This document is scheduled to be published in the
Federal Register on 03/15/2019 and available online at
https://federalregister.gov/d/2019-04809, and on **govinfo.gov**

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-85288; File No. SR-DTC-2018-010]

Self-Regulatory Organizations; The Depository Trust Company; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Settlement Guide Procedures to Provide Status Information for Institutional Transactions to a Matching Utility

March 11, 2019.

On November 29, 2018, The Depository Trust Company ("DTC"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change, to allow DTC to share status information with matching utilities (SR-DTC-2018-010), 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 December 12, 2018.[3] As of March 11, 2019, the Commission has received one comment letter to the proposed rule change.[4] On December 26, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to March 12, 2019.[5] This order

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 84751 (December 7, 2018), 83 FR 63948 (December 12, 2018) (SR-DTC-2018-010) ("Notice").

4 Letter from Mari-Anne Pisarri, Chief Financial Officer, Pickard Djinis and Pisarri LLP, dated January 2, 2019, to Eduardo A. Aleman, Assistant Secretary, Commission, available at https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-4842066-177179.pdf ("SS&C Letter").

5 Securities Exchange Act Release No. 84954 (December 26, 2018), 84 FR 873 (January 31, 2019) (SR-DTC-2018-010).

institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Description of the Proposed Rule Change

Background

DTC proposed to amend the procedures, set forth in the DTC Settlement Service Guide ("Settlement Guide"),[7] to allow DTC to provide status information ("Status Information") for institutional transactions in eligible securities ("Institutional Transactions")[8] to an entity providing a matching service ("Matching Utility"),[9] as described below.

In accordance with the Settlement Guide, for a Matching Utility to establish and maintain a connection with DTC, the Matching Utility must be able to balance with DTC in an automated way[10] and communicate transactions to and from DTC with information

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6 15 U.S.C. 78s(b)(2)(B).

7 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 ("Rules"), available at http://www.dtcc.com/legal/rules-and-procedures.aspx and the Settlement Service Guide, available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.

8 DTC defined in the Notice an Institutional Transaction as a securities transaction between a broker-dealer and its institutional customer (e.g., sell-side firms, buy-side institutions, and custodians).

9 A "matching service" is defined in the Settlement Guide as an electronic service to match trade information, centrally, between a broker-dealer and its institutional customer.

10 For each Matching Utility interfacing with DTC, DTC requires the Matching Utility to deliver a daily message on each business day shortly after noon from the Matching Utility with their accepted item counts of institutional delivery and ID Net transaction totals for Settlement Date minus one transactions. DTC's system

required though mandated fields in order to provide DTC with data necessary for it to be able to process a transaction.[11]

The submission of an Affirmed Transaction by the Matching Utility to DTC, on behalf of a Participant, constitutes the duly authorized instruction of the Participant to DTC to process the Affirmed Transaction in accordance with the Rules and Procedures.[12]

A transaction submitted to DTC for processing may be subject to a processing exception ("Exception"), causing it to pend in the DTC system or not be processed because the transaction does not satisfy certain requirements and/or controls set forth in the Rules and Service Guide. A Matching Utility that has submitted an Institutional Transaction to DTC, or is otherwise involved with the matching of a transaction, does not receive Status Information regarding the transaction and is therefore unable to provide services to facilitate resolution of processing Exceptions occurring at DTC. Therefore, in order to resolve an Exception, the Participants to an Institutional Transaction must (i) access Status Information directly through the DTC Settlement User Interface and (ii), as

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will compare the totals from the Matching Utility to its accepted item counts. If the totals match, an "acknowledged balance" balance file will be sent to the Matching Utility. If the totals do not match, DTC will respond with the list of Settlement Date minus one control numbers received from the Matching Utility, along with their respective transaction types for the originating Matching Utility to compare. Id.

11 The mandated fields for this purpose are the transaction control number ("Control Number"), DTC receiver and deliverer account numbers, CUSIP, message type, share quantity, market type, buy-sell indicator, broker ID, ID agent internal account number, broker internal account number, agent bank ID, settlement amount, origination entity, recipient of message, institution, and settlement date. Id. Institutional Transactions that are not Affirmed Transactions, but which include a Control Number, may be submitted directly by Participants.

12 Id.

necessary, supply the information to their customers that are counterparties to the transaction on their books, in order to facilitate the coordination of the resolution of the Exception among the counterparties.

Proposed Rule Change

DTC received a request from its Matching Utility affiliate, ITP Matching (US) LLC ("ITP"), to receive Status Information so that ITP may transmit the Status Information to counterparties in a centralized format. DTC believes that distribution of Status Information to relevant counterparties in a centralized format would facilitate Participants' ability to monitor Exceptions and coordinate with their institutional customers in order to resolve Exceptions.

Pursuant to the proposed rule change, in order to facilitate more seamless transmission of the Status Information for (i) Affirmed Transactions and (ii) other Institutional Transactions that may have been confirmed at a Matching Utility and received a Control Number, and are submitted directly to DTC by a Participant in an instruction containing the Control Number, (collectively, "Eligible Transactions") to Participants and facilitate their ability to manage Exceptions, DTC proposes to amend the Settlement Guide to provide that DTC may provide Status Information on Eligible Transactions to the applicable Matching Utility that submitted the transaction to DTC, or with respect to which its Control Number is included in transaction details provided by a Participant,[13] if so requested by the Matching Utility.

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[13] DTC states that it is DTC's understanding that a transaction that has been confirmed within a Matching Utility's system, but has not been affirmed, may be assigned a Control Number by the Matching Utility. Any transaction not affirmed by a Matching Utility would not be submitted by it to DTC as an Affirmed

In this regard, DTC would send to a Matching Utility Status Information for Eligible Transactions that DTC has received from the Matching Utility or have been entered by the Participant, that have a Control Number associated with that Matching Utility. The Status Information provided to the Matching Utility would include the status of the transaction (e.g., the Delivery of Securities has been made within DTC, the transaction is pending Delivery within DTC, or the transaction was reclaimed (i.e., sent back to the Deliverer)) and a reason for any pending status (e.g., the Deliverer has insufficient inventory in the applicable Securities, the Deliverer has insufficient Collateral, the Receiver to the transaction has insufficient Net Debit Cap, etc.). The Status Information would also include information ("Identifying Information") to facilitate the Matching Utility's ability to identify the applicable Eligible Transaction and reconcile the Status Information to the Eligible Transaction in its records. Identifying Information would include, but not be limited to, (i) the applicable Control Number (ii) identification numbers of the Participants to the transaction, (iii) quantity of Securities, (iv) dollar amount of the transaction, and (v) an indicator of whether the transaction was submitted to DTC by the Matching Utility or directly by a Participant.

Proposed Changes to the Settlement Guide

Pursuant to the proposed rule change, DTC proposed to revise the Settlement Guide to allow DTC to provide Status Information of (i) Affirmed Transactions and (ii) other institutional transactions to a Matching Utility that requests such information, but only for those transactions that are associated with a Control Number relating to the

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Transaction. In that case, the Participant may submit the transaction directly through DTC as a Deliver Order, and include the applicable Control Number as assigned by the Matching Utility on its submission to DTC.

Matching Utility. The proposed text to the Settlement Guide would also (x) describe the types of Status Information and related Identifying Information that would be shared with a Matching Utility in this regard, and (y) provide that DTC may charge a fee ("Status Information Fee") to a Matching Utility that receives Status Information as set forth in the DTC Fee Guide.[14] The proposed rule change would also add a defined term for "Control Number" to the Settlement Guide in existing text where the term is referred to but not defined.

The proposed rule change would require that prior to providing Status Information to a Matching Utility, DTC would obtain the written agreement, in such form as determined by DTC from time to time ("Status Information Agreement"), from the Matching Utility that includes the following:

(i) a request from the Matching Utility to receive Status Information from DTC;

(ii) an agreement by the Matching Utility that the Matching Utility will not distribute Status Information to any third party other than (a) the Participants indicated on the Status Information and (b) the institutional customers that are counterparties to the transaction for which the Participants indicated on the Status Information are acting with respect to the transaction;

(iii) the agreement of the Matching Utility that the Matching Utility will indemnify, hold harmless and agree, on demand, to reimburse DTC, its

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[14] Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf. Any such fee would be the subject of a subsequent proposed rule change that DTC would file with the Commission.

stockholders, officers, directors and employees from and against and for any and all claims, liabilities, obligations, damages, actions, penalties, losses, costs, expenses and disbursements, including, without limitation, attorneys' fees and disbursements ("Claims"), which they may sustain by reason of DTC's providing Status Information to the Matching Utility, except for any Claims which result from the gross negligence or willful misconduct of the person asserting a right to indemnification;

(iv) the agreement of the Matching Utility to pay the Status Information Fee;

(v) the agreement of the Matching Utility to notify DTC immediately if the Matching Utility becomes aware of Status Information provided to it by DTC being distributed to a third party other than as authorized pursuant to (ii) above; and

(vi) the acknowledgement of the Matching Utility that DTC may terminate the Status Information Agreement in the event that (a) DTC becomes aware that the Matching Utility has used or distributed the Status Information in a manner that violates the terms of the Status Information Agreement, (b) the Matching Utility does not pay the Status Information Fee in accordance with the terms of the Fee Schedule, or (c) DTC submits a rule filing to the SEC, which is approved by the SEC or otherwise becomes effective pursuant to the Act to discontinue DTC's distribution of Status Information to Matching Utilities.

III. Summary of Comment Received

The Commission received one comment letter in opposition to the proposal. The commenter notes, that in 2015, the Commission issued an order permitting the commenter to operate as a Matching Utility,[15] and that in accordance with the Commission's order, the commenter and ITP have undertaken negotiations to facilitate the development of linkages and interfaces that would permit interoperability between the two Matching Utilities.[16] Nevertheless, to date, the commenter and ITP have not achieved interoperability. The commenter opposes the proposal because the commenter believes that the proposal would (i) hinder the development of linked and coordinated facilities for clearance and settlement and (ii) impose an impermissible burden on competition.[17]

According to the commenter, through the proposed rule change, ITP is "asking DTC to charge it for Status Information, and to confirm that DTC will not send Status Information to a competing Matching Utility unless that competing Matching Utility has the sell side on its platform and submits the transaction for settlement."[18] The commenter asserts that given the "sealed ecosphere in which DTC operates," the proposal is a way for ITP to "switch revenue from one DTC pocket to another, while giving ITP an excuse

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15 Bloomberg STP LLP; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption from Registration as a Clearing Agency, Exchange Act Release No. 76514 (November 24, 2015), 80 FR 75388 (December 1, 2015).

16 The Commission's order also permitted a second entity to act as a Matching Utility, but that entity did not submit a comment letter.

17 See SS&C Letter at 4–5.

18 See id.

not to pass acknowledgement messages through its interface for free."[19] The commenter also asserts that "[i]t is impossible to tell from this filing if or how this Status Information differs from the pre-settlement details that DTC already supplies ITP through Trade Suite."[20]

The commenter believes that the proposal would impose a burden on competition because (i) it would be merely a paper transfer of revenue between DTC and ITP without any revenue or cost impact at the parent level and (ii) DTC is not similarly restricted from monetizing this information through the depository or ITP.[21] In contrast, the commenter argues that the proposed fee would be a true cost for the commenter because the commenter would be faced with a choice of absorbing the fee and raising its operating costs, or passing the fee through to its customers, forcing its prices to become less competitive.[22]

IV. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[23] to determine whether the proposed rule change should be approved or disapproved.

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19 See id.

20 See SS&C Letter at 2. According to the commenter, TradeSuite is an ITP services that automates post-trade messaging and settlement for domestic and cross-border trades of equity and fixed income securities, and that DTC's Inventory Management System supplies TradeSuite with updates regarding pre-settlement status of affirmed trades.

21 See id. at 5.

22 See id.

23 15 U.S.C. 78s(b)(2)(B).

Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[24] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from a commenter with respect to, the proposed rule change's consistency with Section 17A of the Act,[25] and the rules thereunder, including the following provisions: (i) Section 17A(b)(3)(F) of the Act,[26] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions; and (ii) Section 17A(b)(3)(I) of the Act,[27] which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any

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[24] Id.

[25] 15 U.S.C. 78q-1.

[26] 15 U.S.C. 78q-1(b)(3)(F).

[27] 15 U.S.C. 78q-1(b)(3)(I).

other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Sections 17A(b)(3)(F) and (I) of the Act, cited above, or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Act,[28] any request for an opportunity to make an oral presentation.[29]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT 31 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. 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

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28 17 CFR 240.19b-4(g).

29 Section 19(b)(2) of the Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2018-010 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-2018-010. 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 such filings 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-2018-010 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Rebuttal comments should be submitted by [INSERT 31 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,
Deputy Secretary.

[30] 17 CFR 200.30-3(a)(57).

[FR Doc. 2019-04809 Filed: 3/14/2019 8:45 am; Publication Date: 3/15/2019]