

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95017; File No. SR-DTC-2022-005)

June 1, 2022

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Certain Fees Charged to Applicants

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 May 24, 2022, 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 (i) DTC Fee Guide (“Fee Guide”)⁶ and (ii) Policy Statement on the Admission of Participants and Pledges

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 (the “Rules”), available at www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁶ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en>.

(“Policy Statement”),⁷ to eliminate certain fees charged to legal entities that formally make an application (“Application”) to DTC to become either a Participant⁸ (each, a “Participant Applicant”) or a Pledgee⁹ (each, a “Pledgee Applicant”) of DTC (Participant Applicants and Pledgee Applicants, referred to collectively as “Applicants”).

More specifically, the Fee Guide will be amended to remove a charge to (A) each Participant Applicant of \$5,000 in connection with its Application to become a Participant¹⁰ (“Participant Application Fee”), and (B) each Pledgee Applicant of \$2,500 in connection with its Application to become a Pledgee¹¹ (“Pledgee Application Fee”) (Participant Application Fee and Pledgee Application Fee, collectively referred to as “Application Fees”). The Policy Statement will be amended to remove text relating to the Application Fees. These proposed changes are 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

⁷ See Policy Statement, supra note 5.

⁸ See Rule 2, Section 1, supra note 5.

⁹ See Rule 2, Section 3, supra note 5.

¹⁰ See Fee Guide, supra note 6, at 16.

¹¹ Id.

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 Fee Guide and Policy Statement to eliminate certain fees charged to Applicants. More specifically, the Fee Guide will be amended to remove the Application Fees. The Policy Statement will be amended to remove text relating to the Application Fees. These proposed changes are described in greater detail below.

Background

DTC may approve an Applicant that is eligible for admission as a Participant or Pledgee¹² only upon a determination by DTC that the Applicant meets reasonable standards of financial condition, operational capability and character at the time of its Application and on an ongoing basis thereafter.¹³ To facilitate DTC's review of an Application so that DTC may determine whether the Applicant satisfies these standards, the Applicant must satisfy DTC's Application requirements in form and substance

¹² See Rule 3 (setting forth qualifications for eligibility for Participants) and Section 3 of Rule 2 (setting forth Persons/entity types that may become Pledgees), supra note 5.

¹³ See Rule 2, supra note 5.

satisfactory to DTC, including, but not limited to, required documentation (“Required Documentation”), in accordance with the Rules.¹⁴

DTC charges each Applicant the applicable Application Fee as established by the Fee Guide.¹⁵ The Application Fees were implemented to help offset expenses associated with the review of Applications.¹⁶ Payment of the full amount of the Application Fee is due as of the date DTC provides the Applicant with access to DTC’s online Application portal (“Portal”)¹⁷ and related payment instructions.¹⁸ An Application Fee is non-refundable¹⁹ regardless of the outcome of the respective Application (i.e., approval, disapproval or expiration).

DTC’s clearing agency affiliates, National Securities Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC”), follow similar membership application processes and require similar documentation from their respective applicants as described above for DTC. However, despite following similar membership application processes, DTC charges Application Fees, while NSCC and FICC do not.

¹⁴ See Rule 2 and the Policy Statement, supra note 5 (setting forth Required Documentation and other requirements that an Applicant must satisfy prior to DTC’s approval of the Applicant’s Application).

¹⁵ See Fee Guide, supra note 6, at 16.

¹⁶ See Securities Exchange Act Release No. 83544 (June 28, 2018), 83 FR 31223 (July 3, 2018) (SR-DTC-2018-002).

¹⁷ The Portal is a closed website that allows Applicants to retrieve the Application forms and templates for the Required Documentation, and to submit their completed Application materials, including Required Documentation, to DTC.

¹⁸ See Fee Guide, supra note 6, at 16.

¹⁹ See Policy Statement, supra note 5.

DTC believes harmonizing its practice with its affiliates' practices would reduce inconsistency between the respective application processes and provide enhanced consistency relating to requirements for applicants, in particular where an entity applies to become a Participant of DTC and a member of NSCC and/or FICC.

Additionally, DTC believes that the Application Fees are not necessary because the amount collected from them is immaterial.²⁰ Therefore, the elimination of the Application Fees will not have a material effect on DTC's overall recovery of costs and expenses associated with the application process, but it will help reduce costs for Applicants.

Proposed Rule Change

To effectuate this proposed rule change, DTC will discontinue charging Application Fees and remove the Application Fees from the Fee Guide. Further, DTC will delete a reference to Application Fees and the following paragraph from the beginning of Section 3 of the Policy Statement:

All applicants to become Participants or Pledgees must pay a non-refundable application fee as specified in the Procedures for each application made by the applicant to DTC to become a Participant or Pledgee.

²⁰ In 2020, six Participant Applications were opened, with a total amount \$30,000 in Application Fees billed. In 2021, eight Participant Applications were opened with a total amount of \$40,000 in Application Fees billed.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act²¹ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes the proposed elimination of the fees is consistent with this requirement. As stated above, the amount of revenue collected on an annual basis by DTC through Application Fees is not material to its recovery of costs and expenses associated with the application process or to DTC's annual revenue and expenses.²² Instead of charging the Application Fees to offset the costs to review Applications, DTC believes it would be more appropriate to absorb the costs as an operating expense through DTC's internal budget process.²³ This approach also would be more consistent with that of its affiliates NSCC and FICC, which follow similar membership application review processes but do not charge membership application fees, as noted above.

For these reasons, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) because it will help provide for the equitable allocation of reasonable fees among its participants.²⁴

²¹ 15 U.S.C. 78q-1(b)(3)(D).

²² See DTC Financial Statements as of and for the Years Ended December 31, 2021 and 2020, and Report of Independent Registered Accounting Firm, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/financials/2021/DTC-Annual-Financial-Statements-2021-and-2020.pdf>, at 3 (providing DTC's statement of income, which includes revenue and expenses for 2021 and 2020).

²³ See DTC Disclosure Framework, available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf, at 123 (providing a description of DTC's formal budgeting process).

²⁴ 15 U.S.C. 78q-1(b)(3)(D).

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

DTC believes that the proposed rule change could impact competition by promoting it. That is, by eliminating the Applications Fees, Applicants could redirect those financial resources to other purposes that could benefit their competitive position.

(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. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right not to respond to any comments received.

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)²⁵ of the Act and paragraph (f)²⁶ 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.

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-2022-005 on the subject line.

Paper Comments:

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

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-DTC-2022-005. 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-2022-005 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).