

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100581; File No. SR-DTC-2024-006)

July 23, 2024

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the DTC Corporate Actions Distributions Service Guide

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 July 17, 2024, 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 the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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)(4).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ consists of amendments to The Tax Event Announcement Feature section⁶ of the Distributions Guide.⁷ The proposed change would modify a requirement relating to the Sub-Event Type⁸ known as “1042-S Classifications,” as described below.

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

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared

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

⁶ Tax Event Announcements provide Participants with information-only announcements regarding taxable events that may give rise to tax-related information and/or withholding obligations that occur, even in the absence of an actual distribution of dividend and interest payments (“Tax Events”). See Distributions Guide, supra note 5, at 13-15.

⁷ The Distributions Guide, supra note 5, is a Procedure of DTC. Pursuant to the DTC Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to DTC Rule 27, as amended from time to time. See DTC Rule 1, Section 1, supra note 5. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules. See DTC Rule 27, supra note 5.

⁸ Tax Event Announcements are classified by “Event Type” and “Sub-Event Type.” See Distributions Guide, supra note 5, at 13-15.

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend The Tax Event Announcement Feature section of the Distributions Guide. The proposed change would modify a requirement relating to the Sub-Event Type known as “1042-S Classifications,” as described below.

1042-S Classifications - Background

Pursuant to Rule 1.1446-4(b)(4) under the Internal Revenue Code of 1986, as amended (“Code”),⁹ issuers of publicly traded partnerships¹⁰ are, in effect, required to provide DTC with “qualified notices,” for the issuer’s applicable Eligible Securities held by DTC,¹¹ that classify a distribution for such securities into multiple components for tax withholding and Internal Revenue Service Form 1042-S¹² reporting purposes (“1042-S Classifications”). For example, on a \$1.00 distribution, the qualified notice may state that \$0.60 is considered dividend income and \$0.40 is income effectively connected with the conduct of a trade or business in the United States. DTC forwards such qualified notices to Participants, as discussed below.

⁹ 26 CFR 1.1446-4(b)(4).

¹⁰ Id. (providing definition of publicly traded partnership).

¹¹ Such issuers are required to provide such notices to DTC as the registered holder of the subject Eligible Securities via DTC’s nominee, Cede & Co.

¹² See Form 1042-S, available at <https://www.irs.gov/pub/irs-pdf/f1042s.pdf>

Meanwhile, other issuers may not be required under applicable tax law to provide DTC with 1042-S Classifications. For example, a regulated investment company may classify a portion of a distribution as representing interest-related dividends or as a short-term capital gain dividend, but it would not be required to provide a qualified notice to DTC pursuant to Rule 1.1446-4(b)(4) under the Code.¹³

However, DTC accepts 1042-S Classifications voluntarily submitted to DTC by issuers using a template provided by DTC.¹⁴ Regardless of whether DTC receives 1042-S Classifications voluntarily or otherwise, it will distribute that information to Participants that hold the applicable securities.

The Distributions Guide currently provides that the breakdown of the 1042-S Classifications must be provided to DTC prior to the record date¹⁵ of the distribution and should not be subject to change.¹⁶ The information is currently required prior to record date to help ensure that DTC has sufficient time to then deliver the corresponding information to the Participants in advance of payment of the distribution, which may trigger a tax withholding and/or reporting obligation for the receiving Participant.

¹³ 26 CFR 1.1446-4(b)(4).

¹⁴ See Distributions Guide, supra note 5, at 15.

¹⁵ The record date is the date set by an issuer of a security by which an investor must own the security to be eligible to receive an upcoming distribution. See 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>, at 26.

¹⁶ See Distributions Guide, supra note 5, at 15.

The Distributions Guide also currently provides that by providing DTC a completed template or qualified notice, the issuer certifies that the information provided in the template is not subject to change, but that DTC will accept and distribute updated information to Participants to the extent an issuer notifies DTC that the issuer made an error in the information provided and provides DTC with a corrected template or qualified notice, as applicable.¹⁷

Proposed Rule Change

Time Frame for Submission of 1042-S Classification Information

As mentioned above, to promote timeliness and accuracy of issuer information provided to DTC, the Distributions Guide requires the breakdown of the 1042-S Classifications be provided prior to the record date. However, even if an issuer can provide the information prior to record date, it is DTC's understanding that due to the timing of the availability of income source information to issuers, issuers may be unable to report such information before ex-date,¹⁸ which, with certain exceptions, was set to occur one business day before record date in a settlement cycle where settlement occurred two days after trade ("T+2").¹⁹

¹⁷ Id.

¹⁸ The ex-date is the date on which a stock starts trading without the benefit of corporate action (i.e., ex-benefit).

¹⁹ The ex-date is determined in accordance with the applicable market procedures. E.g., NYSE Listed Company Manual, Section 703.02 (part 2) (Stock Split/Stock Rights/Stock Dividend Listing Process), available at <https://nyseguide.srorules.com/listed-company-manual/09013e2c855788a0>.

However, with the recent shortening of the U.S. settlement cycle from T+2 to one-day following trade date (“T+1”),²⁰ that timeline is compressed such that ex-date and record date now will be the same date, normally. Therefore, issuers may not be able to submit 1042-S Classifications prior to record date.

Since issuers may not be able to submit 1042-S Classification information prior to record date given that ex-date and record date now will occur on the same date in a T+1 settlement cycle, DTC proposes to amend the Distributions Guide to state that the breakdown of these classifications must be provided to DTC “on or before” record date.

1042-S Classification Changes and Related Certification

As described above, the Distributions Guide currently provides that the breakdown of the 1042-S Classifications information “should not be subject to change”²¹ and that information provided in a complete and “certified” template “is not subject to change;” however, the Distributions Guide also provides that DTC will accept and distribute updated information if updated information is provided to correct an error.²² DTC proposes to revise these provisions to make technical changes, provide more clarity, and better align the language to practices, as described below.

First, DTC would make a technical change for conciseness. In this regard, the text that states that 1042-S Classifications provided by the issuer “should not be subject to change” will be revised to state that the classifications “should be final.”

²⁰ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (S7-05-22) (Shortening the Securities Transaction Settlement Cycle).

²¹ See Distributions Guide, supra note 5, at 15.

²² Id.

Second, text that provides that an issuer “certifies” that the information provided to DTC in a template “is not subject to change” would be revised to replace (a) “certifies” with “confirms” and (b) “is not subject to change” to “should be final.” With respect to (a), it is DTC’s understanding that issuers may not be able to certify that information is final until they complete their year-end tax filings. The revision of the reference from “certifies” to “confirms” would continue to provide DTC with comfort that the issuer believes that the 1042-S Classification information is final, without requiring a certification with respect to information that could change.

Third, text stating “DTC will accept and distribute updated information to Participants to the extent an Issuer notifies DTC that the Issuer entered an error in the applicable template or qualified notice provided by it to DTC and the Issuer provides DTC with a corrected template or qualified notice, as applicable” will be revised (x) so that the text stating “notifies DTC that the Issuer entered an error in the applicable template or qualified notices provided by it to DTC” will be replaced with “notifies DTC that the information has changed” and (y) to make a technical change to replace “a corrected template or qualified notice, as applicable” with “corrected classification information in compliance with applicable tax regulations.” The change described in (x) would account for the possibility that information submitted by an issuer may change for a reason other than an error, such as a change realized as part of a year-end tax process. The change described in (y) reflects that reporting requirements relating to 1042-S Classifications, and any corrections thereto, provided by issuers to DTC stem from issuers’ reporting obligations under applicable tax regulations.

Fourth, also to reflect that the requirements for issuers reporting 1042-S Classifications stem from obligations under applicable tax regulations, the sentence stating, “DTC reserves the right not to accept classification information from Issuers that do not abide by these requirements” would be extended to add “and/or applicable tax regulations.”

Fifth, references to “Record Date” and “Issuer” would be updated to lowercase because they are not defined terms.

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)²³ of the Act.

Section 17A(b)(3)(F) of the Act requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁴ As described above, in addition to certain clarifying and technical changes, the proposed rule change would update the Distributions Guide to provide that (i) the breakdown of 1042-S Classifications must be provided to DTC “on or before” record date, instead of “prior to” record date given the new, shortened settlement cycle of T+1; (ii) the information provided “should be final,” even if provided via a DTC template; and (iii) changed information provided to DTC is not limited to just erroneous entries.

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ Id.

By revising provisions in the Distributions Guide relating to The Tax Event Announcement Feature in this regard, DTC believes that the proposed rule change would help facilitate Participants' compliance with DTC's time frames for submission of 1042-S Classifications in a T+1 settlement cycle and, thus, compliance with U.S. federal tax withholding obligations for the subject securities, while also continuing to provide DTC with comfort that the 1042-S Classification information received is near, if not, final.

Therefore, by helping to facilitate Participant's ability to continue to use DTC's book-entry transfer and settlement services with respect to Eligible Securities that are subject to 1042-S Classifications, the proposed rule change would help 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) of the Act, cited above.

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

DTC believes that the proposed rule change will not impact competition. As described above, the proposed rule change merely facilitates issuers' and Participants' ability to continue to make use of 1042-S Classification reporting through DTC without materially altering requirements for submission or use of 1042-S Classification information.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4,

the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²⁵ of the Act and paragraph (f)²⁶ of Rule 19b-4 thereunder. 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.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>);
or
- Send an email to rule-comments@sec.gov. Please include file number SR-DTC-2024-006 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-DTC-2024-006. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). 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 a.m. and 3 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 (dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-DTC-2024-006 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).