

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97009; File No. SR-DTC-2023-002)

March 1, 2023

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Operational Arrangements

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 February 17, 2023, 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.

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

The proposed rule change⁵ consists of modifications to the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC

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).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

Services) (“OA”)⁶ to add to its existing Legal Notice System (“LENS”) a means of receiving certain index reference rate information for posting to LENS. Specifically, the proposal would provide a Web-based, centralized process to facilitate the receipt and posting of LENS notice information, for Participants, on benchmark replacement rates and related details⁷ (“replacement rate information”) from issuers, trustees and agents of Securities that are currently benchmarked to the London Inter-Bank Offered Rate (“LIBOR”) index,⁸ as described in greater detail below.

⁶ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>. The OA is a Procedure of DTC. Pursuant to the Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See 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 Rules. See Rule 27, supra note 5.

⁷ Details related to the replacement rate include, but are not be limited to, (i) the replacement rate selected; (ii) identifying information for the issue, such as the CUSIP number; (iii) whether the replacement rate information being submitted is new or an update to a prior LENS submission; and (iv) identifying details relating to the submitter of the replacement rate information, including name and entity type (e.g., paying agent, trustee, issuer, etc.). See also DTCC LIBOR Replacement Index Communication Tool User Guide, available at <https://www.dtcc.com/~media/Files/Downloads/Settlement-Asset-Services/Issuer-Services/Libor-Tool-User-Guide.pdf>.

⁸ LIBOR is an indicative measure of the average interest rate at which major global banks can borrow from one another. LIBOR is quoted in multiple currencies and multiple terms, or “maturities,” using data reported by private-sector banks. See SEC Staff Statement on LIBOR Transition—Key Considerations for Market Participants (December 7, 2021), Staff of the Securities and Exchange Commission, available at <https://www.sec.gov/news/statement/staff-statement-libor-transition-20211207>.

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 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 consists of modifications to the OA to add to LENS a means of receiving certain index reference rate information for posting to LENS. Specifically, the proposal would provide a Web-based, centralized process to facilitate the receipt and posting of LENS notice information, for Participants, on replacement rate information from issuers, trustees and agents of Securities that are currently benchmarked to the LIBOR index.

Background

LENS

A LENS notice is a notice of information provided to DTC often by an issuer, trustee, transfer agent, or other third party that is intend for holders of Securities on deposit at DTC. Parties submitting LENS notices may have a legal or regulatory obligation or other interest in distributing the notice information to holders of the Securities. The notices are delivered to DTC because DTC's nominee, Cede & Co., is the registered holder of the

applicable Securities and/or DTC is the appropriate qualified registered securities depository⁹ with respect to the issue.

LENS notices are generally delivered to DTC via e-mail.¹⁰ If a notice is delivered to DTC in accordance with applicable Procedures set forth in the OA, DTC then posts the notice to LENS, where notices are then available for viewing by Participants.¹¹ A Participant may share the notices with their customers that may hold a beneficial interest in the subject Security on the books of the Participant.

Proposed Expansion of LENS

DTC understands that issuers of Securities that currently use LIBOR (USD) as a reference rate will need to choose a replacement benchmark and disseminate information on replacement rates to holders ahead of the LIBOR retirement date, which is scheduled for June 30, 2023.¹²

This proposed rule change is intended to help facilitate the centralized receipt and dissemination of such replacement rate information through LENS, without requiring the

⁹ Pursuant to Rule 17Ad-16 under the Act, an “appropriate qualified registered securities depository” shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. 17 CFR 240.17Ad-16(f).

¹⁰ See OA, supra note 6, at 23-25.

¹¹ Id. Participant fees for single-use access and subscriptions to LENS are set forth in the DTC Fee Guide. See DTC Fee Guide, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf>, at 25.

¹² See ARRC LIBOR Legacy Playbook (July 11, 2022) (“ARRC Playbook”), available at https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2022/LIBOR_Legacy_Playbook.pdf, at 1.

submission of individual LENS notice e-mails for posting. Specifically, the proposal will update the OA to (i) establish a new LENS tool for receiving replacement rate information on Securities currently benchmarked to LIBOR (i.e., the LIBOR Replacement Index Communication Tool (“Communication Tool”)), and (ii) provide for the posting of that replacement rate information to LENS.¹³

While DTC will continue to use e-mail for submission of all other LENS notice types, the LENS Communication Tool will offer a more efficient and effective process to receive and disseminate potentially high volumes¹⁴ of replacement rate information through LENS in a compressed time period.

Proposed Rule Change

Pursuant to the proposed rule change, the OA will be revised to include a new section on the Communication Tool (“New Section”). The New Section will explain that the Communication Tool is designed to help issuers, trustees and agents communicate via LENS certain LIBOR benchmark replacement rate information for Securities that are converting from LIBOR (USD) to an alternative reference rate. The New Section will

¹³ The Communication Tool was developed by DTC, in consultation with the Alternative Reference Rate Committee (“ARRC”) and other financial industry organizations. The ARRC is a group of private-market participants convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York to help ensure a successful transition from LIBOR to an alternative reference rate, such as the Secured Overnight Financing Rate (“SOFR”). ARRC is comprised of a diverse set of private-sector entities with a presence in markets affected by LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members. See ARRC website, available at <https://www.newyorkfed.org/arrc/about>.

¹⁴ DTC believes over 100,000 issuances may require the dissemination of replacement rate information in connection with the pending retirement of LIBOR.

provide a link to DTCC’s LIBOR transition webpage,¹⁵ where the Communication Tool will be available, and will note that links to the Communication Tool also may be available via the DTCC website, Important Notices, direct communications with issuers, trustees and agents, and other websites.

Regarding use of the Communication Tool, the New Section will explain that users must first complete an automated verification process.¹⁶ Once verified, access will be granted and the user will be able to input replacement rate information (i) for multiple securities at one time, using templates in the Communication Tool, or (ii) for an individual Security, not using a template.¹⁷ In either case, the user also will have the option to upload accompanying documentation to include with the inputted replacement rate information, all of which will be posted to LENS.

The New Section will explain that once the user has successfully input all replacement rate information (and uploaded any accompanying documentation), the user may review the information and make any changes, if necessary. If satisfied with the information provided, the user may submit the information for posting to LENS. Once

¹⁵ Available at <https://www.dtcc.com/settlement-and-asset-services/issuer-services/libor-transition>. The webpage will include, among other things, a LIBOR Replacement Index Communication Tool User Guide to help issuers, trustees and agents navigate and use the Communication Tool, including step-by-step instructions and descriptive information on forms and required data fields.

¹⁶ Users will be required to provide their business contact information for verification purposes.

¹⁷ Template options will vary based on template format and the alternative reference rate chosen (e.g., SOFR or a different reference rate). The templates are included as an Exhibit 3 to this proposal.

submitted to LENS, the user will be able to save, export, and print a copy of the posted information for the user's own records.

The New Section will note that (i) all replacement rate information and any accompanying documentation (if applicable) submitted by the user will be posted to LENS in a standardized format reflecting the information submitted by the user; (ii) users should retain a copy of all replacement rate information that they submit for their own records; and (iii) the Communication Tool will be decommissioned and the New Section deleted by DTC on September 30, 2024, as explained further below.

Finally, the New Section will include a disclaimer that DTC does not review any information submitted through the Communication Tool for accuracy, completeness, or confidential information. Rather, it is the full and sole responsibility of the user submitting the information to ensure that the information is accurate, complete, and does not include any information that would otherwise be deemed as confidential or material non-public information.

Effective Date

The proposed rule change will be implemented on February 24, 2023.

Termination Date

As indicated above, LIBOR is expected to be retired on June 30, 2023. DTC believes that demand and use of the Communication Tool will gradually reduce after that date. Therefore, in anticipation of the Communication Tool no longer being needed by September 30, 2024, pursuant to this proposed rule change, the Communication Tool will be decommissioned September 30, 2024, and the New Section proposed herein would be removed from the OA.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁸ requires that the rules of the clearing agency be designed, inter alia, to, generally, protect investors and the public interest. As described above, the proposed rule change would help facilitate the communication of LIBOR replacement rate information provided through the new LENS Communication Tool and posted to LENS. As with other information posted to LENS, Participants may then communicate such replacement rate information to their customers that hold affected Securities. In this regard, DTC believes that the proposed rule change would help protect investors and the public interest by promoting fair and transparent markets through facilitation of the distribution of replacement rate information to Participants, who may then pass the information to their clients.

Rule 17Ad-22(e)(21)¹⁹ promulgated under the Act requires, inter alia, that DTC, a covered clearing agency, establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, be efficient and effective in meeting the requirements of its participants and the markets it serves. As described above, the proposed rule change would update the OA to establish the Communication Tool – a Web-based, centralized means for DTC to receive replacement rate information more efficiently and effectively than via an e-mail submission – and to provide for the posting of that replacement rate information to LENS for Participant consumption. In this regard, DTC believes that the proposed rule change would provide a more streamlined approach for issuers, trustees and agents to disseminate replacement rate information to

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(21).

Participants, and ultimately investors, regarding Securities that they may hold and processed through DTC. Therefore, DTC believes that the proposed rule change would help promote efficiency and effectiveness in DTC meeting the requirements of its participants and the markets it serves, consistent with Rule 17Ad-22(e)(21).

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

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

As described above, the proposed rule change consists of changes to the OA that will provide for the implementation of the Communication Tool to accommodate the submission of replacement rate information for posting to LENS. The Communication Tool will be publicly available on DTCC's LIBOR transition webpage. Use of the Communication Tool to submit replacement rate information will be free of charge and there will be no additional charge for Participants to receive such replacement rate information as part of their existing LENS subscription.²⁰

(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,

²⁰ Although existing Participant fees for the use of LENS would continue to apply, LENS is an optional service and Participants are only charged if they choose to participate in the service.

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 <https://www.sec.gov/regulatory-actions/how-to-submitcomments>. 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)²¹ of the Act and paragraph (f)²² 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.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2023-002 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-2023-002. 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. 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-2023-002 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.²³

Sherry R. Haywood
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).