



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81096; File No. SR-DTC-2017-011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require Agents to Use the Automated Tender Offer Program to Process Consent Solicitations for Book-Entry Only Securities

July 7, 2017

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 30, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. 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

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).

The proposed rule change by DTC would amend the Reorganizations Service Guide (“Guide”)⁵ and the OA to establish the requirement that tabulation agents (“Agents”)⁶ use the DTC Automated Tender Offer Program (“ATOP”) to process ATOP-eligible consent solicitation events (“Consent Solicitations”)⁷ for book-entry-only Securities for which DTC holds the entire amount of the issue (“BEO Securities”)⁸ including those in DTC’s Fast Automated Securities Transfer program (“FAST”).⁹ The Guide would also be amended to (i) reflect DTC’s existing criteria for processing Consent Solicitations through ATOP, (ii) expand the use of ATOP to Consent

⁵ Each capitalized term not otherwise defined herein has the meaning set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>; the Guide, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Reorganizations.pdf>; and in the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services)(“OA”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

⁶ A tabulation agent is an agent designated by the soliciting party to coordinate the process of collecting consents.

⁷ See discussion *infra* 6-7.

⁸ There are some book-entry-only Securities for which DTC, through its nominee, Cede & Co. (“Cede”) is not the sole registered holder and holder of 100 percent of the issue, for example, if the Security is listed dually in the United States and another country. The proposed rule change does not apply to such Securities.

⁹ BEO Securities are Eligible Securities for which (i) physical certificates are not available to investors and (ii) DTC, through Cede, holds the entire amount of the of the issue, either at DTC or through a FAST Agent in DTC’s FAST program. BEO Securities are evidenced by one or more Global Certificates held at DTC or a FAST balance certificate, as applicable, representing the entire amount of the issue.

Solicitations where blocking¹⁰ is not required, and (iii) make ministerial changes to the Guide, as further described below.

¹⁰ To block securities, in this context, means to restrict transfer of Securities credited to the Account of a Participant as to which consent has been submitted (“Blocking”).

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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 proposal would amend the Guide and the OA to establish the requirement that Agents use ATOP to process Consent Solicitations for BEO Securities. The Guide would also be amended to (i) reflect DTC’s existing criteria for processing Consent Solicitations through ATOP, (ii) expand the use of ATOP to Consent Solicitations where Blocking is not required, and (iii) make ministerial changes to the Guide.

Background

A. Consent Solicitations

A Consent Solicitation is a request made for the affirmative consent of holders of securities pursuant to an indenture (“Holders”), to change the terms of such indenture.¹¹

¹¹ In this context, the term “indenture” means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder. 15 U.S.C.77ccc (7).

In order to be processed through DTC, a consent solicitation cannot be linked to a security holder meeting, vote, or call for the objection of Holders while deeming those who do not object as consenting (a “Negative Consent”).

B. Consent Solicitations Processed Outside of DTC

If a Consent Solicitation is not processed through ATOP, but rather is processed outside of DTC, the Agent sends a Consent Solicitation memorandum outlining the terms of the offer to the registered Holders. Cede, as a registered Holder of the subject security, will provide the Agent with a listing of Participants to whose Accounts the Securities are credited, together with an omnibus proxy for those Participants. The Agent must reach out to the Participants outside DTC to solicit the consents. In order to consent, a Participant must mail a hard-copy letter of consent directly to the Agent. These letters of consent then have to be manually tabulated by the Agent and reconciled outside of DTC. In cases of Consent Solicitations with payment,¹² in addition to the consent letter, Agents also must receive payment instructions from each Participant that consents, and pay each consenting Participant the Consent Consideration, outside of DTC.

C. Consent Solicitations Processed Through ATOP

ATOP is a processing platform through which DTC processes certain voluntary reorganization events, including Consent Solicitations.¹³ In order to process a Consent Solicitation through ATOP, an Agent must have, or enter into, a master agreement with DTC. The master agreement specifies the terms and conditions for handling corporate action events through ATOP, including that the Agent will accept electronic messages

¹² Certain Consent Solicitations may include a payment for each valid consent (“Consent Consideration”).

from DTC. The specific terms of each Consent Solicitation are provided in separate addenda to the master agreement.

After a Consent Solicitation event has been approved in ATOP, any Participant to whose Account Securities subject to the Consent Solicitation are credited can enter consent instructions on behalf of its clients via the DTC Participant Transactions Over PTS function (“PTOP”)¹⁴ up until the expiration date of the offer.¹⁵ When a Participant submits consent instructions through PTOPTOP, DTC will electronically deliver the consent instructions to the Agent. DTC will Block the Securities credited to the Account of a Participant as to which consent has been submitted by transferring the Securities to an account maintained by DTC for the Agent until the expiration of the event. Typically, within three days of the expiration of the offer, the Securities as to which consent had been submitted will be unblocked and credited back to the free Account of the

¹³ Until 2010, ATOP could only be used to process reorganizations events such as voluntary corporate actions, tenders and exchanges, cash conversions, and mandatory event processing of mergers with elections. In 2010, DTC filed a rule with the Commission allowing ATOP to be used to facilitate the processing of any corporate action event-type that DTC deems appropriate. Securities Exchange Act Release No. 62119 (May 18, 2010), 75 FR 29374 (May 25, 2010) (SR-DTC-2010-08). In 2013, DTC began offering the option to Agents to process Consent Solicitations via ATOP. Securities Exchange Act Release No. 69597 (May 16, 2013), 78 FR 30382 (May 22, 2013)(SR-DTC-2013-06); DTC Important Notice B#1076-13 (June 27, 2013). For a further description of ATOP, refer to Securities Exchange Act Release No. 33797 (March 22, 1994), 59 FR 14696 (March 29, 1994) (SR-DTC-93-11) (order modifying ATOP).

¹⁴ PTOPTOP is a function that is used by Participants to submit instructions for Voluntary Reorganization events generally.

¹⁵ DTC distributes information to Participants regarding Consent Solicitations. Generally, this information is distributed through PTOPTOP and RIPS (Reorganization Inquiry for Participants) functions of PTS (Participant Terminal System).

Participant. If it is a Consent Solicitation with Consent Consideration, the Agent will fund DTC, which will allocate received funds to the consenting Participants.

Processing Consent Solicitations through ATOP provides an electronic approach to the collection and transmission of consent instructions that: (i) eliminates the highly manual process involved with collection and reconciliation of hard-copy instructions, thereby mitigating the risks of processing errors such as lost documents, misallocations to multiple payees, and the miscounting of hard-copy consent instructions; (ii) reduces the risk of a missed expiration by eliminating the delay caused by mailing hard copies; (iii) facilitates the allocation of Consent Consideration by allowing Agents to centralize payment through DTC; (iv) enhances ability for Agents to handle multiple elections for a single event; and (v) eliminates the potential for consents to exceed a Participant's total outstanding position.

Despite these efficiencies, certain Agents still use the manual and paper-driven process of Consent Solicitations for BEO Securities outside of DTC.

(ii) Proposed Rule Change

A. ATOP Requirement for Consent Solicitations for BEO Securities

Pursuant to the proposed rule change, DTC would require that when an Agent is soliciting consent solicitation events for BEO Securities in DTC's FAST Program, and where Cede is the registered holder of the security and holds 100% of the principal in a global note, the Agent is required to use the ATOP consent processing service to solicit and collect consents from participant holders, provided that the consent solicitation satisfies the criteria for ATOP processing. DTC believes that this requirement would

centralize and streamline the Consent Solicitation process for Agents and Participants with respect to BEO Securities.

For issues for which Cede is not the sole registered holder and holder of 100 percent of the issue,¹⁶ there would be no requirement to use ATOP for Consent Solicitations for that Security.

B. Criteria for Acceptance of a Consent Solicitation For ATOP

As discussed above, the proposed rule change would apply only to Consent Solicitations for BEO Securities that satisfy DTC's current criteria for processing a Consent Solicitation. In accordance with current practice, if a consent solicitation does not satisfy all of the below criteria, it cannot be processed through ATOP. The criteria are:

1. The consent solicitation must be made by the issuer.¹⁷
2. The consent solicitation must be for affirmative consent to modify the terms of the indenture.
3. The consent solicitation is not linked to a Holder meeting, vote, or Negative Consent.
4. Electronic transmission of consents does not violate the terms of the indenture.

¹⁶ See supra note 4.

¹⁷ Third party solicitations, for example, those of activist bondholders, are handled by DTC's Shareholder Demand Process. See DTC's Proxy Services, available at <http://www.dtcc.com/matching-settlement-and-asset-services/issuer-services/proxy-services>.

5. Hard-copy documentation is not required to support the consent instructions.
6. Blocking:
 - a. If Blocking is a requirement of the consent solicitation and the event is predicated on record date, the record date must also be equal to the final expiration date of the consent solicitation.
 - b. If Blocking is a requirement of the consent solicitation, blocked positions are to be released no more than three (3) days after the expiration of the event and not exceeding forty-five (45) days from the date of the Consent Solicitation memorandum, unless there is an opportunity for a Participant to withdraw its consent instructions when the issuer extends the consent deadline beyond forty-five (45) days.

In addition to the above, there is currently a requirement that a Consent Solicitation processed through ATOP must require Blocking. Pursuant to the proposed rule change, DTC would expand ATOP to include Consent Solicitations that do not require Blocking.¹⁸

(iii) Amendments to the Guide and OAs

The proposed rule change would update both the Guide and the OA to (i) reflect DTC's existing criteria for processing Consent Solicitations through ATOP and (ii)

¹⁸ A Consent Solicitation would not require Blocking when the solicitation is being made to holders that had position as of a record date. DTC will Block positions only when Blocking is a requirement of the Consent Solicitation. To avoid Blocking positions (where there is a record date and Blocking is not a requirement of the Consent Solicitation), DTC will establish a position in a contra-CUSIP as of the record date (without affecting positions on the target security) for the purposes of collecting, transmitting and processing consents, thereby allowing the target security for the consent to continue to trade and settle in the marketplace.

expand the use of ATOP to Consent Solicitations where Blocking is not required. The proposed rule change would also make ministerial changes to the Guide, by correcting punctuation and capitalization, and by removing an incorrect reference to a hard-copy Proxy Record Date Notice, which is not supplied as part of Proxy Announcements and therefore should not be referenced in the Guide as a source of information.

Implementation Timeframe

The proposed rule change would be implemented 30 days after the date of filing, or such shorter time as the Commission may designate.

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) of the Act.¹⁹

Section 17A(b)(3)(F) of the Act requires, inter alia, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁰ By requiring Agents to process through ATOP Consent Solicitations for BEO Securities, the proposed rule change would promote the use of an existing automated, paperless process that (i) improves the efficiency of the collection of consents by centralizing the process at DTC, and (ii) mitigates the risks of manual processing errors such as lost documents, misallocations to multiple payees, and the miscounting of hard-copy consent instructions. Further, by permitting Consent Solicitations without a Blocking requirement to be processed by ATOP, the proposed rule change would further reduce the

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ Id.

need for Agents to use a manual and paper-driven process, by allowing the use of the efficient, streamlined process of ATOP for Consent Solicitations without Blocking. In addition, by amending the Guide to reflect DTC's existing procedures around ATOP and Consent Solicitations, and to correct ministerial errors, the proposed rule change would clarify the procedures around processing Consent Solicitations through ATOP. Therefore, by adding efficiencies and mitigating risk to allow Agents, with less risk, to more quickly and effectively process Consent Solicitations for BEO Securities, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

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

DTC believes that the proposed rule change would not have an impact on competition with respect to access to ATOP. To use ATOP, an Agent does not have to be a Participant. A majority of existing Agents that handle Consent Solicitations are already electronically connected to ATOP.²¹ Thus, ATOP is available on a broad basis to Agents, and the proposed rule change does not impact competition in this respect. However, DTC recognizes that (i) there are existing fees associated with processing Consent Solicitations through ATOP, and (ii) there may be Agents that prefer to handle Consent Solicitations for BEO Securities outside of DTC and therefore may need to adjust their practice to comply with the proposed rule change. Therefore, to the extent that there may be some impact on competition from requiring the use of ATOP, where

²¹ If an Agent does not want to connect electronically to ATOP, it also would have the option to accept an emailed report generated by ATOP that provides the details on consents by Participants.

such use would require Agents to pay the associated fees²² or adjust certain practices, DTC believes there would be no significant burden on competition because the majority of Agents already use ATOP, and Agents would be charged fees that are not different from established published fees for processing Consent Solicitations through ATOP. DTC views any associated burden on competition as necessary and appropriate in furtherance of the purpose of the Act, because the proposed rule change would promote the consolidation of Consent Solicitation processing for BEO Securities into ATOP, adding efficiency and mitigating the risks posed by manually processing Consent Solicitations outside of DTC, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

(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 comments regarding the proposed rule change. To the extent DTC receives written comments on the proposed rule change; DTC will forward such comments to the Commission. DTC has presented this proposal to several industry groups and received positive feedback.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;

²² See 2017 Fee Schedule, Corporate Actions, Agent Fees, available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>; Important Notice B#1076-13, available at <http://www.dtcc.com/~media/Files/pdf/2013/6/27/1076-13.pdf>.

- (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)²³ of the Act and Rule 19b-4(f)(6) thereunder.²⁴

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 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-2017-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-DTC-2017-011. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2017-011 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.²⁵

Eduardo A. Aleman,

²⁵ 17 CFR 200.30-3(a)(12).

Assistant Secretary.

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