

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79252; File No. SR-DTC-2016-011)

November 7, 2016

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Allow DTC to Automate the Process for Participants to Submit Eligibility Requests for the DTC Custody Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4,² notice is hereby given that on October 28, 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 the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)⁴ thereunder. The proposed rule change was effective upon filing with the Commission. 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 would amend the DTC Custody Service Guide (“Custody Guide”)⁶ to allow DTC to (i) enhance the process by which Participants

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 otherwise defined herein have the respective meanings set forth in the DTC Rules, By-laws and Organization Certificate (“Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁶ Available at <http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf>.

submit requests to make Securities, and assets that are not Securities (“Non-Security Assets”), as applicable, eligible for deposit into the Custody Service (“Custody Eligibility Requests”) and (ii) add functionality for Participants to inquire as to whether a particular issue is eligible for the Custody Service. Upon its implementation, the proposed rule change would enhance efficiencies for Participants and DTC by providing a secure, centralized environment for the submission of Custody Eligibility Requests.

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

In order for DTC to accept a Security or a Non-Security Asset, as applicable, for deposit into the Custody Service, DTC requires that the Security or Non-Security Asset be made eligible for the Custody Service pursuant to a Custody Eligibility Request.⁷ The

⁷ Once the Security or Non-Security Asset subject of the Custody Eligibility Request is made eligible by DTC for deposit into the Custody Service, additional deposits of that Security or Non-Security Asset by the requesting Participant or other Participants may be made without requiring submission of another Custody Eligibility Request.

proposed rule change would allow DTC to transfer the existing request method for Custody Eligibility Requests by which Participants submit requests via email, to an Internet-based application (“Application”), as more fully described below (“Enhanced Process”).⁸ Upon implementation, the Enhanced Process would (i) promote a more secure environment by providing for the submission and processing of Custody Eligibility Requests through the Application,⁹ and (ii) enhance efficiencies for DTC by reducing the manual processing of Custody Eligibility requests, as more fully described below.

Background

The Custody Service enables Participants that hold (i) Securities that (A) are not presently eligible for book-entry services at DTC and/or (B) would otherwise be eligible for DTC book-entry services but are not registered in the name of DTC’s nominee, Cede & Co., and/or (ii) certain Non-Security Assets, to deposit those Securities and/or Non-Security Assets with DTC for safe-keeping, in accordance with requirements set forth in the Custody Guide.¹⁰ Securities and Non-Security Assets deposited through the Custody Service are maintained in DTC’s secure vault in a Participant’s name or a Participant’s

⁸ The Custody Guide provides that Custody Service functions may become accessible via web-based services as announced by DTC via Important Notice from time to time. See Custody Guide, supra note 6 at 4. DTC would announce the proposed rule change via Important Notice.

⁹ The Application has been designed to provide a secure, centralized online system managed by DTC, whereas Participant security protocols for the transmission of emails may vary.

¹⁰ See Custody Guide for the types of Securities and Non-Security Assets eligible for deposit to the Custody Service (“Custody Eligible Security Types”), supra note 6, at 5,12.

customer's name (i.e., they are not transferred into DTC's nominee name, Cede & Co).¹¹

In addition, once a Security is deposited into the Custody Service, DTC may perform limited depository services relating to the Security including physical processing for the Security on a Participant's behalf, such as facilitating the transfer of Security Certificates, and providing services available through the Custody Reorganization Service.¹²

The proposed rule change would amend the Custody Guide to allow DTC to implement the Enhanced Process by moving the processing of Custody Eligibility Requests to the Application and replacing certain manual processes, as more fully described below.

Existing Process

In order for an issue to be made eligible for deposit to the Custody Service, a Participant must submit a Custody Eligibility Request to DTC. The Custody Eligibility Request is submitted by email and must include certain data elements ("Data Elements")¹³ and a copy of the Security Certificate to be deposited or, if the asset to be

¹¹ Cede & Co. is the holder of record of Securities eligible for DTC's book-entry services.

¹² See Custody Guide, *supra* note 6, 14-17 (providing Procedures for the Custody Reorganization Service). The limited depository services provided by DTC as described above relate only to securities processing functions and do not apply to Non-Security Assets.

¹³ Data Elements include DTC Participant Number (to identify the Participant making the Custody Eligibility Request), CUSIP (if available); Sub-Issue Type (required); description of the Security or Non-Security Asset ("Security Description") (required); U.S/Non U.S. (This field is required for corporate debt and equity issues. All certificates of deposit and collateralized mortgage obligations must be U.S. issues. For municipal securities, this field is set to U.S. and is not updateable); Issuer Country of Origin (required for corporate debt and equity issue types); State of Incorporation (required for all U.S. issues); Dated Date (required for corporate debt and municipal security types); Accrual Date

deposited is a Non-Security Asset, other asset-related documentation evidencing the asset to be deposited. Upon receipt of a Custody Eligibility Request, DTC reviews the Data Elements and the Security Certificate or other asset-related documentation, as applicable, to determine whether the Security or Non-Security Asset is a Custody Eligible Security Type.¹⁴ If the Security or Non-Security, as applicable, is a Custody Eligible Security Type and otherwise complies with DTC's Rules on eligibility,¹⁵ DTC will make it eligible for Custody services by adding it to the DTC Custody security master file ("Custody Master File"). For those eligible Securities or Non-Security Assets without an assigned CUSIP, DTC establishes the CUSIP for the Security, or other Non-Security Asset, as applicable, in DTC's system. The validation, CUSIP assignment and communication with the Participant are all manually processed by DTC. Once a Security or Non-Security Asset is made eligible for deposit into the Custody Service, the Participant may deliver the physical Security Certificate or other asset-related documentation, as applicable, either by hand, or via overnight mail, for deposit into DTC's secure vault.¹⁶

(required for corporate debt and municipal security types); Certificate Type (required and defaulted to R for Registered, can be updated to Bearer or Interchangeable, as applicable); Maturity Date (required for corporate debt, municipal securities and warrants); Interest Rate (required for corporate debt and municipal security types); Name of Paying Agent (required for corporate debt and municipal security types); and Exercise Price (required for warrants).

¹⁴ See Custody Guide, supra note 10.

¹⁵ See Rule 5, supra note 5.

¹⁶ See Custody Guide, supra note 6 at 10–14 (setting forth Procedures for the deposit of Securities and Non-Security Assets to the Custody Service).

Enhanced Process

Pursuant to the proposed rule change, Custody Eligibility Requests would be submitted by Participants to DTC using the Enhanced Process through the Application. DTC would eliminate the ability to submit Custody Eligibility Requests by email. Participants would continue to provide the same information through the Application that they currently provide through email, including the Data Elements and a copy of the Security Certificate or other asset-related documentation they are seeking to make eligible.¹⁷ In addition, the Application would offer Participants seeking to make multiple Custody Eligibility Requests the option to submit a spreadsheet containing the Data Elements for all the Securities and Non-Security Assets for which eligibility is being requested as one submission.¹⁸

Once the Custody Eligibility Request is submitted, DTC would validate the Data Elements to determine whether the Security or Non-Security Asset, as applicable, is a Custody Eligible Security Type, as DTC does today. DTC would send an automated email to notify the Participant if a Custody Eligibility Request requires further review by DTC prior to adding the Security or Non-Security Asset, as applicable, to the Custody system as eligible for deposit. DTC may require other information it deems necessary to

¹⁷ If the request does not contain the required Data Elements, and the Security Certificate or other asset-related documentation, as applicable, then the Application would prompt the Participant to resubmit the inquiry with all required Data Elements, and the Security Certificate or other asset-related documentation, as applicable. Today, the Participant is notified in this regard only after DTC has reviewed the email request.

¹⁸ Currently, each Custody Eligibility Request must be submitted individually. This feature would assist Participants performing large conversions, including those moving Custody functions from their own facility to DTC's Custody Service.

complete its processing of a Custody Eligibility Request. If DTC requires additional information to complete its review of a Custody Eligibility Request, or otherwise identifies an issue that may affect processing of the Custody Eligibility Request (e.g., incorrect Sub-Issue type, an issue regarding compliance with sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), the listing of a Security on the issuer list maintained by OFAC,¹⁹ etc.), DTC staff would contact the Participant in this regard directly by phone and/or in writing.²⁰

If a Security or Non-Security Asset subject of the Custody Eligibility Request is eligible for deposit in the Custody Service but has not been assigned a CUSIP prior to submission of the Custody Eligibility Request to the Application, DTC would assign a CUSIP as it does today.²¹ DTC would then notify the Participant through an automated email message that the Security or Non-Security Asset is eligible for the Custody Service, and add the Security or Non-Security Asset to the Custody Master File. The Participant may then deliver the physical Security Certificate or, for a Non-Security Asset, other asset-related documentation, as applicable, to DTC for deposit into DTC’s secure vault in the same manner that it would today.

Implementation of the Enhanced Process would provide enhanced efficiency and a more secure system for submission and review of Custody Eligibility Requests to Participants and DTC in relation to the current email-based method. First, as described

¹⁹ See Rule 2, Section 8, and Rule 5, Section 1, supra note 5.

²⁰ The Custody Guide would state that Participants with questions regarding this process should call the DTC Underwriting Hotline phone number.

²¹ CUSIPS [sic] assigned by DTC would be viewable on the Application screen.

above, the Application would enhance security in transmission of Custody Eligibility Requests by using a secure online system instead of the current email method. Second, use of the Application for this purpose would enhance transparency for Participants with respect to the status of their individual Custody Eligibility Requests.²² Third, the migration of the submission of Custody Eligibility Requests from an email-based method to using the Application would enhance processing efficiencies at DTC by providing an automated and centralized means for DTC to receive and manage Eligibility Request Documents.

Eligibility Inquiry Capability

The Application would also offer a new inquiry capability (“Custody Eligibility Inquiry Function”) for Participants’ use that would allow them to directly view whether a Security or Non-Security Asset is already eligible for deposit into the Custody Service. The Participant would make the inquiry by entering certain search criteria (“Search Criteria”). The Custody Eligibility Inquiry Function, in addition to providing Participants the ability to search by CUSIP and Security Description or Non-Security Asset, would also provide the capability to use other Search Criteria to narrow the search.²³ If the applicable Security or Non-Security Asset is eligible for the Custody Service, the Participant would know that it can proceed with its deposit without first requesting eligibility. This feature would provide a Participant that needs to verify eligibility of a

²² The Application would provide Participants with the ability to view the status of their Custody Eligibility Requests online.

²³ The Search Criteria include CUSIP or partial CUSIP (at least 6 characters), and Security Description (at least 3 characters). Additional Search Criteria would allow the Participant to narrow the results including the Security Interest Rate range, Maturity Date range, Dated Date range and Sub-Issue Type.

Security or Non-Security Asset before depositing it a real-time view into whether the Security is already on the Custody Master File without having to inquire with DTC by phone or email.

Proposed Rule Changes

The Custody Guide does not currently contain a section describing Custody Eligibility Requests and the process for submitting them. Pursuant to the proposed rule change, DTC would amend the text of the Custody Guide to add a section in this regard, and:

- (i) provide the Procedures for the Enhanced Process as described above;
- (ii) provide that (a) if a Participant seeking to make a Security or other asset eligible for the Custody Service does not know whether the Security or asset is currently eligible for deposit in DTC's Custody Service, the Participant should verify the eligibility status using the online Custody Eligibility Inquiry Function through the Application, as defined below and (b) if the Security or asset is not eligible then the Participant must, prior to depositing it at DTC, submit a request to DTC to make the Security or asset eligible for the Custody Service using the Custody Eligibility Application. [sic]
- (iii) provide the Procedures for the Custody Eligibility Inquiry Function as described above; and

- (iv) state that Participants must have access to DTC’s online web-based portal (“Portal”) and the Application in order to submit Custody Eligibility Requests and make Custody Eligibility Inquiries.²⁴

Implementation

The proposed rule change would be implemented in phases whereby Participants using the Custody Service would be migrated to use the Application to submit Custody Eligibility Requests over a period of approximately two months beginning on October 31, 2016 (“Effective Date”). Migration to the Application for all Participants that use the Custody Service would be expected to be completed by the end of December 2016. However, email submission of Custody Eligibility Requests would remain available to Participants as a valid method to submit Custody Eligibility Requests until the later of (i) January 31, 2017 and (ii) 30 calendar days following the date all Participants using the Custody Service have migrated to be able to submit Custody Eligibility Requests using the Custody Eligibility Application (“Final Effective Date”).²⁵ On and after the Final Effective Date, DTC would not accept such email requests and Custody Eligibility Requests would be required to be submitted through the Custody Eligibility Application only. The Custody Guide text as proposed would contain a footnote reflecting the above regarding the Final Effective Date and state that the footnote would be deleted as of the Final Effective Date.

²⁴ The Custody Guide would provide that Participants that require assistance in accessing the Portal and/or Application should contact their DTC Relationship Manager.

²⁵ The Final Effective Date would be announced via a DTC Important Notice.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act²⁶ requires that the rules of the clearing agency be designed, inter alia, in general, to protect investors and the public interest. DTC believes the proposed rule change is consistent with this provision because (i) having Custody Eligibility Requests submitted through the Application would promote efficient and secure delivery and processing of such requests in order to facilitate making Securities and Non-Security Assets, as applicable, eligible for deposit into the Custody Service by Participants on behalf of themselves and their customers, and (ii) the proposed online functionality would facilitate enhanced transparency for Participants in their use of the Custody Service on behalf of themselves and their customers. Thus, by (i) facilitating efficient and secure submission of Custody Eligibility Requests, which in turn would facilitate the ability of Participants to deposit customer assets in DTC's secure vault, and (ii) providing for enhanced transparency to Participants in this regard, the proposed rule change would protect investors and the public interest.

Rule 17Ad-22(d)(6) promulgated under the Act²⁷ requires that each registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, be cost-effective in meeting the requirements of participants while maintaining safe and secure operations. DTC believes that the proposed rule change is consistent with Rule 17Ad-22(d)(6) because (i) by enhancing the efficiency of the processing of Custody Eligibility Requests without

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(d)(6).

increasing costs to Participants to access the service,²⁸ the proposed rule change would be cost-effective in meeting requirements of Participants, and (ii) by processing Custody Eligibility Requests through the Application, a centralized and secure online application, DTC would maintain safe and secure operations with respect to transmission and processing of such requests.

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

DTC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition because DTC would not charge a fee for access to the Application and therefore the proposal would not impose additional costs on Participants in this regard. In addition, the process for Participants to register for the Application is identical to that used by Participants to register for DTC web-based services generally.²⁹ DTC has discussed the proposal with Participants using the Custody Service and is conducting user testing on the Application prior to implementation on a Participant-by-Participant basis.

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

DTC has not solicited and does not intend to solicit, comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule

²⁸ DTC would not charge Participants a fee for access to the Application.

²⁹ Participants using DTC web-based services, such as the Application, make use of super access coordinators who are persons at the Participant firm authorized to grant other individuals at the Participant firm to access DTC web-based services on behalf of the Participant. All Participants using the Custody Service currently have appointed super access coordinators.

change, DTC will forward such comments to the Commission. DTC has conducted industry outreach with respect to the proposal including discussions with the Securities Processing Advisory Board (SPAB), whose members account for over 70 percent of the overall Custody Service activity at 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)³⁰ of the Act and paragraph (f) of Rule 19b-4³¹ 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-2016-011 on the subject line.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f).

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-2016-011. 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-2016-011 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.³²

Brent J. Fields
Secretary

³² 17 CFR 200.30-3(a)(12).