

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78520; File No. SR-DTC-2016-005)

August 9, 2016

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Implementation of Functionality to Submit a Cover of Protect on Behalf of Another Participant and the Removal of the Option to Cover of Protect Directly with Agent

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 29, 2016, 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2) of the Act.³ 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 change by DTC would update its Procedures⁴ set forth in the Guide to make changes to certain options within its Participant Subscription Offer

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(2).

⁴ Capitalized terms not otherwise defined herein have the meaning set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx> and the Reorganizations Service Guide (the “Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Reorganizations.pdf>.

Program (“PSOP”)⁵ and Participant Tender Offer Program (“PTOP”) functions.⁶

Specifically, DTC proposes to add an option called “Cover of Protect on Behalf of Another Participant” (“CPAP”) to both PSOP and PTOP (“PSOP/PTOP”) that would allow a Participant to tender subscription rights (“Rights”) or Securities through DTC to an agent (“Offer Agent”),⁷ on behalf of another Participant that needs to tender such Rights or Securities in order to receive the shares and/or consideration from (i) a subscription rights offering (a “Rights Offer”); or (ii) a cash tender offer or exchange offer (collectively, a “Tender/Exchange Offer”) (together with Rights Offer, “Offer”). DTC would also eliminate an option called “Cover of Protect Submitted Directly to Agent” (“CPDA”) from PSOP/PTOP that has allowed a Participant to tender Rights or Securities through DTC to be eligible to receive the shares and/or consideration from an Offer, when such Participant submitted its initial acceptance directly to the Offer Agent

⁵ References in this rule filing to “PSOP” refer to both the PSOP function within the DTC Participant Terminal System (“PTS”) interface and the equivalent “Rights Subscription” function within the Participant Browser System (“PBS”) interface. PSOP is a function that is used by Participants to submit instructions including oversubscriptions, submit protects, submit cover of protects, submit cover of protects on behalf of another Participant, and submit Rights sell instructions on Rights Subscription events. PTS and PBS are user interfaces for DTC’s Settlement and Asset Services functions. PTS is mainframe-based and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent.

⁶ References in this rule filing to “PTOP” refer to both the PTOP function within the PTS interface and the equivalent “Voluntary Tenders and Exchanges” function within the PBS interface. PTOP is a function that is used by Participants to submit instructions, submit protects, submit cover of protects, submit cover of protects on behalf of another Participant, and submit withdrawals on various Voluntary Reorganization events.

⁷ The Offer Agent is the fiscal agent of the offeror, typically a bank or trust company that is designated to coordinate the process of the Offer.

outside of DTC. In addition, DTC proposes to make ministerial changes to the text of the Guide, 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, DTC 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. DTC 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 by DTC would update its Procedures set forth in the Guide to make changes to certain options within its PSOP and PTOP functions. Specifically, DTC proposes to add an option called CPAP to PSOP/PTOP that would allow a Participant to tender Rights or Securities through DTC to an Offer Agent, on behalf of another Participant that needs to tender such Rights or Securities in order to receive the shares and/or consideration from (i) a Rights Offer; or (ii) a Tender/Exchange Offer. DTC would also eliminate an option called CPDA from PSOP/PTOP that has allowed a Participant to tender Rights or Securities through DTC to be eligible to receive the shares and/or consideration from an Offer, when such Participant submitted its initial acceptance directly to the Offer Agent outside of DTC. In addition, DTC proposes to make ministerial changes to the text of the Guide, as more fully described below.

(i) Protects and Covers

(a) Protects and Covers Outside of DTC

Subscription Rights Offering

A Rights Offer is the issuance of Rights to each shareholder as of a record date set by the issuer. Rights are issued to each shareholder in proportion to the number of shares it holds, and entitles the shareholder to purchase additional shares at a discount. Rights may be either non-transferable or transferable. Holders are able to trade transferable Rights in the secondary market.

In order to subscribe to a Rights Offer, an investor or its broker (“Investor”) must, prior to the expiration of the Rights Offer, deliver to the Offer Agent: (i) the Rights, (ii) an executed subscription form for such Rights Offer (“Subscription Form”) in which it subscribes to the new shares of the Rights Offer, and (iii) the payment due for the purchase of the shares.

Tender Offers and Exchange Offers

A tender offer is a solicitation by an issuer or a third party to purchase a substantial percentage of the issuer’s shares for a specified period of time. The tender offer is at a fixed price, usually higher than the current market price, and is usually conditioned on a sufficient number of the issuer’s shareholders tendering a fixed number of their shares. An exchange offer is an offer by an issuer to exchange its Securities for other Securities (of that issuer or another).

If an Investor wants to accept a Tender/Exchange Offer, it submits to the Offer Agent: (i) the letter of transmittal for such Tender/Exchange Offer (“Letter of Transmittal”) setting forth the terms of the tender or exchange, including information

about the quantity of Securities being tendered as well as where and to whom the payment should be made, and (ii) the Securities it is tendering.

Cover of Protect

An Investor may want to accept an Offer but will not have the necessary Rights or Securities, as the case may be, before the expiration date of the Offer. If permitted by the terms of the Offer, the Investor may submit to the Offer Agent the notice of guaranteed delivery for such Offer (“Notice of Guaranteed Delivery”) which serves as (i) protection of the Investor’s acceptance of the Offer (the “Protect”), and sets forth the number of shares being subscribed to or the amount of Securities being tendered, and (ii) a guarantee that the Rights or Securities (the “Cover”) will be delivered to the Offer Agent within the period prescribed by the Offer (the “Protect Period”).⁸

Covering Another Investor’s Protect

In some cases, an Investor may find that it will not have the necessary Rights or Securities, as the case may be, in time to tender to the Offer Agent before the expiration of the Protect Period. This may occur due to a failed trade or late delivery of such Rights or Securities. If the Investor is unable to deliver the Rights or Securities within the Protect Period, it will have failed to validly tender and will not be eligible to purchase shares under the Rights Offer or to receive the consideration of the Tender/Exchange Offer, respectively. However, another Investor who does hold the Rights or Securities, and typically owes such Rights or Securities to the Investor who submitted the Protect because of a failed trade or late delivery, may submit the Cover to the Offer Agent on behalf of such Investor.

⁸ A Protect Period is usually three business days after the expiration of the Offer.

(b) Protects and Covers Through DTC

PSOP and PTOP

DTC distributes information to Participants regarding the reorganization activity that it handles. Generally, this information is distributed through PSOP/PTOP, or the Reorganization Inquiry for Participants (“RIPS”) function of PTS/PBS. Upon receiving notice of such reorganization activity, Participants may use the PSOP (for Rights Offers) or PTOP (for Tender/Exchange Offers) functions to elect participation in the reorganization event and to place related instructions for DTC to process.

DTC’s Automated Subscription Offer Program

As part of its corporate action⁹ services, DTC offers the Automated Subscription Offer Program (“ASOP”),¹⁰ through which DTC, as a conduit between Participants and the Offer Agents, processes Rights Offers for Eligible Securities. Each Offer Agent for a Rights Offer that is eligible for processing through ASOP enters into an agreement with DTC specifying, among other things, that the relay of electronic messages by DTC will qualify as the execution and delivery of Subscription Forms or Notices of Guaranteed Delivery by Participants.

ASOP enables Participants to submit subscription instructions using PSOP. Through PSOP, a Participant that wants to subscribe to a Rights Offer transmits its

⁹ Corporate actions processed by DTC include, but are not limited to, the reorganization of Eligible Securities resulting from mergers, acquisitions, and reverse splits. DTC performs corporate actions processing through its Mandatory and Voluntary Reorganization Services. See DTC Operational Arrangements, available at <http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

¹⁰ See Securities Exchange Act Release No. 35108 (December 16, 1994), 59 FR 67356 (December 29, 1994) (SR-DTC-94-15) (instituting ASOP).

acceptance and acknowledgment of the terms of the Subscription Form, and instructs and authorizes DTC to surrender the Rights and process the corresponding payment to the Offer Agent. In accordance with these electronic instructions, DTC effects book-entry deliveries of the Rights by transferring the Rights from the Participant's Account to a DTC operational account maintained by DTC on behalf of the Offer Agent ("Agent Account") and sending an electronic confirmation to the Offer Agent. DTC debits the Participant's Settlement Account for the amount of the subscription payments and wires the payment to the Offer Agent. When the additional shares are distributed by the Offer Agent, DTC credits the Securities to the Account of the Participant.

If permitted by the terms of the Rights Offer, if a Participant will not have the Rights before the expiration date of the Rights Offer, it may submit a Protect to the Offer Agent by transmitting through PSOP its acceptance and acknowledgment of the terms of the Notice of Guaranteed Delivery. If the Participant receives the Rights before the day designated by DTC as the Cover end date (the "DTC Cover Protect Expiration Date"),¹¹ the Participant may submit a Cover of Protect by transmitting its acceptance of the terms in the Letter of Transmittal via a Cover of Protect option in PSOP, and instructing DTC to deliver the Rights and process the payment to the Offer Agent.

DTC's Automated Tender Offer Program

DTC offers the Automated Tender Offer Program ("ATOP"),¹² through which DTC processes Tender/Exchange Offers for Eligible Securities. Offer Agents for

¹¹ The DTC Cover Protect Expiration Date is usually one business day earlier than the Protect Period expiration date established by the terms of the Offer.

¹² For a description of ATOP, refer to Securities Exchange Act Release No. 33797 (March 22, 1994), 59 FR 14696 (March 29, 1994) (SR-DTC-93-11) (approving enhancements to ATOP).

Tender/Exchange Offers eligible for processing through ATOP must enter into a master agreement with DTC.

A Participant uses PTOP to transmit its acceptance and acknowledgement of the Letter of Transmittal of the applicable Tender/Exchange Offer and to instruct DTC to deliver the Securities to the Offer Agent. In accordance with permitted instructions, DTC effects book-entry delivery of Securities from the Participant's Account to the Agent Account. When the payment (for a tender offer) and/or Securities (for an exchange offer) are distributed by the Offer Agent, DTC credits the amount of the payment and/or Securities to the Settlement Account or Account of the Participant, respectively.

A Participant's Securities may not be available to tender to the Offer Agent prior to the expiration of the Tender/Exchange Offer. If the Participant anticipates receiving the Securities and wants to participate in the Tender/Exchange Offer, it may, if permitted by the terms of the Tender/Exchange Offer, submit a Protect by transmitting through PTOP its acknowledgement and acceptance of the terms of the Notice of Guaranteed Delivery. Before the DTC Cover Protect Expiration Date, the Participant must acknowledge and agree to the terms of the Letter of Transmittal through PTOP and instruct DTC to deliver the Securities to the Offer Agent to Cover such Participant's Protect. If the Participant is unable to deliver the Securities before the DTC Cover Protect Expiration Date, it will have failed to validly tender and will not be eligible for the consideration of the Tender/Exchange Offer.

(c) Proposal

As explained above, there are times when a Participant that submitted a Protect (the "Protecting Participant") may need to have another Participant (the "Covering

Participant") Cover the Protect. Currently, neither PSOP nor PTOP has the specific functionality for a Covering Participant to submit a Cover on behalf of a Protecting Participant.

However, DTC is aware that Covering Participants frequently utilize the PSOP/PTOP CPDA option in order to submit a Cover on behalf of another Participant, which is not the intended purpose of the CPDA function. The intended purpose of the CPDA function is to enable a Participant that submitted a Protect directly to an Offer Agent outside of DTC to later submit the corresponding Cover through DTC.

In order to address directly a Participant's need to submit a Cover of another Participant's Protect, DTC proposes to add the CPAP option to PSOP/PTOP. With this enhancement, the Protecting Participant would submit a Protect through PSOP/PTOP, and the Covering Participant would be able to submit a Cover through PSOP/PTOP by providing the Protecting Participant's Protect ID, Protect Sequence Number, and Protect Participant ID. This enhanced functionality would automate the matching of Covers to corresponding Protects, as well as automatically allocate the applicable credits for Securities and/or payments directly to the Protecting Participant, rather than to the Covering Participant. The CPAP option would eliminate the need for Participants to utilize CPDA for the unintended purpose of Covering another Participant's Protect.

In addition, to further reduce the risks, burden, and costs to DTC associated with the manual processing of the CPDA option in PSOP/PTOP, DTC is proposing to eliminate that option. When a Participant uses CPDA to submit a Cover for another Participant's Protect, DTC must manually process the Cover and use manual exception processing to match the Cover to the corresponding Protect. In addition, DTC must

allocate the credits for Securities and/or payment from the Offer to the Covering Participant. Even when a Participant uses CPDA for its intended purpose, which is infrequent, it is a labor intensive process for DTC, as it must manually process the Cover and return the allocation to the Offer Agent within a narrow timeframe. Therefore, DTC proposes that when a Participant submits a Protect directly to the Offer Agent, such Participant would need to submit the Cover directly to the Offer Agent, and not through PSOP/PTOP.

(ii) Technical Changes

The proposed rule change would revise the Guide to make ministerial updates to reflect current terminology and practices, as set forth below. The Guide would be updated to:

- Correct the text of the Guide to accurately reflect names of functions accessible through PTS, and to accurately reflect the names of the corresponding functions that are accessible through PBS. Presently, the Guide assigns PTS functions to PBS, and does not provide the names of the corresponding PBS functions.
- Correct the timeframes within which a Participant can submit a Notice of Guaranteed Delivery on the expiration date of a Rights Offer. Generally, a Participant may submit a Notice of Guaranteed Delivery through PSOP/PTOP from 8:00 a.m. to 2:15 p.m., at which time the window closes to allow for settlement of cash activities. However, DTC will re-open the window from 3:30 p.m. to 5:00 p.m. on the expiration date of the Offer to allow Participants extra time to submit a Notice of Guaranteed Delivery before the Offer expires, provided

that the Offer Agent agrees to accept deferred subscription payments. The text of the Guide incorrectly reflects an open window from 8:00 a.m. to 5:00 p.m., which is not the practice. With this rule filing, the text would be corrected to reflect the correct 8:00 a.m. to 2:15 p.m. and 3:30 p.m. to 5:00 p.m. windows.

- Pursuant to Participant requests, expand the availability of PTOP for a Participant to submit a Cover of Protect, on the dates specified in the notice of an Offer. The current availability is until 4:15 p.m. or 12:00 p.m., depending on the type of Offer, and the proposed rule change would revise the text to reflect availability until 5:00 p.m. or 1:00 p.m., as applicable.
- Remove references to the UNIT Swingovers service. Several years ago, the UNIT Swingovers service was discontinued, and instead, voluntary unit separations and recombinations¹³ began to be processed under the FAST program.¹⁴
- Clarify information regarding available reports and methods of submission and receipt.
- Replace reference to ‘NASDAQ’ with ‘FINRA’.
- Replace reference to ‘AMEX’ with ‘NASDAQ’.
- Add the title of the Guide, delete ‘Copyright,’ and update the ‘Important

¹³ A unit is a Security comprised of more than one class of Securities, e.g., common stock and warrants (the components). In a voluntary unit separation, the separation and recombination between the security component and the security is done by the Participant and transfer agent using DTC’s Deposit and Withdrawal at Custodian system.

¹⁴ Securities Exchange Act Release No. 59199 (January 6, 2009), 74 FR 1266 (January 12, 2009) (SR-DTC-2008-14).

Legal Information' to align with other DTC service guides.

- Correct spelling, grammatical, capitalization, numbering, and typographical errors throughout.
- Update other text, including address, phone numbers, website information, and methods of communication.

Implementation Date

DTC will announce the effective date via Important Notice upon the Commission's approval of the proposed rule change.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁵ 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 because (i) by adding the CPAP option by which a Participant can submit a Cover through PSOP/PTOP on behalf of another Participant instead of improperly using the CPDA option that then requires DTC to resort to manual processing and allocate the consideration to the Covering Participant rather than the Protecting Participant, and (ii) by removing the CPDA option and requiring that Participants that Protect outside of DTC to also Cover outside DTC, the proposed rule change would establish a process that would streamline Cover of Protect transactions, allocations and recordkeeping for Participants, and reduce manual processing and the risks, burdens, and costs associated with such processing for DTC, thereby promoting the prompt and accurate clearance and

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

settlement of securities, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Additionally, the proposed ministerial changes to the Procedures, which update the Guide as set forth above, would provide additional clarity to Participants and would ensure the accuracy of the Procedures by reflecting the present state of DTC's reorganization services and practices, thereby promoting the prompt and accurate clearance and settlement of securities, 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, or impose any burden, on competition because it would remove a function that is infrequently used for its intended purpose, and would establish a new function, available to all Participants, without the addition of a new fee.

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

Written comments relating to the proposed rule change have not been solicited or received. 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

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-2016-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2016-005. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2016-005 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).