

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92125; File No. SR-DTC-2021-008)

June 8, 2021

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Distributions Guide to Accommodate Participants' Tax Reporting and Withholding Obligations

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 June 1, 2021, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been primarily 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)(6) thereunder.⁴ 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 Procedures⁶ set forth in the

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)(6).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the "DTC Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the DTC Corporate Actions Distributions Service Guide ("Distributions Guide"), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf>.

⁶ 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. DTC's Procedures are filed

Distributions Guide to accommodate Participants' tax reporting and withholding obligations under Section 1.1446(f)-4 ("IRS Regulation")⁷ of the final regulations of the Internal Revenue Service ("IRS"), by setting forth DTC's proposed Procedure relating to distribution of certain Participant tax forms and related information to DTC's Participants, in accordance with the IRS Regulation, as described in greater detail below.

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 would amend the Procedures set forth in the Distributions Guide to accommodate Participants' tax reporting and withholding obligations under the IRS Regulation. In this regard, the proposed rule change would set forth DTC's Procedure relating to distribution of certain Participant tax forms and related information to DTC's Participants, in accordance with the IRS Regulation, as discussed

with the Commission. They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, supra note 5.

⁷ See 26 CFR § 1.1446(f)-4, available at [https://www.law.cornell.edu/cfr/text/26/1.1446\(f\)-4](https://www.law.cornell.edu/cfr/text/26/1.1446(f)-4).

below.

(a) Distributions Service

The Distributions Service includes the announcement, collection, allocation and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC. This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements (“Distribution Event”),⁸ from multiple issuers and agents.⁹

Also as part of the Distributions Service, DTC also provides tax services (“Tax Services”) to facilitate Participant compliance with tax obligations, including international tax regulations, tax treaty provisions and withholding tax reporting requirements, including Tax Event Announcements, U.S. Tax Withholding, Tax Relief and Tax Info Services relating to distributions processed by DTC.¹⁰ Procedures relating to Tax Services are set forth in the Distributions Guide.¹¹

Tax Forms

⁸ Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depositary receipts, return of capital, dividend with option, stock splits, stock dividends, automatic dividend reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. See Distributions Guide, supra note 5 at 12.

⁹ See Distributions Guide, supra note 5 at 9.

¹⁰ See DTC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf at 9.

¹¹ See Distributions Guide, supra note 5.

In connection with its use of the DTC's services, each Participant must submit to DTC the applicable IRS tax form ("Tax Form").¹² The information in these forms, which includes the Participant's name, federal tax identification number and certain certifications by the Participant facilitates DTC's ability to provide Tax Services related to tax reporting and withholding by facilitating DTC's ability to determine the status of each Participant ("Tax Status") with respect to the type of reporting, and any rate of withholding, that may be required under federal tax regulations with respect to distributions.

In this regard, Participants that are U.S. persons provide DTC with a valid IRS Form W-9 ("Form W-9").¹³ Each non-U.S. Participant submits a valid IRS Form W-8,¹⁴ as applicable ("Form W-8").¹⁵ The form must be (1) valid for the type of entity; (2) filled out completely; and (3) signed by an authorized signatory of the entity.¹⁶ U.S. branches of foreign banks must also submit the appropriate W-8 Form.¹⁷

IRS Regulation

The IRS Regulation sets forth requirements relating to tax withholding and information reporting obligations on Participants with respect to the transfer of a publicly

¹² See Distributions Guide, supra note 5 at 25.

¹³ See IRS Form W-9, available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

¹⁴ See IRS. "About Instructions for the Requester of Forms W-8 BEN, W-8 BEN-E, W-8 ECI, W-8 EXP, and W-8 IMY", available at <https://www.irs.gov/forms-pubs/about-form-w-8>.

¹⁵ See Distributions Guide, supra note 5 at 25.

¹⁶ Id.

¹⁷ Id.

traded partnership interests.¹⁸ In addition, Section 1.1446(f)-4(a)(5)¹⁹ of the IRS Regulation provides that, when such withholding requirement is applicable, the U.S. clearing organization (e.g., DTC) may act as an agent for the selling Participant for purposes of furnishing the selling Participant's Tax Form to the buying Participant, provided the clearing organization notifies the selling Participant and such Participant has the ability to opt-out. DTC understands that Section 1.1446(f)-4(a)(5)²⁰ of the IRS Regulation is intended to address concerns about the difficulty of Participants obtaining documentation to determine whether tax withholding or reporting applies on certain transaction to other Participants processed through DTC's systems. In this regard, the IRS has issued guidance on use of the Tax Forms for determining a payee's tax status such that a payor would be able to properly report of affected payments and apply the correct withholding rate.²¹ In accordance with the IRS Regulation, DTC proposes to implement a method to share Tax Forms and related information among Participants.

Proposal

Pursuant to the proposed rule change, DTC would make each Participant's Tax Forms available to all Participants in accordance with the IRS Regulation. DTC would make the Tax Forms available for download by Participant on the DTC system to facilitate tax withholding and reporting obligations related to dispositions of partnership

¹⁸ See 26 CFR § 1.1446(f)-4, supra note 7.

¹⁹ Id.

²⁰ Id.

²¹ See IRS 2021 Publication 515, available at <https://www.irs.gov/pub/irs-pdf/p515.pdf> at 46-47.

interests. Also, in accordance with the IRS Regulation, Participants would be able to opt-out of having their Tax Form(s) made available for other Participants to download, as described below.

In this regard, beginning on or about August 31, 2021, Participants' Tax Forms would be made available for download in DTC's Corporate Actions Web browser ("CA Web"). Tax Forms would be available through the "Instructions" tab on CA Web, under "TaxInfo, Country of Investment: United States." To find, view, and download another Participant's tax form, a Participant would access CA Web as described above, and scroll to the relevant Participant Tax Form to download.

As an interim step, to facilitate Participants' ability to develop their internal procedures and processes to comply with their tax reporting and withholding requirements under the IRS Regulation, beginning on June 15, 2021, DTC would make available on CA Web tax status information ("Tax Status Information"). The Tax Status Information for each Participant would indicate (i) the type of Tax Form provided by the Participant to DTC (i.e., either Form W-9 or the type of Form W-8 provided (e.g., Form W-8 IMY, W-8BEN-E or W-8ECI)), and (ii) for Participants that provided Form W-8 IMY, whether the Participant indicated on the Form W-8 IMY that it is (a) Qualified Intermediary, (b) non-Qualified Intermediary, (c) U.S. Branch – Treated as a U.S. Person or (d) U.S. Branch – not-treated as a U.S. Person.

The Tax Status Information would be made available in the same location on CA Web as the Tax Forms would be located, as described above.

Pursuant to the proposed rule change, Participants would be able to elect to opt-out of having their Tax Forms and Tax Status Information posted to CA Web for other

Participants to download. Participants would use an opt-out form (“Opt-Out Form”) and submit their elections (“Opt-Out Election”) to opt-out electronically to DTCC’s Account Administration department using a mechanism provided at a link to be set forth in the Distributions Guide. Each Opt-Out Election would remain in place indefinitely until DTC is in receipt of a duly authorized written notice from the Participant rescinding this Opt-Out Election.

Text of Proposed Rule Change

In this regard, DTC would add the following text to the Distributions Guide in the “Other Services” section, just after the subsection titled “Undistributed Long-Term Capital Gains” and before the subsection titled “Claims”.

“Tax Form Repository

Beginning on June 15, 2021, to facilitate Participants’ ability to comply with tax withholding and reporting regulations relating to the disposition of partnership interests, and in furtherance of DTC’s role as a “clearing organization” in accordance with Section 1.1446(f)-4(a)(5) of the final regulations of the Internal Revenue Service, Participant tax status information (“Tax Status Information”) from the Tax Forms of Participants shall be made available to Participants in the “Instructions” tab of CA Web, within “TaxInfo, Country of Investment: United States.” Tax Status Information will no longer be available once Tax Forms become available for download from CA Web, as described below.

Beginning on or about August 31, 2021, to facilitate Participants’ ability to comply with tax withholding and reporting regulations relating to the

disposition of partnership interests, and in accordance with Section 1.1446(f)-4(a)(5) of the final regulations of the Internal Revenue Service, Participant tax forms (i.e., IRS Forms W-9 and W-8) (“Tax Forms”) shall be available for Participants to view and download. Tax Forms shall be available in the “Instructions” tab of CA Web, within “TaxInfo, Country of Investment: United States.

Opt-Out

Effective immediately, a Participant may submit an election (“Opt-Out Election”) to DTC to opt-out of having its Tax Form and Tax Status Information posted to CA Web, by electronically submitting a form (“Opt-Out Form”) made available by DTC for this purpose. The Opt-out Form, as well as the mechanism for completing, electronically signing and submitting the form, is available at <https://na2.docusign.net/Member/PowerFormSigning.aspx?PowerFormId=854f0396-16aa-4fbb-bf67-c694274c04cf&env=na2&acct=642629e5-740a-442a-b744-d7655d9a1f21&v=2>.” Any Opt-Out Election will only be considered valid if it is (i) fully completed and electronically signed by an authorized signer of the Participant using the Opt-Out Form and (ii) submitted through the mechanism made available through this link. An Opt-Out Election will become effective as of a date designated by the Participant on the Opt-Out Form. For this purpose, a Participant may designate its account activation date (for new Participants of DTC), or a future date, for its Opt-Out Election to become effective. Each Opt-Out Election will remain in place indefinitely until DTC is in receipt of a duly authorized written notice from the Participant rescinding this Opt-Out Election.

Please contact your Relationship Manager with any questions regarding Opt-Out Elections.”

Effective Date

The proposed rule change would be effective upon filing with the Commission. The proposed rule change would not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)²² of the Act.

Section 17A(b)(3)(F) of the Act²³ requires, inter alia, that the rules of the clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. As described above, the proposed rule change would amend the Distributions Guide, as described above, to accommodate Participants’ tax reporting and withholding obligations relating to transactions subject to the IRS Regulation. Specifically, DTC understands, when a non-U.S. Participant Delivers a Security (acting on behalf of a seller) representing a publicly traded partnership interest to another Participant (acting on behalf of a buyer), the Participant acting on behalf of the buyer may be required to withhold tax and/or perform reporting to

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ Id.

the IRS relating the proceeds realized by a selling non-U.S. Participant.²⁴ DTC believes that the sharing of Participant Tax Forms and Tax Status Information would accommodate compliance by Participants with the IRS Regulation for such transactions for such transfers between them because the Tax Form and Tax Status Information contain information that would facilitate Participants' ability to determine if they have an obligation for tax withholding and reporting under the IRS Regulation.²⁵ Therefore, because the proposed rule change would accommodate the exchange of Tax Forms and Tax Status Information between Participants, and this would facilitate compliance with certain tax requirements for certain activity they transact among themselves, as described above, DTC believes that the proposed rule change would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

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

DTC believes that the proposed rule change, as described above, could impose a burden on competition, because by requiring Participants to opt-out if they do not wish to have their Tax Status Information and Tax Status Forms shared with other Participants, a Participant would affirmatively need to submit an Opt-Out Form, which is an action that they do not need to perform today.

To the extent the proposed rule change may impose a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the

²⁴ See supra note 7.

²⁵ Id.

Act,²⁶ because the proposed rule change would (i) accommodate Participants' tax reporting and withholding obligations under the IRS Regulation (ii) and facilitate Participants' ability to comply with applicable DTC Rules.²⁷ In this regard, the proposed rule change would set forth DTC's Procedure relating to the distribution of certain Participant tax forms and related information to DTC's Participants, in accordance with the IRS Regulation, and DTC is not aware of an alternative method available to Participants to share Tax Forms and Tax Status Information among each other in a centralized facility as contemplated by the IRS Regulation.

(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 written 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 change, DTC will forward such comments to the Commission.

During outreach on the proposal by DTC to Participants, Participants have indicated to DTC that receiving Tax Forms and Tax Status Information through DTC would facilitate their ability to comply with their tax withholding obligations. DTC is not aware of any Participants indicating that they would prefer that these forms and information not be shared among Participants.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

²⁶ 15 U.S.C. 78q-1(b)(3)(I).

²⁷ Pursuant to Rule 2, Section 8, in connection with their use of the Corporation's services, Participants must comply with all applicable laws, including but not limited, to all applicable laws relating to taxation. See Rule 2, supra note 5.

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and Rule 19b-4(f)(6)²⁹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. DTC has requested that the Commission waive the 30-day operative delay under Rule 19b-4(f)(6)(iii)³² so that the proposed rule change may become effective and operative on June 15, 2021. DTC states that the proposal is intended to amend the Distributions Guide to allow DTC to provide tax information and facilitate Participants' compliance with tax reporting and withholding obligations relating to the disposition of partnership interests, in accordance with the IRS Regulation. DTC further states that implementation of the proposed rule change within a shorter timeframe would facilitate Participants' ability to make necessary adjustments to their internal processes and systems to timely comply with the IRS Regulation, and therefore facilitate their ability to comply with applicable U.S. tax reporting and

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ Id.

³¹ 17 CFR 240.19b-4(f)(6)(iii).

³² Id.

withholding requirements on behalf of themselves and their customers that invest in partnership interests. Accordingly, DTC believes that the prompt implementation of these changes would be consistent with the public interest and the protection of investors.

The Commission believes that delaying the operation of the proposed rule change for 30 days would impede DTC's ability to begin to provide tax information and facilitate Participants' ability to comply with tax reporting and withholding obligations relating to the disposition of partnership interests, in accordance with the IRS Regulation which will become effective on January 1, 2022. Moreover, the Commission believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the changes are designed to facilitate compliance with the IRS regulation and do not affect the rights of Participants or impose any new costs on Participants. Accordingly, the Commission waives the operative delay and designates the proposed rule change as effective and operative on June 15, 2021.³³

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

³³ DTC satisfied the five-day pre-filing requirement. For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-008 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-2021-008. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2021-008 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).