

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80598; File No. SR-DTC-2017-001)

May 4, 2017

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change to Establish a Sub-Account for Use with the DTCC Euroclear Global Collateral Ltd Collateral Management Service and Provide for the Authorization of a Representative to Receive Information About the Sub-Account

On March 9, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2017-001 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on March 24, 2017.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of The Depository Trust Company (“DTC Rules”)⁴ in order to add new Rule 35 (CMS Reporting). The proposed rule would provide that any DTC participant that is, or is acting on behalf of, a user of certain collateral management

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR-DTC-2017-001) (“Notice”).

⁴ Available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

services (“CMS”)⁵ of DTCC Euroclear Global Collateral Ltd. (“DEGCL”)⁶ may establish one or more sub-Accounts at DTC in connection with CMS (each, a “CMS Sub-Account”). A DTC participant that establishes a CMS Sub-Account pursuant to the proposed rule (“CMS Participant”) would thereby: (i) authorize DEGCL to receive account and transactional information and reports with respect to the CMS Sub-Account, and (ii) direct DTC to provide such information and reports to DEGCL, as described below.

A. DEGCL Background

DTC states that DEGCL performs information and record-keeping services for CMS users that have entered into user agreements with DEGCL for this purpose (“CMS Users”).⁷ CMS Users are financial institutions that are counterparties to agreements establishing obligations between them to provide securities collateral with respect to swaps or other types of financing transactions.⁸ These bilateral swap or other financing

⁵ In particular, there would be a CMS option authorizing DEGCL, on behalf of the CMS User, to propose collateral allocations to satisfy counterparty obligations of the CMS User, referred to by DEGCL as the “Allocation Option” and further explained below.

⁶ DEGCL is a joint venture of The Depository Trust & Clearing Corporation (“DTCC”), the corporate parent of DTC, and Euroclear S.A./N.V. (“Euroclear”), the corporate parent of Euroclear Bank, described further below. DTC understands that CMS will be operated by Euroclear Bank and other entities in the Euroclear group, as service providers to DEGCL, in accordance with appropriate agreements between them.

⁷ Notice, 82 FR at 15082.

⁸ Id.

agreements are entered into by such counterparties outside and independent of DEGCL or DTC.⁹

This proposed rule change relates to one of the services that DEGCL proposes to offer, the DEGCL “Allocation Option” (also referred to as “auto-select”). DTC states that the Allocation Option would only be used with DTC eligible securities held in a CMS Sub-Account by a CMS Participant (“CMS Securities”).¹⁰ The Allocation Option is dependent on DEGCL receiving certain information from DTC for the applicable CMS Sub-Account of the applicable CMS Participant.¹¹ The proposed rule change would provide a mechanism for a CMS Participant to authorize DEGCL as the CMS Participant’s “CMS Representative” to receive the necessary information from DTC, and to direct DTC to provide DEGCL with that information, as described below.

B. The Proposed Rule Change

The proposed rule change would allow a CMS Participant to establish one or more CMS Sub-Accounts. Upon doing so, a CMS Participant would be able to instruct DTC to transfer securities to the CMS Participant’s CMS Sub-Account. Such securities (i.e., CMS Securities) would then be available for allocation by DEGCL for delivery or pledge by book-entry at DTC in accordance with DTC Rules and Procedures (including

⁹ DTC states that a CMS User will typically be a major financial institution or buy-side investor that is a bank, broker dealer, or investment company. CMS Users will enter into a Collateral Management Service Agreement with DEGCL, which includes general terms of conditions and operating procedures (“CMS Agreement”). Id.

¹⁰ Id.

¹¹ The CMS Participant may be a CMS User acting for itself or a DTC participant acting on behalf of a CMS User as the CMS Participant. Id.

risk management controls),¹² in satisfaction of the various collateral obligations of the CMS Participant or the CMS User on behalf of which the CMS Participant is acting.¹³

By establishing a CMS Sub-Account, a CMS Participant would be (i) authorizing DEGCL, as its CMS Representative, to receive in report form, the information defined below regarding CMS Securities credited to the CMS Sub-Account at the time of the report (“CMS Report”), and regarding any delivery or pledge from, or delivery or release to, the CMS Sub-Account (“CMS Delivery Information”);¹⁴ (ii) representing and warranting that it is duly authorized to instruct DTC to provide the CMS Reports and CMS Delivery Information about such CMS Sub-Account to DEGCL; (iii) directing

¹² DTC states that its risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the DTC Rules, supra note 4), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest participant or affiliated family of participants. The Collateral Monitor tests whether a DTC participant has sufficient collateral for DTC to pledge or liquidate if that participant were to fail to meet its settlement obligation. Id. Pursuant to these controls under applicable DTC Rules and Procedures, any delivery instruction order to a CMS Sub-Account that would cause the CMS Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC, would not be processed by DTC. Id. Deliveries would be processed in the same order and with the same priority as otherwise provided in the DTC Rules and Procedures, i.e., such deliveries would not take precedence over any other type of delivery in the DTC system. Id.

¹³ Id. at 15082-83.

¹⁴ Each CMS Participant would continue to be liable as principal for the actions of its CMS Representative and would indemnify DTC against any claim or loss arising from any act or omission of its CMS Representative, or arising from DTC’s provision of the CMS Report and CMS Delivery Information to DEGCL or the receipt and use thereof by DEGCL, except to the extent caused directly by DTC’s gross negligence or willful misconduct. Id. at 15083.

DTC to provide the CMS Reports and CMS Delivery Information to DEGCL;¹⁵ and (iv) representing and warranting that it would conduct business in such CMS Sub-Account as provided in proposed Rule 35, and otherwise pursuant to the DTC Rules and Procedures, and in compliance with applicable law.

The CMS Report would include, with respect to the CMS Securities credited to a CMS Sub-Account of such CMS Participant at the time of such report, (i) the Committee on Uniform Securities Identification Procedures (“CUSIP”) number, International Securities Identification Number (“ISIN”), or other identification number of the CMS Securities; and (ii) the number of shares or other units or principal amount of the CMS Securities. CMS Delivery Information would be provided in real time, and would include, with respect to each delivery or pledge of CMS Securities from, or delivery or release of CMS Securities to a CMS Sub-Account, a copy of any delivery, pledge, or release message with respect to the CMS Sub-Account, including (i) the CUSIP, ISIN, or other identification number of such CMS Securities, and (ii) the number of shares or other units or principal amount of such CMS Securities.

¹⁵ The CMS Report and CMS Delivery Information would be transmitted to DEGCL using DTCC’s existing Common Data Transfer Service (“CDTS”) over a dedicated BT Radianz link. See CDTS User Guide and Schemas, available at <http://www.dtcc.com/~media/Files/Downloads/Settlement-Asset-Services/Underwriting/CDTS.zip>. BT Radianz is an existing DTCC network service provider. CDTS is DTCC’s proprietary file input and output management system. Id. It enables DTCC to securely and reliably automate the exchange of files over a network link with its Participants, Members, and third-parties. Id.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹⁶ 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 is consistent with the Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(e)(20) under the Act, as discussed below.¹⁷

A. Consistency with Section 17A

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁸ As described above, the proposed rule change would permit a CMS Participant (i.e., a DTC participant acting for itself or on behalf of a CMS User) to establish a CMS Sub-Account at DTC. Securities transferred to the CMS Sub-Account would then be available for allocation by DEGCL, via DTC, to satisfy various collateral obligations through the DEGCL Allocation Option. By monitoring transactions of a CMS User with multiple counterparties, the Allocation Option could offer efficiency by automating the selection of appropriate securities collateral to satisfy applicable collateral obligations. The proposed rule change could allow CMS Participants to avail themselves of the efficiency of the Allocation Option, such as not needing to transmit delivery and

¹⁶ 15 U.S.C. 78s(b)(2)(C).

¹⁷ 15 U.S.C. 78q-1(b)(3)(F); 17 CFR 240.17Ad-22(20).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

position information to DEGCL, by providing a mechanism for DTC to provide information on behalf of CMS Participants to DEGCL. Therefore, the Commission believes that the proposed rule change could help streamline the settlement of collateral transactions, thereby promoting the prompt and accurate clearance and settlement, consistent Section 17A(b)(3)(F), cited above.

B. Consistency with Rule 17Ad-22(e)(20)

Rule 17Ad-22(e)(20) under the Act requires a clearing agency, such as DTC, to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link DTC establishes with one or more other clearing agencies, financial market utilities, or trading markets.¹⁹ In developing the proposed rule change, DTC states that it evaluated the risks that could arise by establishing a link with DEGCL.²⁰ In particular, DTC identified the risk of data error from the communication link or the external communication of a CMS Participant's proprietary information.²¹ DTC determined that the identified risks could be mitigated because (i) the Allocation Option would not require any material change to DTC's settlement framework, technology, or operating procedures including existing settlement cycles and risk management controls; (ii) DTCC's Technology Risk Management existing control procedures could manage data integrity and authorization provisioning to mitigate information and technology risk; and (iii) DEGCL is only receiving CMS

¹⁹ 17 CFR 240.17Ad-22(e)(20).

²⁰ Notice, 82 FR at 15084.

²¹ Id.

Reports and CMS Delivery Information from a CMS Sub-Account specifically designated for this purpose by a CMS Participant.²² Therefore, the Commission believes that DTC has sought to identify, monitor, and manage the relevant risks associated with the proposed rule change, consistent with Rule 17Ad-22(e)(20), cited above.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act²³ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-DTC-2017-001 be, and hereby is, APPROVED.²⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

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Assistant Secretary

²² Id.

²³ 15 U.S.C. 78q-1.

²⁴ 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).

²⁵ 17 CFR 200.30-3(a)(12).