

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97948; File No. SR-DTC-2023-007)

July 19, 2023

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Distributions Guide, Redemptions Guide, Reorganizations Guide, and Operational Arrangements, Relating to the Compensation Claims Process

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 July 12, 2023, 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.

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).

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

The proposed rule change⁵ consists of modifications to the DTC Distributions Service Guide (“Distributions Guide”),⁶ DTC Redemptions Service Guide (“Redemptions Guide”),⁷ DTC Reorganizations Service Guide (“Reorganizations Guide,”⁸ and collectively with the Distributions Guide and Redemptions Guide, “Service Guides”) and the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”),⁹ relating to the process under which DTC, on behalf of its Participants, claims compensation for payments due from the Paying Agent and/or Issuer if there is a failure to pay DTC principal and interest, or entitlements for a corporate actions event, on the scheduled payment date in immediately available funds (“Compensation Claims Process”), as described below.¹⁰

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁶ Available at <https://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Service-Guide-Distributions.pdf>.

⁷ Available at <https://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Redemptions.pdf>.

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

⁹ Available at <https://www.dtcc.com/-/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

¹⁰ The respective Service Guides and OA are each a Procedure 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 time to time. See Rule 1, Section 1, supra note 5. They are binding on DTC and each Participant in the same manner that they are bound by the Rules. See Rule 27, supra note 5.

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 Service Guides and the OA relating to the Compensation Claims Process, as described below.

Background

As the holder of immobilized securities through its nominee, Cede & Co., DTC provides asset services that facilitate centralization, simplification, and automation in the processing of principal and income payments and corporate actions.¹¹ In this regard, DTC receives from agents, on behalf of its Participants, funds payments representing scheduled payments of dividends on equity securities or interest or principal on debt securities. These payments may include payments of principal and, in certain cases, payments of interest accrued from the preceding interest payment date. These payments are credited to the Participants to whom they are due (as reflected in DTC's records).

¹¹ These services, including distributions, redemptions, and reorganizations, among others, are further described in applicable DTC service guides, available at <https://www.dtcc.com/legal/rules-and-procedures>.

DTC also receives and allocates funds payments in connection with redemptions of debt securities prior to their scheduled maturity. DTC also processes the allocation of cash and stock entitlements it receives in connection with reorganizations.

To the extent funds and identifying information are received, these entitlements pass through DTC and are credited to the accounts of Participants on the same day that they are paid to DTC, in accordance with the OA. Occasionally, DTC has received late payments of such entitlements, and Participants may not realize interest or other returns that they would have if the entitlements were timely paid by the agent.

Pursuant to the OA, DTC may, on behalf of Participants, elect to claim interest compensation for payments due from the Paying Agent and/or Issuer if there is a failure to pay DTC for an event on the scheduled payment date in immediately available funds.¹² The Distributions Guide and Redemptions Guide provide that DTC will make such claims on behalf of Participants for interest relating to late payments by agents. As such, DTC automatically and proactively claims interest compensation from agents who pay DTC after the payable date. Collected compensation is passed on to Participants that had a position in the late-paying issue.

Historically, the percentage and value of claims paid by agents is low relative to the amounts claimed despite considerable resources dedicated by DTC to this process.¹³

¹² See OA, supra note 9, at 5.

¹³ For example, for the two months of December 2022 and January 2023 combined, DTC made 51 claims to agents in a total amount of \$1,139,092.98. Of these claims, a total of 6 claims, or 12 percent were paid by the agents. The total dollar amount recovered was \$99,145.41, or less than 9 percent of the total claimed. For the months from August 2021 to September 2022, for more than half of the months DTC received payment in a value of less than 5 percent of the amount claimed. For each of three months during this period where the value recovered was over 50 percent of the amount claimed, the highest total number of claims in

This outcome may be due to factors arising away from DTC (e.g., unavailability of issuer funds to pay such claims, an agent paying a Participant interest outside of DTC, terms of a particular security, etc.). DTC believes it would be more efficient for Participants to manage their claims directly with agents, instead of via DTC, as they may have information relating to the terms of their investments and the underlying terms of the securities to determine whether a claim should be made and whether the pursuit of a claim is worth the use of their time and resources in relation to the value of the claim. Since Participants are better situated to make claims on their own, without DTC's intervention, DTC believes that the resources it uses to perform the Compensation Claims Process would be better used on other DTC processing functions. Therefore, DTC proposes to no longer automatically and proactively claim agents for late compensation on behalf of Participants. However, DTC would maintain discretion to submit compensations claims to an agent on behalf of a Participant, in the event the Participant is unsuccessful in making its own direct claims for compensation to an issuer or agent, and so notifies DTC.

In addition, the proposed rule change would clarify the circumstances under which DTC may make claims relating to late payments of entitlements for reorganization events. Unlike distributions or redemptions, reorganization events do not necessarily have a scheduled or announced payment date across all our various event types. In this regard, DTC would clarify the OA that it may claim an agent or issuer on any of these dates, or any time entitlements are available to holders and DTC was not paid timely.

a month was 6, and the amount highest total dollar amount claimed in a month was less than \$5,200.

Proposed Rule Change

Pursuant to the proposed rule change, the Compensation Claims Process language in the Distributions Guide and Redemptions Guide would be revised to state that if a Participant is unsuccessful in making its own direct claims for compensation to an issuer or agent, and so notifies DTC, DTC may, rather than will, make claims on behalf of Participants for interest against agents and/or issuers relating to late payments by agents.

The text of the OA that provides that DTC may elect to claim compensation for payments due from the Paying Agent and/or Issuer if there is a failure to pay DTC for an event on the scheduled payment date in immediately available funds would be clarified with respect to when DTC may make claims relating to reorganizations events. In this regard, text would be added to state that in the case of certain reorganization transactions, DTC may claim the agent and/or issuer if there is a failure to pay DTC in immediately available funds on the scheduled payment date or on the effective date (as it applies to the Reorganizations transaction), or on the first day funds are made available for payment. Consistent with the proposed text for the Distributions Guide and Redemptions Guide described above, the revised text would preface any election by DTC to pursue such a claim on a Participant notifying DTC that it was unsuccessful in making its own direct claims for compensation to an issuer or agent.

The text of the Reorganizations Guide, which currently does not address compensation claims, also would be amended to add similar language as that proposed for the OA, above. Specifically, the Reorganizations Guide would state that in the case of reorganization transactions, if a Participant is unsuccessful in making its own direct claims for compensation to an issuer or agent, and so notifies DTC, DTC may claim the agent

and/or issuer if there is a failure to pay DTC in immediately available funds on the scheduled payment date or on the effective date, or the first day funds are made available for payment.

Effective Date

The proposed rule change is to become immediately effective upon filing.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁴ requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed rule change would revise the OA and Service Guides such that DTC would no longer automatically and proactively engage in the Compensation Claims Process on behalf of Participants; rather DTC may make such claims to the extent a Participant is unsuccessful in making its own direct claims for compensation to an issuer or agent. As described above, (i) Participants are better situated than DTC to determine when and how to make compensation claims in accordance with their own priorities, and (ii) the proposal would enable the reallocation of DTC's resources that are currently used for the Compensation Claims Process, to other functions that support DTC services, thus helping to promote prompt and accurate clearance and settlement. Therefore, DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(21)¹⁵ promulgated under the Act requires, inter alia, that DTC, a covered clearing agency, establish, implement, maintain, and enforce written policies and

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 240.17Ad-22(e)(21).

procedures reasonably designed to, as applicable, be efficient and effective in meeting the requirements of its participants and the markets it serves. As described above, the proposed rule change would revise the OA and Service Guides such that DTC would no longer automatically and proactively submit compensation claims to agents and/or issuers, except DTC may make such claims at its discretion. As noted above, the percentage of claims paid in both actual and dollar value amounts are historically low, which does not warrant DTC expending resources to recover the funds. Instead, DTC believes it could more effectively and efficiently apply the resources allocated to the Compensation Claims Process to other core DTC processing functions. Therefore, DTC believes that the proposed rule change would help promote efficiency and effectiveness in DTC meeting the requirements of its participants and the markets it serves, consistent with Rule 17Ad-22(e)(21).

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

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

As described above, the proposed rule change consists of changes to the OA and Service Guides to clarify DTC's Compensation Claims Process and changes this process so that DTC would no longer automatically and proactively makes claims for interest on late payments. As described above, the amount, both in actual and dollar amounts, of claims recovered is low relative the amount and value of claims DTC makes to agents, and the value Participants receive in return is minimal. In addition, DTC believes that Participants can more efficiently make compensation claims directly to an agent and/or issuer, away from DTC, by pursuing claims they believe are worth pursuing. Therefore,

given the minimal benefit realized by Participants from the current Compensation Claims Process, and that Participants may engage agents more efficiently on their own to make such claims, DTC believes that the proposed rule change would not have any impact or impose any burden, on competition.

(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-submitcomments>. 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 to not 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)¹⁶ of the Act and paragraph (f)¹⁷ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-DTC-2023-007 on the subject line.

Paper Comments:

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

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

All submissions should refer to file number SR-DTC-2023-007. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 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>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to File Number SR-DTC-2023-007 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry Haywood,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).