the proposed rule change is consistent with this provision because it would provide enhanced clarity and transparency for participants with respect to services offered by DTC by updating the Procedures to remove the ability to access a service that Participants and issuers did not utilize and are unlikely to utilize in the future.

¹⁸ See supra note 13.

¹⁹ See supra note 14.

²⁰ See supra notes 15-17.

²¹ 15 U.S.C. 78q-1(b)(3)(F).

Therefore, by providing enhanced clarity and transparency in the Rules regarding the services provided by DTC, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

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

DTC does not believe that the proposed rule change would have any impact on competition. Participants and issuers have not used the Security Holder Tracking Service and are unlikely to use the service in the future. Therefore, DTC believes the proposed rule change would have no effect on Participants or issuers, other than to remove the unutilized Security Holder Tracking Service from the Procedures.

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

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²² of the Act and paragraph (f)²³ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

²² 15 U.S.C 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2021-006 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-2021-006. 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-2021-006 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).