

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83940; File No. SR-DTC-2018-006]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change To Amend Rule 35 To Provide for Designated Accounts for Use With Designated Collateral Management Service Providers

August 24, 2018.

On July 9, 2018, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2018-006 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 July 24, 2018.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the Rules, By-Laws and Organization Certificate of The Depository Trust Company (“DTC Rules”) ⁴ to revise DTC’s current Rule 35—CMS Reporting (“Rule 35”).

A. Background

Currently, Rule 35 provides that a Participant of DTC (“Participant”) may establish a collateral management service (“CMS”) ⁵ sub-account (“CMS Sub-Account”), which authorizes DTCC Euroclear Global Collateral Ltd.

(“DEGCL”) ⁶ to receive from DTC (i) a CMS report that provides information regarding securities credited to the CMS Sub-Account of such Participant at the time of the report (“CMS Report”), and (ii) CMS delivery information that provides real-time information regarding any delivery or pledge from, or delivery or release to, the CMS Sub-Account (“CMS Delivery Information”).⁷

B. The Proposed Rule Change

DTC proposes five changes to Rule 35: (1) Adding the term “CMSP” (*i.e.*, a CMS provider) and its associated function; (2) adding the term “CMSP Accounts” and its associated function; (3) adding the term “CMSP Reports” and its associated function; (4) authorizing a CMSP to submit CMSP instructions (“CMSP Instructions”) on behalf of a Participant or a Pledgee of DTC (“Pledgee”); and (5) making ministerial changes to conform with the proposed changes, as well as making stylistic edits.⁸ Each of these proposed changes is described below.

1. CMSP

The proposal would add to Rule 35 the term and function of a CMSP, which a Participant or Pledgee could then designate to act on its behalf under the rule, pursuant to the proposed changes.⁹ The term CMSP would replace the existing, singular designation of DEGCL to act under Rule 35 as a collateral management provider.¹⁰ A partnership, corporation, or other organization or entity could become a CMSP, under the proposed changes to Rule 35, if it satisfies three proposed criteria: (1) One or more Participants or Pledgees designate the entity as a CMSP for purposes of Rule 35; (2) the entity (i) satisfies at least one of the qualifications set forth in Section 1(a)–(h) of Rule 3 ¹¹

or (ii) is organized in a country other than the United States, is regulated by a financial regulatory authority in the country in which it is organized, and demonstrates that it has notified the Commission in writing of its intention to operate under Rule 35;¹² and (3) the entity establishes a connection to DTC, in accordance with the reasonable requirements of DTC, in order to be able to receive position and transaction information and to submit instructions to DTC in accordance with the DTC Rules and Procedures.¹³

As proposed, DTC may decline to accept an entity as a CMSP if it would present material risk to DTC, its Participants and Pledgees, or impose material costs to DTC.¹⁴ DTC states that some examples of circumstances in which DTC might reject an applicant as a CMSP include when DTC reasonably believes that acceptance of the applicant as a CMSP would (i) subject DTC to additional legal or regulatory regimes, to which it is not otherwise subject; (ii) expose DTC to additional technology risk; or (iii) cause DTC to be in violation of applicable law or regulation.¹⁵

2. CMSP Account

The proposed rule change would add the term and function of a “CMSP Account” to Rule 35.¹⁶ Currently, Rule 35 requires a Participant looking to utilize the services offered through Rule 35 to designate an account for such

¹² DTC states that in order to protect DTC, its Participants and Pledgees, a CMSP that wishes to act under the proposed changes to Rule 35 would need to be subject to regulatory oversight comparable to a Participant, as provided in proposed Section 2(b)(i) of Rule 35, or, if the entity is organized in a country other than the United States (a “non-U.S. entity”), it would need to be regulated by a financial regulatory authority in the country in which it is organized, as provided in proposed Section 2(b)(ii) of Rule 35. Notice, 83 FR at 35045. Further, the proposed rule change would require that, in order to be eligible to become a CMSP, the non-U.S. entity must notify the Commission in writing of its intention to operate under Rule 35, as modified by the proposed changes. *Id.* While DTC reserves the right to request documentation and/or information relating to a CMSP’s compliance with the requirements of proposed Section 2 of Rule 35, it would be the sole responsibility of the Participant or Pledgee to evaluate and choose an appropriate CMSP that, at a minimum, satisfies the requirements. *Id.* Under proposed Section 2 of Rule 35, the designating Participant or Pledgee would remain liable as principal for the actions of its designated CMSP(s) on its behalf, and would indemnify DTC for any loss, liability, or expense as a result of any claim arising from (i) any act or omission of the CMSP, (ii) the provision of CMSP Reports to the CMSP by DTC, or (iii) DTC’s compliance with instructions of the CMSP. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83667 (July 18, 2018), 83 FR 35044 (July 24, 2018) (SR-DTC-2018-006) (“Notice”).

⁴ Available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>. Each capitalized term not otherwise defined herein has its respective meaning as set forth in the DTC Rules.

⁵ Collateral management generally involves calculating collateral requirements and facilitating the transfer of collateral between counterparties. See Securities Exchange Act Release No. 64796 (July 1, 2011), 76 FR 39963, 39964 (July 7, 2011) (S7-28-11).

⁶ DEGCL is a joint venture of The Depository Trust & Clearing Corporation, the corporate parent of DTC, and Euroclear S.A./N.V. and was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL offers service options for the selection of collateral to satisfy the collateral obligations of its users (“DEGCL CMS”). See Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR-DTC-2017-001) (“CMS Order”) (providing additional information on DEGCL and DEGCL CMS). One option relates exclusively to Securities held at DTC, and is dependent on Rule 35. *Id.*

⁷ CMS Order, 82 FR at 21838.

⁸ Notice, 83 FR at 35044-45.

⁹ Notice, 83 FR at 35045.

¹⁰ *Id.*

¹¹ Sections 1(a)–(h) of Rule 3 provide the qualifications for a partnership, corporation or other organization or entity to be eligible to become a Participant. See DTC Rules, Rule 3, Sections 1(a)–(h), *supra* note 4.

purposes (*i.e.*, a CMS Sub-Account).¹⁷ A Pledgee, however, is not permitted to designate a CMS Sub-Account under the existing Rule 35.

The proposed CMSP Account would replace the concept of the existing CMS Sub-Account and would allow either a Participant or a Pledgee to designate any account as a CMSP Account.¹⁸ Once established, a CMSP Account would allow the designated CMSP access and authority to provide instruction to DTC (as further described below) for the Delivery, Pledge, or Release of securities on behalf of a Participant or Pledgee, as applicable.¹⁹ As proposed, a Participant or Pledgee could designate one or more CMSP Accounts and, concurrently, designate one or more CMSPs with respect to each CMSP Account.²⁰

A Participant's or Pledgee's designation of a CMSP for a CMSP Account would serve four functions: (1) The appointment of the CMSP to act on its Participant's or Pledgee's behalf for the purposes of Rule 35; (2) the authorization of the CMSP to receive CMSP Reports and to provide CMSP Instructions on behalf of its Participant or Pledgee; (3) the authorization of DTC to act in accordance with any CMSP Instruction of a Participant's or Pledgee's designated CMSP; and (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with any CMSP Instruction.²¹

The proposed rule change would not substantially alter the current liability and indemnification provisions provided for in Rule 35.²² Specifically, the proposed rule change would provide that each Participant and Pledgee that designates a CMSP would indemnify DTC, and any nominee of DTC, against any loss, liability or expense as a result of any claim arising from the compliance of DTC with CMSP Instructions, except to the extent such loss, liability, or expense is caused directly by the DTC's gross negligence or willful misconduct.²³

3. CMSP Reports

Rule 35 currently authorizes DEGCL, and only DEGCL, to receive position

and transaction information from DTC on behalf of a Participant in the form of CMS Delivery Information and CMS Reports.²⁴ The proposed rule change would permit a Participant or Pledgee to authorize a CMSP, which may or may not be DEGCL, to receive CMSP Reports (with respect to CMSP Accounts for which the CMSP is designated).²⁵ The CMSP Information and CMSP Position Report are analogous to the reports currently provided to DEGCL under Rule 35 (*i.e.*, CMS Report and CMS Delivery Information, respectively).²⁶

Currently, Rule 35 defines "CMS Delivery Information" to mean, "with respect to CMS Securities and any Delivery or Pledge thereof from, or Delivery or Release thereof to, a CMS Sub-Account, a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) The CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities."²⁷ DTC states that this definition was drafted to align with DEGCL specifications.²⁸

Pursuant to the proposed rule change, the definition of "CMSP Information" would be drafted in more general terms to provide flexibility for the different collateral management service offerings of CMSPs (in addition to DEGCL).²⁹ Pursuant to the proposed rule change, "CMSP Information" would mean, "with respect to a CMSP Account of a Participant or Pledgee, a copy of any message sent to the Participant or Pledgee by the Corporation."³⁰ These messages would include, but would not be limited to, the Delivery, Pledge, and Release messages referenced in the definition of CMS Delivery Information in existing Rule 35.³¹

Similarly, Rule 35 currently defines "CMS Report" to mean, "with respect to a CMS Participant and its CMS Sub-Account, the following information identifying the CMS Securities that are, at the time of such report, credited to such CMS Sub-Account: (i) The CUSIP, 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."³² DTC states that this definition was drafted to

align with DEGCL specifications.³³ Pursuant to the proposed rule change, the specific language "(i) the CUSIP, 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" would be deleted from the definition of "CMSP Position Reports."³⁴

Finally, similar to what is provided for in Rule 35 today, the proposed changes would provide that DTC would have no liability to any Participant or Pledgee as a result of providing one or more CMSP Reports to any CMSP pursuant to proposed Section 5 of Rule 35.³⁵

4. CMSP Instructions

The proposed rule change would provide that a CMSP would be authorized to instruct DTC, on behalf of the Participant or Pledgee, for the Delivery, Pledge, or Release of securities credited to such Participant or Pledgee's CMSP Account, as applicable.³⁶ CMSP Instructions would be subject to the terms and conditions of the DTC Rules and Procedures applicable to Deliveries, Pledges, and Releases of securities generally, including risk management controls.³⁷ DTC states that the purpose of this proposed change is to streamline collateral processing by CMSPs by allowing them to receive information directly from DTC and to take direct action on that information through CMSP Instructions, on behalf of Participants and Pledgees.³⁸

The proposal would not preclude instructions by the Participant or Pledgee itself, or CMSP Instructions by another CMSP, with respect to the same

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ For a CMSP Account of a Participant, that would include Delivery or Pledge. *Id.* For a CMSP Account of a Pledgee, that would include Delivery or Release. *Id.*

³⁷ DTC states that its risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the Rules), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or Affiliated Family of Participants. *Id.* The Collateral Monitor tests whether a 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, DTC states that it would not process any Delivery or Pledge instruction order from a CMSP Account that would cause the Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC. *Id.* DTC states that 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 and Pledges would not take precedence over any other type of Delivery or Pledge in the DTC system). *Id.*

³⁸ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* The proposed rule change would specify that, with respect to a CMSP Account, a Participant or Pledgee would retain the right to instruct DTC as otherwise provided in the DTC Rules and Procedures. *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Notice, 83 FR at 35046.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

CMSP Account.³⁹ Furthermore, the proposed changes to Rule 35 would provide that DTC has no liability (i) to a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) to any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP.⁴⁰

5. Ministerial Changes

In connection with the foregoing, DTC proposes the following ministerial changes to Rule 35 in order to conform the existing rule text to the proposed changes, as well as to make stylistic edits:⁴¹

Title. DTC proposes to replace the current title “CMS Reporting” with “CMSP Reports and Instructions,” to reflect the amended substance of the proposed rule.⁴²

Section 1. For stylistic consistency, DTC proposes to insert the title “Certain Defined Terms” for Section 1.⁴³ DTC further proposes to (i) delete the definitions of CMS, CMS Participant, CMS Representative, CMS Securities, DEGCL, and DTCC; (ii) add definitions for CMSP, CMSP Account, CMSP Instruction, and CMSP Reports; (iii) replace the defined term “CMS Delivery Information” with “CMSP Information” and simplify the definition by referring to “a copy of any message sent to the Participant or Pledgee” with respect to a CMSP Account, instead of “a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) The CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities”; and (iv) replace the defined term “CMS Report” with “CMSP Position Report” and simplify the definition by removing the DEGCL specifications of “(i) the CUSIP, 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.”⁴⁴

Proposed Section 2 (New). DTC proposes to insert a new proposed Section 2, titled “Qualification as a CMSP.”⁴⁵ This section would identify the aforementioned requirements that

an entity must satisfy to become a CMSP.⁴⁶

Section 2 (Proposed Section 3). DTC proposes to renumber Section 2 to Section 3, and to change the title of proposed Section 3 to “CMSP Accounts.”⁴⁷ DTC also proposes to modify subsection (a) to delete DEGCL CMS-specific terms and to reflect that (i) a Participant or Pledgee can designate one or more CMSP Accounts, as well as designate one or more CMSPs for each CMSP Account, and (ii) as noted above, describe what the designation of a CMSP entails, with respect to a CMSP Account by a Participant or Pledgee would constitute.⁴⁸ DTC further proposes to modify subsection (b) to remove CMS-specific references, to reflect the inclusion of Pledgees, CMSPs, and CMSP Instruction in the proposed rule, and to make ministerial changes.⁴⁹ Additionally, DTC proposes to remove subsection (c) as it would be no longer relevant because it relates exclusively to DEGCL.⁵⁰

Section 3 (Proposed Section 4). DTC proposes to renumber Section 3 as Section 4, and to change the title of the section to “Instructions on a CMSP Account.”⁵¹ DTC further proposes to (i) modify subsection (a) to remove provisions relating to the transfer of securities to a CMS Sub-Account, and to insert a provision stating that a Participant or Pledgee retains its right to instruct DTC with respect to its CMSP Account, and (ii) modify subsection (b) to remove provisions relating to the transfer of securities to a CMS Sub-Account, and to insert a provision specifying that a CMSP may instruct the Delivery, Pledge, or Release of securities to or from a CMSP Account for which it is designated pursuant to proposed Section 3 of Rule 35.⁵² Further, DTC proposes to insert the new subsection (c) that would state that all Deliveries, Pledges, and Releases to or from a CMSP Account would be subject to the terms and conditions of the DTC Rules and Procedures applicable to Deliveries, Pledges, and Releases of securities generally.⁵³

Section 4. DTC proposes to delete this section, as it relates to DEGCL specifications for a CMS Report.⁵⁴

Section 5. DTC proposes to replace the current title of “CMS Delivery

Information” with “CMSP Reports.”⁵⁵ DTC is further proposing to insert proposed subsection (a) to provide for the provision of CMSP Position Reports and CMSP Information to each CMSP for each CMSP Account for which it is designated.⁵⁶ DTC additionally proposes to delete language relating to DEGCL-specific requirements regarding “CMS Delivery Information.”⁵⁷ Further, DTC proposes to incorporate the remaining language of Section 5, modified to conform to the defined terms of the proposed rule change, into proposed subsection (b).⁵⁸

Section 6. DTC proposes to modify the section to (i) add references to CMSPs, Pledgees, CMSP Reports, and CMSP Instructions, (ii) remove references to CMS Participant, CMS Report, Delivery Information, and CMS Representative, and (iii) update a cross-reference relating to CMSP Reports.⁵⁹ DTC further proposes to add disclaimers of liability to (i) a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP, with respect to a CMSP Account.⁶⁰

For additional clarity, DTC also proposes to make ministerial changes to (i) update articles, pronouns, and determiners, and (ii) modify language for stylistic conformity within the proposed rule.⁶¹

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁶² 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)(21) under the Act.⁶³

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Notice, 83 FR at 35046–7.

⁴⁹ Notice, 83 FR at 35047.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁶² 15 U.S.C. 78s(b)(2)(C).

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

A. Consistency With Section 17A

Section 17A(b)(3)(F) of the Act⁶⁴ requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

As described above, DTC proposes to make five core changes to Rule 35. First, DTC proposes to no longer reference DEGCL as the sole CMS provider under Rule 35 but, instead, to reference the new term CMSP and its associated functions. Specifically, the proposed change would allow any otherwise eligible partnership, corporation, or other organization or entity that meets the proposed criteria to offer collateral management services through DTC for the purpose of Rule 35. The Commission believes that by expanding Rule 35 to include a broader concept of a CMSP, not just one specific CMSP (*i.e.*, DEGCL), the proposed change (i) opens up the opportunity for other collateral management providers to compete in offering their services under Rule 35, and (ii) affords Participants and Pledges the opportunity to evaluate whether another entity could better meet its collateral management requirements. By increasing the opportunity for competition and selection, the proposed change should help collateral management providers, Participants, and Pledges be better positioned to more efficiently effect the settlement of collateral transactions under Rule 35. Therefore, the change would help promote the prompt and accurate clearance and settlement of securities transactions.

Second, as described above, DTC proposes to add to Rule 35 the term CMSP Account and its associated functions. As proposed, a CMSP Account would allow Pledges, not just Participants, to use collateral management service offerings of CMSPs for the purposes of Rule 35. By establishing the ability for Pledges to utilize collateral management services under Rule 35, through the proposed CMSP Account, the proposal affords Pledges the same opportunities to manage such collateral transactions through DTC as Participants. The Commission believes that expanding Rule 35 to include Pledges should help Pledges more efficiently effect the settlement of their collateral transactions at DTC, thus helping to promote the prompt and accurate clearance and settlement of such securities transactions.

Third, as described above, DTC proposes to add to Rule 35 the term

CMSP Reports and its associated functions; namely, the CMSP Position Report and the CMSP Information. The CMSP Position Report would enable the CMSP to know what securities are credited to a Participant or Pledgee's CMSP Account each day, while the CMSP Information would allow the CMSP to know the Participant's or the Pledgee's real-time correspondence with DTC. These two reports are designed to furnish the CMSP with information needed to calculate collateral requirements and facilitate the transfer of collateral between counterparties. As such, the Commission believes that the CMSP Position Report and CMSP Information would assist CMSPs in providing collateral management services, and thereby, promote the prompt and accurate clearance and settlement of those securities transactions.

Fourth, as described above, the proposed rule change would allow a CMSP to instruct DTC to Deliver, Pledge, or Release securities credited to a CMSP Account, on behalf of a Participant or Pledgee. In doing so, the proposed rule change should help reduce the number of actions that a Participant or Pledgee that uses a CMSP would need to take in order to effect the settlement of collateral transactions at DTC. The Commission believes that the proposal would thereby help add efficiency to the clearance and settlement process by providing straight-through submission and processing of settlement instructions by a CMSP, without further actions by the Participant or Pledgee. As such, the proposed CMSP Instructions would help promote the prompt and accurate clearance and settlement of securities transactions.

Fifth, as described above, the proposal would make ministerial changes to Rule 35 to conform the existing language in Rule 35 to the proposed changes. The proposal would also make various stylistic edits to the rule text. These changes are designed to help ensure that the final rule text is coherent and all cross-references within the rule text are current. The Commission believes the ministerial and stylistic changes thereby would help Participants and Pledges to better understand their rights and obligations with respect to the collateral management services provide under Rule 35. Therefore, the changes would help promote the prompt and accurate clearance and settlement of such transactions.

As each of the aforementioned changes is designed to promote the prompt and accurate clearance and settlement of securities transactions, the

Commission finds that the proposal is consistent with the requirements Section 17A(b)(3)(F).

B. Consistency With Rule 17Ad-22(e)(21)

Rule 17Ad-22(e)(21) promulgated under the Act requires, *inter alia*, a covered clearing agency⁶⁵ to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.⁶⁶

As described above, the proposal would amend Rule 35 to, generally, (i) broaden what entities may serve as a CMSP, (ii) allow Participants and Pledges to utilize the services offered by Rule 35, (iii) and permit Participants and Pledges to designate one or more CMSPs, with respect to a CMSP Account, to provide CMSP Instructions, as well as receive CMSP Information and CMSP Position Reports. With these proposed changes, the Commission believes that the proposal would grant both Participants and Pledges the flexibility to establish and structure their respective CMSP Accounts, including the eligible CMSP that would service the accounts, in a manner that is most effective and efficient for the collateral management needs of that Participant or Pledgee and for the specifications of its designated CMSP(s).

The proposed rule change also would make ministerial revisions and stylistic edits to Rule 35, as described above. These changes are designed to help Participants and Pledges better understand their rights and obligations with respect to the services offered under Rule 35. By helping Participants and Pledges better understand their rights and obligations with respect to Rule 35, the Commission believes that the proposed changes are designed to be efficient and effective in meeting the requirements of Participants and Pledges that take advantage of DTC's collateral management services under Rule 35.

⁶⁵ A "covered clearing agency" means, among other things, a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q-1 *et seq.*) that is designated systemically important by the Financial Stability Oversight Counsel ("FSOC") pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*). See 17 CFR 240.17Ad-22(a)(5)-(6). On July 18, 2012, FSOC designated DTC as systemically important. U.S. Department of the Treasury, "FSOC Makes First Designations in Effort to Protect Against Future Financial Crises," available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1645.asp>. Therefore, DTC is a covered clearing agency.

⁶⁶ 17 CFR 240.17Ad-22(e)(21).

⁶⁴ 15 U.S.C. 78q-1(b)(3)(F).

Therefore, the Commission finds that the proposal is designed to be efficient and effective in meeting the requirements of Participants and Pledgees, consistent with Rule 17Ad-22(e)(21) under the Act.

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 Act⁶⁷ 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-2018-006 be, and hereby is, *approved*.⁶⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83953; File No. SR-DTC-2017-803]

Self-Regulatory Organizations; The Depository Trust Company; Notice of No Objection to an Advance Notice, as Modified by Amendment No. 1, To Adopt a Recovery & Wind-Down Plan and Related Rules

August 27, 2018.

On December 18, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-DTC-2017-803 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”)² to adopt a recovery and wind-down plan (“R&W Plan”) and related rules.³ The advance notice was

published for comment in the **Federal Register** on January 30, 2018.⁴ In that publication, the Commission also extended the review period of the advance notice for an additional 60 days, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act.⁵ On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,⁶ which tolled the Commission’s period of review of the advance notice until 60 days from the date the information required by the Commission was received by the Commission.⁷ On June 28, 2018, DTC filed Amendment No. 1 to the advance notice to amend and replace in its entirety the advance notice as originally

8, 2018, Securities Exchange Act Release No. 82432 (January 2, 2018), 83 FR 884 (January 8, 2018) (SR-DTC-2017-021). On February 8, 2018, 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. Securities Exchange Act Release No. 82669 (February 8, 2018), 83 FR 6653 (February 14, 2018) (SR-DTC-2017-021, SR-FICC-2017-021, SR-NSCC-2017-017). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 82912 (March 20, 2018), 83 FR 12999 (March 26, 2018) (SR-DTC-2017-021). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Securities Exchange Act Release No. 83509 (June 25, 2018), 83 FR 30785 (June 29, 2018) (SR-DTC-2017-021, SR-FICC-2017-021, SR-NSCC-2017-017). On June 28, 2018, DTC filed Amendment No. 1 to the Proposed Rule Change. Securities Exchange Act Release No. 83628 (July 13, 2018), 83 FR 34263 (July 19, 2018) (SR-DTC-2017-021). DTC submitted a courtesy copy of Amendment No. 1 to the Proposed Rule Change through the Commission’s electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the Proposed Rule Change has been publicly available on the Commission’s website at <https://www.sec.gov/rules/sro/dtc.htm> since June 29, 2018. The Commission did not receive any comments. The proposal, as set forth in both the advance notice and the Proposed Rule Change, each as modified by Amendments No. 1, shall not take effect until all required regulatory actions are completed.

⁴ Securities Exchange Act Release No. 82579 (January 24, 2018), 83 FR 4310 (January 30, 2018) (SR-DTC-2017-803) (“Notice”).

⁵ Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the advance notice raised novel and complex issues and, accordingly, extended the review period of the advance notice for an additional 60 days until April 17, 2018. See Notice, *supra* note 4.

⁶ 12 U.S.C. 5465(e)(1)(D).

⁷ See 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); see Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled “Commission’s Request for Additional Information,” available at <http://www.sec.gov/rules/sro/dtc-an.shtml>.

filed on December 18, 2017.⁸ On July 6, 2018, the Commission received a response to its request for additional information in consideration of the advance notice, which, in turn, added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.⁹ The Commission did not receive any comments. This publication serves as notice that the Commission does not object to the proposed changes set forth in the advance notice, as modified by Amendment No. 1 (hereinafter, “Advance Notice”).

I. Description of the Advance Notice

In the Advance Notice, DTC proposes to (1) adopt an R&W Plan; and (2) amend the Rules, By-Laws and Organization Certificate of DTC (“Rules”)¹⁰ to adopt Rule 32(A) (Wind-down of the Corporation) and Rule 38 (Market Disruption and Force Majeure) (each proposed Rule 32(A) and proposed Rule 38, a “Proposed Rule” and, collectively, the “Proposed Rules”).

DTC states that the R&W Plan would be used by the Board of Directors of DTC (“Board”) and DTC’s management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern.

DTC states that the Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow DTC to effectuate its strategy for winding down and transferring its business; (2) provide Participants with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide DTC with the legal basis to implement those provisions of the R&W Plan when necessary.

A. DTC R&W Plan

The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to DTC to either (i) recover, in the event it

⁸ Securities Exchange Act Release No. 83743 (July 31, 2018), 83 FR 38344 (August 6, 2018) (SR-DTC-2017-803). DTC submitted a courtesy copy of Amendment No. 1 to the advance notice through the Commission’s electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the advance notice has been publicly available on the Commission’s website at <http://www.sec.gov/rules/sro/dtc-an.shtml> since June 29, 2018.

⁹ 12 U.S.C. 5465(e)(1)(E) and (G); see Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled “Response to the Commission’s Request for Additional Information,” available at <http://www.sec.gov/rules/sro/dtc-an.shtml>.

¹⁰ Capitalized terms used herein and not otherwise defined herein are defined in the Rules.

⁶⁷ 15 U.S.C. 78q-1.

⁶⁸ 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).

⁶⁹ 17 CFR 200.30-3(a)(12).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ On December 18, 2017, DTC filed the advance notice as proposed rule change SR-DTC-2017-021 with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder (“Proposed Rule Change”). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Proposed Rule Change was published in the **Federal Register** on January