



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-93533; File No. SR-DTC-2021-014]

Self-Regulatory Organizations; The Depository Trust Company; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

November 5, 2021

I. Introduction

On July 22, 2021, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2021-014 (“Proposed Rule Change”) 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 August 11, 2021.³ The Commission has received no comment letters on the Proposed Rule Change.

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁵ This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,⁶ to determine whether to approve or disapprove the Proposed Rule Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 92572 (August 5, 2021), 86 FR 44077 (August 11, 2021) (SR-DTC-2021-014) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ Securities Exchange Act Release No. 92861 (September 2, 2021), 86 FR 50570 (September 9, 2021) (SR-DTC-2021-014).

⁶ 15 U.S.C. 78s(b)(2)(B).

II. Summary of the Proposed Rule Change

As described in the Notice,⁷ DTC proposes to amend the Rules, the Settlement Guide, and the Fee Guide in order to provide Participants that are also members of the National Securities Clearing Corporation (“NSCC”) with a proposed optional securities financing transaction clearing service of NSCC (“NSCC SFT Service”). The proposed NSCC SFT Service would provide central clearing for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (each, an “SFT”).⁸ SFTs between counterparties that are members of NSCC (each, an “NSCC SFT Counterparty”) would be settled through their respective Participant accounts at DTC.

Pursuant to the proposed rule change, DTC would (i) expand the types of instructions that NSCC can submit to DTC on behalf of a Participant that are also members of NSCC in connection with the NSCC SFT Service, (ii) apply a modified look-ahead process to the new account that NSCC would maintain at DTC in connection with the NSCC SFT Service (the “NSCC SFT Account”), and (iii) establish a fee for the payments relating to SFT activities at NSCC, and (iv) make clarifying and conforming changes.

(i) NSCC Instructions to DTC

⁷ The description of the Proposed Rule Change is based on the statements prepared by DTC in the Notice. See Notice, supra note 3. Capitalized terms used herein and not otherwise defined herein are defined in DTC’s Rules, By-Laws and Organization Certificate, available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf, and the Notice.

⁸ On July 22, 2021, NSCC filed a proposed rule change and an advance notice to establish the NSCC SFT Service (“NSCC Proposed Rules”). See Securities Exchange Act Release No. 92570 (August 5, 2021), 86 FR 44482 (August 12, 2021) (SR-NSCC-2021-010); Securities Exchange Act Release No. 92568 (August 5, 2021), 86 Fed. Reg. 44530 (August 12, 2021) (SR-NSCC-2021-803).

NSCC would use its new NSCC SFT Account in connection with the NSCC SFT Service. DTC would allow NSCC to submit instructions to DTC with respect to the NSCC SFT Service. NSCC would submit Delivery Versus Payment (“DVP”) instructions or payment orders relating to SFT activity (“SFT PD Payment Orders”) to DTC in accordance with the NSCC Proposed Rules. The DVP instructions or the SFT PD Payment Orders would be subject to DTC’s risk management controls and the modified look-ahead.

(ii) Modified Look-Ahead Processing

The typical look-ahead process utilized by DTC reduces transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a Participant’s Net Debit Cap.⁹

DTC would apply a modified look-ahead processing to the NSCC SFT Accounts so that look-ahead matches on other details in addition to CUSIP. The modified look-ahead would be satisfied when (i) the pair of instructions from NSCC are consistent in terms of the number of subject shares and/or dollar amount, CUSIP, and DTCC Reference ID, and (ii) the net effect of processing the instructions would not violate the respective Net Debit Caps, Collateral Monitor¹⁰ or other risk management system controls of the Participants that are on each side of the DVP or SFT PD Payment Order.

In addition, because the modified look-ahead relies on the completion of offsetting transactions, transactions to and from the NSCC SFT Account would not be subject to either reclaims or Receiver Authorized Delivery (“RAD”). Since both reclaims and RAD effectively permit one side of the transaction to reject or reverse the

⁹ The Net Debit Cap controls the amount of the settlement obligation that any Participant or family may incur.

¹⁰ The Collateral Monitor tracks whether each Participant has available sufficient collateral value to secure a borrowing to fund the amount of the Participant’s net settlement obligation, in the event that the Participant fails to settle.

transaction, allowing such activity would interfere with the ability of the modified look-ahead to rely on the completion of the offsetting transactions.

(iii) SFT PD Payment Order Fee

DTC proposes to amend the Fee Guide to establish a fee for SFT PD Payment Orders. DTC proposes a fee of \$0.005 per item delivered or received to be charged to the payor and the payee of an SFT PD Payment Order.

III. 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 Act¹¹ to determine whether the Proposed Rule Change should be approved or disapproved. 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,¹² 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 commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,¹³ and the rules thereunder, including the following provisions:

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² Id.

¹³ 15 U.S.C. 78q-1.

- Section 17A(b)(3)(F) of the Act,¹⁴ 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
- Section 17A(b)(3)(D) of the Act¹⁵ requires that the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees, and other charges among Participants.

IV. Procedure: 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 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 Section 17A(b)(3)(F) of the Act,¹⁶ and Section 17A(b)(3)(D) of the Act,¹⁷ 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,¹⁸ any request for an opportunity to make an oral presentation.¹⁹

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1(b)(3)(D).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 15 U.S.C. 78q-1(b)(3)(D).

¹⁸ 17 CFR 240.19b-4(g).

¹⁹ 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).

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 date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of DTC's statements in support of the Proposed Rule Change, which are set forth in the Notice,²⁰ in addition to any other comments they may wish to submit about the Proposed Rule Change.

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-2021-014 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-2021-014. 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

²⁰ See Notice, supra note 3.

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-2021-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Jill M. Peterson,

Assistant Secretary.

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²¹ 17 CFR 200.30-3(a)(31).