

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78935; File No. SR-DTC-2016-005)

September 26, 2016

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, 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

On July 29, 2016, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2016-005 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the Federal Register on August 15, 2016.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. On September 14, 2016, DTC filed Amendment No. 1 to the proposed rule change, as discussed below. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving on an accelerated basis the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposed Rule Change and Notice of Filing Amendment No. 1

The proposed rule change by DTC, as modified by Amendment No. 1, would update its Procedures<sup>4</sup> set forth in the Guide to make changes to certain options within its

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78520 (August 9, 2016), 81 FR 54170 (August 15, 2016) (SR-DTC-2016-005) (“Notice”).

<sup>4</sup> 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

Participant Subscription Offer Program (“PSOP”)<sup>5</sup> and Participant Tender Offer Program (“PTOP”) functions.<sup>6</sup> Specifically, DTC proposes to add an option called “Cover of Protect on Behalf of Another Participant” (“CPAP”) to both PSOP and PTOPTOP (“PSOP/PTOPTOP”) that would allow a Participant to tender subscription rights (“Rights”) or Securities through DTC to an agent (“Offer Agent”),<sup>7</sup> 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/PTOPTOP that has allowed a Participant to tender Rights or Securities through DTC to be eligible to receive the shares and/or

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<http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Reorganizations.pdf>.

<sup>5</sup> References in this notice and order 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.

<sup>6</sup> References in this notice and order to “PTOPTOP” refer to both the PTOPTOP function within the PTS interface and the equivalent “Voluntary Tenders and Exchanges” function within the PBS interface. PTOPTOP 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.

<sup>7</sup> 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.

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.<sup>8</sup>

A. Proposal

As DTC describes in the Notice, there are times when a Participant that submitted a Protect<sup>9</sup> (the “Protecting Participant”) may need to have another Participant (the “Covering Participant”) Cover the Protect.<sup>10</sup> Currently, neither PSOP nor PTOPTOP has the specific functionality for a Covering Participant to submit a Cover on behalf of a Protecting Participant.

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/PTOPTOP. With this enhancement, the Protecting Participant would submit a Protect through PSOP/PTOPTOP, and the Covering Participant would be able to submit a Cover through PSOP/PTOPTOP by providing the Protecting Participant’s Protect ID, Protect Sequence Number, and Protect Participant ID. DTC explains that this enhanced functionality would automate the matching of Covers to corresponding Protects, as well as automatically allocate the

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<sup>8</sup> The description of the proposed rule change herein is based on the statements prepared by DTC in the Notice. Notice, supra note 3, 81 FR at 54170–72.

<sup>9</sup> DTC states that an investor or its broker (“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”). Notice, supra note 3, 81 FR at 54171.

<sup>10</sup> Notice, supra note 3, 81 FR at 54171.

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.<sup>11</sup>

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, as clarified by Amendment No. 1, DTC proposes that, when a Participant submits a Protect directly to the Offer Agent (i.e., not through DTC), such Participant would need to (a) submit the Cover directly to the Offer Agent (i.e., again, not through DTC), or (b) request that DTC process the Cover, but not through PSOP/PTOP.

B. 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

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<sup>11</sup> As DTC explains in the Notice, it 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. Notice, supra note 3, 81 FR at 54172.

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 would 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. 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 PTOPTOP 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, as modified by Amendment No. 1, 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 recombinations<sup>12</sup> began to be processed under the FAST program.<sup>13</sup>
- 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 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.

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<sup>12</sup> 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.

<sup>13</sup> Securities Exchange Act Release No. 59199 (January 6, 2009), 74 FR 1266 (January 12, 2009) (SR-DTC-2008-14).

C. Notice of Filing of Amendment No. 1

In Amendment No.1, DTC clarifies that when a Participant submits a Protect directly to the Offer Agent (i.e., not through DTC), such Participant could still request that DTC process the Cover, but just not through PSOP/PTOP. Therefore, Amendment No. 1 proposes to set forth in the Guide that, once a Participant has accepted an Offer through the Offer Agent via a hard copy Notice of Guaranteed Delivery submitted directly to the Offer Agent, a Participant would need to either (a) submit the Cover directly to the Offer Agent, or (b) request that DTC manually process the Cover, but not through PSOP/PTOP.

Implementation Date

DTC would announce the effective date via Important Notice upon the Commission's approval of the proposed rule change, as modified by Amendment No. 1.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>14</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal, as modified by Amendment No. 1, is consistent with Section 17A(b)(3)(F) of the Act,<sup>15</sup> as described in detail below.

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

Section 17A(b)(3)(F) of the Act<sup>16</sup> requires that the rules of the clearing agency be designed, inter alia, to promote the prompt and accurate clearance and settlement of securities transactions. By adding the CPAP option, through which a Participant can properly submit a Cover through PSOP/PTOP on behalf of another Participant, and by removing the CPDA option, the proposed rule change, as modified by Amendment No. 1, will establish a process that will streamline Cover of Protect transactions, allocations, and recordkeeping for Participants. Further, as DTC explains in the Notice, the proposed rule change, as modified by Amendment No. 1, will reduce for DTC the risks, burdens, and costs associated with its current processing of such transactions. Therefore, adding the CPAP option and removing the CPDA option will promote 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.

As the proposed rule change pertains to technical changes to the Procedures, the Commission finds the technical changes also consistent with Section 17A(b)(3)(F) of the Act<sup>17</sup> because technical updates to the Procedures to make them more clear, consistent, and current for Participants that rely on the Procedures support the prompt and accurate clearance and settlement of securities transactions.

### III. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to File Number SR-DTC-2016-005, including whether

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<sup>16</sup> Id.

<sup>17</sup> Id.



Amendment No. 1 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](mailto: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.

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 ([9](http://dtcc.com/legal/sec-rule-</a></p></div><div data-bbox=)

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].

IV. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the Federal Register. In Amendment No.1, DTC clarifies that when a Participant submits a Protect directly to the Offer Agent, such Participant could still request that DTC process the Cover. As such, Amendment No. 1 proposes to set forth in the Guide that, once a Participant has accepted an Offer through the Offer Agent via a hard copy Notice of Guaranteed Delivery submitted directly to the Offer Agent, a Participant would need to either (a) submit the Cover directly to the Offer Agent, or (b) request that DTC manually process the Cover, but not through PTO/PSOP.

As discussed more fully above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, will streamline DTC's processing of Cover of Protect transactions and reduce for DTC the risks, burdens, and costs associated with its current processing of such transactions, thereby promoting the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F), cited above.

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<sup>18</sup> 15 U.S.C. 78s(b)(2).

Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>19</sup>

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>20</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that

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<sup>19</sup> Id.

<sup>20</sup> 15 U.S.C. 78q-1.

proposed rule change SR-DTC-2016-005, as modified by Amendment No. 1, be, and hereby is, APPROVED on an accelerated basis.<sup>21</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Brent J. Fields  
Secretary

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<sup>21</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> 17 CFR 200.30-3(a)(12).