

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Depository Trust Company
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input checked="" type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Modify the DTC Settlement Service Guide and the Form of DTC Pledgee's Agreement

Contact Information
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Petrofsky
 Title * Assistant General Counsel and Director
 E-mail * JPetrofsky@dtcc.com
 Telephone * (813) 470-2115 Fax

Signature
 Pursuant to the requirements of the Securities Exchange Act of 1934,
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
 (Title *)
 Date 04/01/2021 Deputy General Counsel and Managing Director
 By Brandon Becker bbecker@dtcc.com
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The proposed rule change¹ of The Depository Trust Company (“DTC”) would modify the DTC Settlement Service Guide (“Settlement Guide”)² and the form of DTC Pledgee’s Agreement (“Pledgee’s Agreement”),³ as described below. Specifically, the proposed rule change would revise text in the Settlement Guide and Pledgee’s Agreement to clarify the text with respect to the processing of book entries of Pledge-related⁴ activity at DTC. The

¹ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (“Rules”) available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

² Available at <https://www.dtcc.com/legal/rules-and-procedures>. The Service Guides constitute Procedures 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, infra note 3. DTC’s Procedures are filed with the Securities and Exchange Commission (“Commission”). They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, infra note 3.

³ Available at <https://www.dtcc.com/legal/rules-and-procedures>. Pursuant to Rule 2, Section 3, an entity that uses DTC’s pledge services must enter into an agreement with DTC satisfactory to DTC. See Rule 2, Section 3, supra note 1. In this regard, DTC requires a Pledgee that is not a Participant to sign a Pledgee’s Agreement. Participants enter into a Participant’s Agreement which binds them to the Rules and Procedures (including, but not limited to, those related to pledge activity), and are not required by DTC to enter into a separate Pledgee’s Agreement. See also Rule 1, Section 1, supra note 1 (providing terms of the Participant’s Agreement).

⁴ Pursuant to Rule 1, The defined term “Pledge” in the Rules means, inter alia, “creating or providing for a security interest in a Certificated or Uncertificated Security, a Securities Account or a Securities [sic] Entitlement in accordance with the NYUCC.” See Rule 1, supra note 1. Pursuant to Rule 1, the term “NYUCC” means the Uniform Commercial Code of New York, as amended from time to time. See Rule 1, supra note 1. Pursuant to Rule 1, the term “Certificated Security” has the meaning given to the term “certificated security” in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, “certificated security” means a security that is represented by a certificate. See NYUCC 8-102. Pursuant to Rule 1, the term “Uncertificated Security” has the meaning given to the term “uncertificated security” in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, “uncertificated security” means a security that is not represented by a certificate. Pursuant to Rule 1, the term “Securities Account” (1) as used with respect to a Participant or Pledgee, means an account maintained by DTC for the Participant or Pledgee to which Securities transactions of the Participant or Pledgee effected through the facilities of DTC are debited and credited in the manner specified in the Rules and Procedures; and (2) as used with respect to DTC, means an internal account of DTC to which Securities transactions are debited and credited to DTC. See Rule 1, supra note 1. Pursuant to Rule

proposed revisions would reflect in the text of the Settlement Guide and Pledgee’s Agreement that Pledged Securities remain credited to a Pledgor’s Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee’s Agreement currently indicate that Pledged Securities are credited to a Pledgee’s Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee. The text of the proposed changes to the rules of DTC are annexed hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Clearing Agency

The proposed rule change was approved by a Deputy General Counsel of DTC on April 1, 2021.

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

(a) Purpose

The proposed rule change of DTC would modify the Settlement Guide and the form of Pledgee’s Agreement, as described below. Specifically, the proposed rule change would revise text in the Settlement Guide and Pledgee’s Agreement to clarify the text with respect to the processing of book entries of Pledge-related⁵ activity at DTC. The proposed revisions would

1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8-102 of the NYUCC. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See id. Pursuant to Section 8-102 of the NYUCC, “security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5. See NYUCC §8-102. NYUCC Section 8-501(b) provides that a person acquires a “security entitlement” when, *inter alia*, a securities intermediary indicates by book entry that a financial asset has been credited to the person’s securities account. The absence of the crediting of a financial asset to an account of a Pledgee and the fact that an account of a Pledgee is not a securities account under Article 8 mean that the Pledgee has not acquired a security entitlement under Article 8. See NYUCC § 8-501(b). Pursuant to Section 8-102, “entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder. See NYUCC §8-102.

⁵ Pursuant to Rule 1, The defined term “Pledge” in the Rules means, inter alia, “creating or providing for a security interest in a Certificated or Uncertificated Security, a Securities Account or a Securities [sic] Entitlement in accordance with the NYUCC.” See Rule 1, supra note 1. Pursuant to Rule 1, the term “NYUCC” means the Uniform Commercial

reflect in the text of the Settlement Guide and Pledgee's Agreement that Pledged Securities remain credited to a Pledgor's Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee's Agreement currently indicate that Pledged Securities are credited to a Pledgee's Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee.

Code of New York, as amended from time to time. See Rule 1, supra note 1. Pursuant to Rule 1, the term "Certificated Security" has the meaning given to the term "certificated security" in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, "certificated security" means a security that is represented by a certificate. See NYUCC 8-102. Pursuant to Rule 1, the term "Uncertificated Security" has the meaning given to the term "uncertificated security" in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, "uncertificated security" means a security that is not represented by a certificate. Pursuant to Rule 1, the term "Securities Account" (1) as used with respect to a Participant or Pledgee, means an account maintained by DTC for the Participant or Pledgee to which Securities transactions of the Participant or Pledgee effected through the facilities of DTC are debited and credited in the manner specified in the Rules and Procedures; and (2) as used with respect to DTC, means an internal account of DTC to which Securities transactions are debited and credited to DTC. See Rule 1, supra note 1. Pursuant to Rule 1, the term "Security Entitlement" has the meaning given to the term "security entitlement" in Section 8-102 of the NYUCC. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See id. Pursuant to Section 8-102 of the NYUCC, "security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5. See NYUCC §8-102. NYUCC Section 8-501(b) provides that a person acquires a "security entitlement" when, *inter alia*, a securities intermediary indicates by book entry that a financial asset has been credited to the person's securities account. The absence of the crediting of a financial asset to an account of a Pledgee and the fact that an account of a Pledgee is not a securities account under Article 8 mean that the Pledgee has not acquired a security entitlement under Article 8. See NYUCC § 8-501(b). Pursuant to Section 8-102, "entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder. See NYUCC §8-102.

The following discussion is provided by DTC and includes, but is not limited to, its own analysis of applicable state law provisions that DTC believes are relevant for purposes of describing the proposed rule change.

Background.

Eligibility for Pledge Services

The pledge services of DTC are available to banks, trust companies, broker-dealers and other Persons approved by the DTC, which have entered into an agreement with the DTC satisfactory to it, for the purpose of effecting a Pledge of Deposited Securities to such banks, trust companies, broker-dealers and other Persons.⁶ A Pledgee may but need not be a Participant. A Pledgee is required by DTC to sign a Pledgee's Agreement unless it is also a Participant. Participants are not required to sign a separate Pledgee's Agreement to use DTC's pledge services because the Participant's Agreement binds the Participant to DTC's Rule and Procedures, including those relating to pledge-related activity. Only a Pledgee which is a Participant may receive a Pledge Versus Payment.⁷

Book Entry of Pledges and Legal Effect

As indicated above, the definition of a "Security Entitlement" in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that "[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement."

However, as more fully discussed below, while the Settlement Guide and the Pledgee's Agreement make reference to the movement of Securities to a Pledgee's Account, from an operational standpoint, DTC does not in fact credit a Security to an Account of a Pledgee; what the Pledgee receives is not a Security Entitlement. The Securities remain credited to the Pledgor's account until the Pledgee releases the Pledged Securities or makes a demand for the Pledged Securities, as discussed below. Rather, a notation is placed on the Account of the Pledgor that the Securities are Pledged to the Pledgee and the Securities remain in pledged status until the Pledgee instructs otherwise.

As described below, this bookkeeping method does not adversely impact the rights of the Pledgee in that the Pledgee maintains Control over the Pledged Securities and the Pledged Securities cannot be used by the Pledgee for any other transaction unless the Pledgee releases the Securities from the Pledged Status through an instruction to DTC.

DTC's Description of Pledge

DTC's Settlement Service Guide states that:

⁶ See Rule 2, Section 3, supra note 1.

⁷ See id.

“[w]hen pledging securities to a pledgee, the pledgor’s position is moved from the pledgor’s general free account to the pledgee’s account which prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position would move the pledged position back to the pledgor’s general free account where it would then be available to complete other transactions.”⁸

Paragraph 2 of DTC’s form of Pledgee’s Agreement provides that:

“[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books transferring the securities from the account of such depositor to the account of Pledgee and shall maintain such securities in the account of Pledgee until instructed by Pledgee to release such securities to the account of the pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.”

The descriptions of DTC’s pledge arrangements in the (1) Settlement Service Guide, with respect to the text shown above, and as more fully described below, and (2) form of Pledgee’s Agreement are imprecise because in practice DTC does not move or transfer the securities from an account of the Pledgor to an account of the Pledgee, as more fully described below.

The definition of a “Security Entitlement” in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that “[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement.”

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, what the Pledgee receives is not a Security Entitlement.

The definition of an “Entitlement Holder” in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC (as to which see below) and notes that “[a] Participant or Pledgee is an Entitlement Holder with respect to a Security credited to its Account”.

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, the Pledgee is not an Entitlement Holder. However, the Pledgee maintains Control of the Pledged Securities as more fully described below. A key to a Pledgee exercising its Control is its ability to instruct DTC an Entitlement Order for the delivery, pledge release or withdrawal of a security.

Entitlement Order

The definition of an “Entitlement Order” in the Rules incorporates the definition of such term in Article 8 of the NYUCC that “[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order”.

⁸ See Settlement Guide, supra note 2 at 3-4.

Note that the definition of an Entitlement Order does not require that the Security be credited to a Securities Account of the instructor. The breadth of this definition allows permitted entities, such as Pledges, to issue Entitlement Orders to DTC in respect of Securities credited to Securities Accounts belonging to others.

DTC Rule 9(B)⁹ provides that:

“[i]f [DTC] receives an instruction from a Pledgee to effect a Delivery or Withdrawal of Pledged Securities, such instruction shall have the effect of notifying [DTC] that the Pledgee elects not to Release the Pledged Securities but, rather, to assert its Control over the Pledged Securities by the transfer of a greater interest in the Pledged Securities to itself or another Person. [DTC] shall accept such an instruction as a representation that the Pledgee is acting in accordance with applicable law, rules or regulations, agreements or any adjudication thereof.”

Under NYUCC Section 8-507(a),¹⁰ a securities intermediary satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary. DTC satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the Entitlement Holder and the Securities Intermediary. In the case of Security Entitlements pledged on the books of DTC, DTC satisfies its duty to comply with an Entitlement Order by complying with the Entitlement Order of the Pledgee.

Control

Under NYUCC Section 9-106(a),¹¹ “[a] person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8-106”.¹²

Under NYUCC Section 8-106(d), “[a] purchaser has “control” of a security entitlement if:

- (1) the purchaser becomes the entitlement holder;
- (2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
- (3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.”

⁹ See Rule 9(B), supra note 1.

¹⁰ NYUCC § 8-507(a).

¹¹ See NYUCC § 9-106(a).

¹² NYUCC § 8-106.

Under NYUCC Section 1-102,¹³ a purchaser is “a person that takes by purchase” with “purchase” being defined as “taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property”.

NYUCC Section 8-106(f) further provides that “[a] purchaser has “control” under subsection (c)(2) or (d)(2) even if any duty of the issuer or the securities intermediary to comply with instructions or entitlement orders originated by the purchaser is subject to any condition or conditions (other than further consent by the registered owner or the entitlement holder).”

Official Comment 4 to NYUCC Section 8-106¹⁴ notes that:

“[s]ubsection (d)(2) provides that a purchaser has control if the securities intermediary has agreed to act on entitlement orders originated by the purchaser if no further consent by the entitlement holder is required. Under subsection (d)(2), control may be achieved even though the original entitlement holder remains as the entitlement holder.”

Example 6 of Official Comment 4 is illustrative:

“Able & Co., a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with Clearing Corporation. Able causes Clearing Corporation to transfer the shares into a pledge account, pursuant to an agreement under which Able will continue to receive dividends, distributions, and the like, but Alpha has the right to direct dispositions. As in Example 3, Alpha has control of the 1000 shares under subsection (d)(2).”

In the case of security entitlements pledged on the books of DTC, because DTC will comply with the instructions of a Pledgee as provided for in Rule 9(B),¹⁵ which is an agreement between DTC and its Participants and Pledgees, a Pledgee has control of such security entitlements under NYUCC § 8-106(d)(2) even when the Pledged Securities remain credited to the account of the Pledgor.

DTC’s pledge arrangements operate pursuant to the DTC Rules and the NYUCC. When Security Entitlements are pledged to a Pledgee through the facilities of DTC, the Pledgee has a security interest in such pledged Security Entitlements.¹⁶ A Pledgee has “control” under Articles

¹³ See NYUCC § 1-102.

¹⁴ See NYUCC § 8-106.

¹⁵ See Rule 9(B), supra note 1.

¹⁶ The interest transferred is, however, only a security interest if the Pledgor and Pledgee have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied. The agreement is entered into by the parties outside of DTC,

8 and 9 of the NYUCC and under the DTC Rules of any Security Entitlements pledged to it through the facilities of DTC,¹⁷ and the Pledgee is empowered to issue Entitlement Orders¹⁸ to DTC to direct the release, delivery or withdrawal of any such pledged Security Entitlements.

Example of a Pledge by a Participant to a Pledgee

When Security Entitlements credited to Participant A's account at DTC are pledged to Pledgee B through the facilities of DTC, B has a security interest in such pledged security entitlements.¹⁹

B does not itself have "security entitlements" to the underlying securities and B is not an "entitlement holder" as such terms are defined in the NYUCC.

However, B as Pledgee would have "control" under Articles 8 and 9 of the NYUCC and under the Rules of any Security Entitlements pledged to it through the facilities of DTC, and B is empowered to issue Entitlement Orders to DTC to direct the release, delivery or withdrawal of any such pledged Security Entitlements.

Proposed Rule Change

Proposed change to text of Settlement Guide

Pursuant to the proposed rule change, DTC would revise the text of the Settlement Guide to reflect that Pledged Securities do not move to an Account of the Pledgee. As discussed above, the movement of the securities is not required to effect a Pledge and does not impact the rights of Pledgor or Pledgee under the Rules or the NYUCC. Rather a Pledged Securities continues

and DTC does not have knowledge or information on the existence of such an agreement between the parties.

¹⁷ The definition of "Control" in the Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that "[a] Pledgee has Control of Pledged Securities until they are Delivered, Released or Withdrawn by the Pledgee." See Rule 1, Section 1, supra note 1.

¹⁸ The definition of an "Entitlement Order" in the Rules incorporates the definition of such term in Section 8-102 of the NYUCC and notes that "[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order". As noted above, Pursuant to Section 8-102, "entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement. See NYUCC 8-102.

¹⁹ As mentioned above, the interest transferred is, however, only a security interest if A and B have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied.

credited to the pledgor's account, however with a system notation showing the status of the position as pledged by the pledgor to the pledgee. This status systemically prevents the pledged position from being used to complete other transactions, which is consistent with the Pledgees Control over the Pledge Securities, as discussed above. Likewise, the release of a pledged position results in the removal of notation of the pledge status of the position and the position would become available to the pledgor to complete other transactions.

The changes to the Settlement Guide text are technical in nature, and while enhancing clarity with respect to the book entries performed by DTC as they relate to pledge activity, the change would not impact the rights or obligations of Participants and Pledgees. In this regard, the applicable sections of the Settlement Guide would be revised to (1) clarify the text with respect operational aspect of book entries of pledges, as discussed above, and (2) make changes to text for readability necessary in the context of the proposed clarification, as follows (**bold, underlined** text indicates additions; ~~**bold-strike-through**~~ text indicates deletions):

- (a) Text included in Item 3 (Collateral Loans) set forth under the heading "Settlement Transactions"²⁰ would be revised as follows:

"[w]hen pledging securities to a pledgee, the pledgor's position ~~is moved from the pledgor's general free account to the pledgee's account~~ **continues to be credited to the pledgor's account, however with a system notation showing the status of the position as pledged by the pledgor to the pledgee. This status systemically** ~~which~~ prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position ~~would move the pledged position back to the~~ **results in the removal of notation of the pledge status of the position and the position would become pledgor's general free account where it would then be** available to **the pledgor to** complete other transactions."

- (b) Text included under the heading "About the Product" that appears under the heading "Collateral Loan Program"²¹ would be revised as follows:

"The Collateral Loan Program allows you to pledge securities ~~from held in~~ **held in** your general free account as collateral for a loan or for other purposes (such as Letters of Credit) to a pledgee participating in the program. You can also request the pledgee to release pledge securities ~~back to your general free account~~. These pledges and releases can be free (when money proceeds are handled outside DTC) or valued (when money proceeds are applied as debits and credits to the pledgee's and pledgor's money settlement accounts). A Pledgee may, but need not be, a Participant. Only a Pledgee which is a Participant may receive valued pledges."

²⁰ See Settlement Guide, supra note 2 at 3-4.

²¹ See Settlement Guide, supra note 2 at 8-9.

- (c) Text included under the heading “Pledges to the Options Clearing Corporation”²² would be revised as follows:

“A Participant writing an option on any options exchange may fully collateralize that option by pledging the underlying securities by book-entry through DTC to the Options Clearing Corporation (OCC). If the option is called (exercised), the securities may be released and delivered to the holder of the call. If the option contract is not exercised, OCC validates a release of the pledged securities, ~~which are then returned to the Participant’s general free account.~~”

- (d) Text included under the heading “Release of Deposits with Options Clearing Corporation on Expired Options” would be revised as follows:

OCC automatically releases securities deposited with it to cover margin requirements on an option contract when the option contract expires. ~~The securities are then allocated to your general free account.~~ Notification of the released securities is received via the Collateral Loan Services functionality in the Settlement User Interface or automated output.

- (e) Text included under the heading “Shared Control Accounts”²³ would be revised as follows: In addition to changes made for the purposes described in (x) and (y) above, DTC would also delete text shown below that states” “Pledgee account continue to be available at DTC.” This sentence was added to the text when Shared control account arrangements were added to the Procedures²⁴ to clarify that the existing pledge services would continue to be offered. As both the original pledge program and the Shared control account process are both established programs, DTC believes the sentence is no longer necessary:

About the Product

Shared control accounts are available as an alternative to “agreement to pledge” arrangements.

Background

When a Participant pledges securities to ~~the pledgee account of~~ a pledgee at DTC (sometimes called a “hard pledge”), the securities are under the sole control of the pledgee. Only the pledgee can redeliver or release the securities. ~~Pledgee accounts continue to be available at DTC.~~

²² See Settlement Guide, supra note 2 at 10.

²³ See Settlement Guide, supra note 2 at 15-16.

²⁴ See Securities Exchange Act Release No. 40191 (July 10, 1998), 63 FR 38444 (July 16, 1998) (SR-DTC-98-5).

Shared control accounts are available at DTC as an alternative to agreement to pledge (sometimes called “agreement to deliver”) arrangements. A pledgee has control over securities delivered by a Participant to the Participant’s shared control account at DTC since the pledgee has the ability to redeliver the securities without further consent by the Participant. Until the pledgee redelivers the securities, the Participant has the flexibility to redeliver or make substitutions for the securities without obtaining the pledgee’s release of the securities.

Shared controls are separately identified in DTC’s Reference Directory. Participants interested in establishing a shared control account should contact their Relationship Manager.

Procedures for DTC Shared Control Accounts

The following procedures are an addition to DTC’s Procedures for Pledges.

1. Any Participant may establish a shared control account at DTC and may designate any DTC pledgee to be the pledgee for that shared control account. A Participant may deliver securities (or other financial assets) by a free pledge from any of its DTC accounts (the “original account”) to its shared control account in order to grant a security interest or other interest in the securities to the pledgee. The shared control account is an account of the Participant and is identified with a separate account number from any other account of the Participant. A Participant may establish multiple shared control accounts, but only one pledge can be designated for each shared control account.
2. Except as modified by these procedures, the operation of a shared control account is identical to the operation of a DTC pledge ~~account~~ and all DTC procedures applicable to pledges ~~accounts~~ are applicable to shared control accounts. No deliveries vs. payment, pledges vs. payment, or physical deposits can be made to a shared control account and no deliveries vs. payment, pledges vs. payment, or physical withdrawals can be made from a shared control account. A Participant should not deliver securities to another Participant’s shared control account. In the instructions for a delivery of securities to a shared control account, the mandatory hypothecation code field should be completed in the same manner as it is for a **pledge made without the use of a shared control delivery to a pledge** account. The DTC fees and charges for a transaction involving a shared control account are the same as the fees and charges for a **pledge** transaction **that does not involving involve** a pledge account. The DTC monthly account usage charges applicable to a shared control account are charged to the Participant. The DTC reports and statements to the Participant and the pledge for a transaction involving a shared control account are the same as the reports and statements for a transaction involving a pledge **that does not involve a shared control** account.

3. ~~As with a pledge account, voting~~ **Voting** rights on the securities credited to a shared control account are assigned to the Participant. Cash dividend and interest payments and other cash distributions on such securities are credited to the original account. Distribution of securities for which the ex-distribution date is on or prior to the payable date or in which the distribution is payable in a different security are also credited to the original account. Any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date are credited to the shared control account.
4. The securities credited to a shared control account cannot be designated as or included in the collateral for any obligation of the Participant or the pledgee to DTC. DTC has no lien or other interest in any securities credited to a shared control account”

Proposed change to text of the Pledgee’s Agreement

Pursuant to the proposed rule change, DTC would revise the text of the Pledgee’s Agreement to reflect that Pledged Securities do not move to a pledgee account. The change is technical in nature and while enhancing clarity with respect to the book entries performed by DTC as they relate to pledge activity, the change would not impact the rights or obligations of Participants and Pledgees pursuant to the Rules, Service Guide and/or the Pledgee’s Agreement. In this regard, the applicable text of the Pledgee’s Agreement would be revised as follows (**bold, underlined** text indicates additions; **~~bold strike-through~~** text indicates deletions):

“[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books **to indicate the pledge of** ~~transferring~~ the securities from ~~the account of~~ such depositor to the ~~account of~~ Pledgee and shall maintain such securities ~~in the account of~~ **with a notation that the securities are pledged by the depositor to the** Pledgee until instructed by Pledgee to release such securities to the ~~account of the~~ pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.”

Effective Date

The proposed rule change would become effective upon filing.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (“Act”),²⁵ requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

consistent with this provision of the Act. DTC believes that the proposed rule change is consistent with this provision of the Act for the reasons described below.

As described above, the proposed rule change would allow Participants and Pledges to more readily understand the Rules and Procedures relating to the processing of book entries of Pledges at DTC by (1) clarifying text to more accurately reflect the operational process of how book entries of pledges are entered on DTC's system, and (2) making changes to text for readability necessary in the context of the proposed clarification. By clarifying the Rules to facilitate Participants ability to understand the operational processes relating to pledge services, DTC believes that the proposed changes would facilitate Participants' and Pledges' ability to process pledge transactions and related understand DTC system functionality designed to accommodate key aspects of the pledge process, including the ability of the Pledgee to release Pledged Securities or make a demand for collateral relating to the Pledged Securities, as described above. Therefore, by facilitating the ability of Participants to understand the related Rules and pledge functionality, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(f) of the Act.²⁶

4. Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition because it would merely make technical clarifying changes and changes for enhanced readability to the text of the Settlement Service Guide and the Pledgee's Agreement that do not otherwise affect Participants' and Pledgee's rights or obligations.

5. Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change is to take effect immediately upon filing pursuant to Section 19(b)(3)(A) of the Act²⁷ and subparagraph (f)(4)(i) of Rule 19b-4 under the Act.²⁸

²⁶ Id.

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(4)(i).

(b) In accordance with subparagraph (f)(4)(i) of Rule 19b-4 under the Act,²⁹ the proposed rule change effects a change in an existing DTC service that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible, and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. The proposed rule change would clarify text in the Settlement Guide and Pledgee's Agreement without impacting the respective rights or obligations of DTC or persons using DTC's services, because the changes are technical in nature.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act of 2010

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Settlement Guide and Pledgee's Agreement.

²⁹

Id.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-DTC-2021-005)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of and Immediate Effectiveness of a Proposed Rule Change to Modify the DTC Settlement Service Guide and the Form of DTC Pledgee’s Agreement

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 April __, 2021, 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 change consists would modify the DTC Settlement Service Guide (“Settlement Guide”)⁵ and the form of DTC Pledgee’s Agreement (“Pledgee’s

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 Available at <https://www.dtcc.com/legal/rules-and-procedures>. The Service Guides constitute Procedures 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, infra note 3. DTC’s Procedures are filed with the Securities and Exchange

Agreement”),⁶ as described below. Specifically, the proposed rule change would revise text in the Settlement Guide and Pledgee’s Agreement to clarify the text with respect to the processing of book entries of Pledge-related⁷ activity at DTC. The proposed

Commission (“Commission”). They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, infra note 3.

⁶ Available at <https://www.dtcc.com/legal/rules-and-procedures>. Pursuant to Rule 2, Section 3, an entity that uses DTC’s pledge services must enter into an agreement with DTC satisfactory to DTC. See Rule 2, Section 3, supra note 1. In this regard, DTC requires a Pledgee that is not a Participant to sign a Pledgee’s Agreement. Participants enter into a Participant’s Agreement which binds them to the Rules and Procedures (including, but not limited to, those related to pledge activity), and are not required by DTC to enter into a separate Pledgee’s Agreement. See also Rule 1, Section 1, supra note 1 (providing terms of the Participant’s Agreement).

⁷ Pursuant to Rule 1, The defined term “Pledge” in the Rules means, inter alia, “creating or providing for a security interest in a Certificated or Uncertificated Security, a Securities Account or a Securities [sic] Entitlement in accordance with the NYUCC.” See Rule 1, supra note 1. Pursuant to Rule 1, the term “NYUCC” means the Uniform Commercial Code of New York, as amended from time to time. See Rule 1, supra note 1. Pursuant to Rule 1, the term “Certificated Security” has the meaning given to the term “certificated security” in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, “certificated security” means a security that is represented by a certificate. See NYUCC 8-102. Pursuant to Rule 1, the term “Uncertificated Security” has the meaning given to the term “uncertificated security” in Section 8-102 of the NYUCC. See Rule 1, supra note 1. Pursuant to Section 8-102 of the NYUCC, “uncertificated security” means a security that is not represented by a certificate. Pursuant to Rule 1, the term “Securities Account” (1) as used with respect to a Participant or Pledgee, means an account maintained by DTC for the Participant or Pledgee to which Securities transactions of the Participant or Pledgee effected through the facilities of DTC are debited and credited in the manner specified in the Rules and Procedures; and (2) as used with respect to DTC, means an internal account of DTC to which Securities transactions are debited and credited to DTC. See Rule 1, supra note 1. Pursuant to Rule 1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8-102 of the NYUCC. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See id. Pursuant to Section 8-102 of the NYUCC, “security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5. See NYUCC §8-102. NYUCC Section 8-501(b) provides that a person acquires a “security entitlement” when, *inter alia*, a

revisions would reflect in the text of the Settlement Guide and Pledgee's Agreement that Pledged Securities remain credited to a Pledgor's Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee's Agreement currently indicate that Pledged Securities are credited to a Pledgee's Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee. The text of the proposed changes to the rules of DTC are annexed hereto as Exhibit 5, as described in greater detail below.⁸

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

securities intermediary indicates by book entry that a financial asset has been credited to the person's securities account. The absence of the crediting of a financial asset to an account of a Pledgee and the fact that an account of a Pledgee is not a securities account under Article 8 mean that the Pledgee has not acquired a security entitlement under Article 8. See NYUCC § 8-501(b). Pursuant to Section 8-102, "entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder. See NYUCC §8-102.

⁸ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC ("Rules") available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

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 of DTC would modify the Settlement Guide and the form of Pledgee’s Agreement, as described below. Specifically, the proposed rule change would revise text in the Settlement Guide and Pledgee’s Agreement to clarify the text with respect to the processing of book entries of Pledge-related⁹ activity at DTC. The proposed

⁹ Pursuant to Rule 1, The defined term “Pledge” in the Rules means, *inter alia*, “creating or providing for a security interest in a Certificated or Uncertificated Security, a Securities Account or a Securities [sic] Entitlement in accordance with the NYUCC.” See Rule 1, *supra* note 1. Pursuant to Rule 1, the term “NYUCC” means the Uniform Commercial Code of New York, as amended from time to time. See Rule 1, *supra* note 1. Pursuant to Rule 1, the term “Certificated Security” has the meaning given to the term “certificated security” in Section 8-102 of the NYUCC. See Rule 1, *supra* note 1. Pursuant to Section 8-102 of the NYUCC, “certificated security” means a security that is represented by a certificate. See NYUCC 8-102. Pursuant to Rule 1, the term “Uncertificated Security” has the meaning given to the term “uncertificated security” in Section 8-102 of the NYUCC. See Rule 1, *supra* note 1. Pursuant to Section 8-102 of the NYUCC, “uncertificated security” means a security that is not represented by a certificate. Pursuant to Rule 1, the term “Securities Account” (1) as used with respect to a Participant or Pledgee, means an account maintained by DTC for the Participant or Pledgee to which Securities transactions of the Participant or Pledgee effected through the facilities of DTC are debited and credited in the manner specified in the Rules and Procedures; and (2) as used with respect to DTC, means an internal account of DTC to which Securities transactions are debited and credited to DTC. See Rule 1, *supra* note 1. Pursuant to Rule 1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8-102 of the NYUCC. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See *id.* Pursuant to Section 8-102 of the NYUCC, “security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5. See NYUCC §8-102. NYUCC Section 8-501(b) provides that a person acquires a “security entitlement” when, *inter alia*, a securities intermediary indicates by book entry that a financial asset has been credited to the person’s securities account. The absence of the crediting of a

revisions would reflect in the text of the Settlement Guide and Pledgee's Agreement that Pledged Securities remain credited to a Pledgor's Account unless the Pledgee makes a demand for the Pledged Securities, as described below. In this regard, the respective texts of the Settlement Guide and the Pledgee's Agreement currently indicate that Pledged Securities are credited to a Pledgee's Account. As discussed below, the proposed rule change relates to a technical aspect of the operational processing of Pledge transactions and would not impact the rights or obligations of a Participant or Pledgee.

The following discussion is provided by DTC and includes, but is not limited to, its own analysis of applicable state law provisions that DTC believes are relevant for purposes of describing the proposed rule change.

Background.

Eligibility for Pledge Services

The pledge services of DTC are available to banks, trust companies, broker-dealers and other Persons approved by the DTC, which have entered into an agreement with the DTC satisfactory to it, for the purpose of effecting a Pledge of Deposited Securities to such

financial asset to an account of a Pledgee and the fact that an account of a Pledgee is not a securities account under Article 8 mean that the Pledgee has not acquired a security entitlement under Article 8. See NYUCC § 8-501(b). Pursuant to Section 8-102, "entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder. See NYUCC §8-102.

banks, trust companies, broker-dealers and other Persons.¹⁰ A Pledgee may but need not be a Participant. A Pledgee is required by DTC to sign a Pledgee's Agreement unless it is also a Participant. Participants are not required to sign a separate Pledgee's Agreement to use DTC's pledge services because the Participant's Agreement binds the Participant to DTC's Rule and Procedures, including those relating to pledge-related activity. Only a Pledgee which is a Participant may receive a Pledge Versus Payment.¹¹

Book Entry of Pledges and Legal Effect

As indicated above, the definition of a "Security Entitlement" in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that "[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement."

However, as more fully discussed below, while the Settlement Guide and the Pledgee's Agreement make reference to the movement of Securities to a Pledgee's Account, from an operational standpoint, DTC does not in fact credit a Security to an Account of a Pledgee; what the Pledgee receives is not a Security Entitlement. The Securities remain credited to the Pledgor's account until the Pledgee releases the Pledged Securities or makes a demand for the Pledged Securities, as discussed below. Rather, a notation is placed on the Account of the Pledgor that the Securities are Pledged to the Pledgee and the Securities remain in pledged status until the Pledgee instructs otherwise.

As described below, this bookkeeping method does not adversely impact the rights of the Pledgee in that the Pledgee maintains Control over the Pledged Securities and the

¹⁰ See Rule 2, Section 3, supra note 1.

¹¹ See id.

Pledged Securities cannot be used by the Pledgee for any other transaction unless the Pledgee releases the Securities from the Pledged Status through an instruction to DTC.

DTC's Description of Pledge

DTC's Settlement Service Guide states that:

“[w]hen pledging securities to a pledgee, the pledgor's position is moved from the pledgor's general free account to the pledgee's account which prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position would move the pledged position back to the pledgor's general free account where it would then be available to complete other transactions.”¹²

Paragraph 2 of DTC's form of Pledgee's Agreement provides that:

“[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books transferring the securities from the account of such depositor to the account of Pledgee and shall maintain such securities in the account of Pledgee until instructed by Pledgee to release such securities to the account of the pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.”

The descriptions of DTC's pledge arrangements in the (1) Settlement Service Guide, with respect to the text shown above, and as more fully described below, and (2) form of Pledgee's Agreement are imprecise because in practice DTC does not move or

¹² See Settlement Guide, supra note 2 at 3-4.

transfer the securities from an account of the Pledgor to an account of the Pledgee, as more fully described below.

The definition of a “Security Entitlement” in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that “[t]he interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement.”

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, what the Pledgee receives is not a Security Entitlement.

The definition of an “Entitlement Holder” in the DTC Rules incorporates the definition of such term in Article 8 of the NYUCC (as to which see below) and notes that “[a] Participant or Pledgee is an Entitlement Holder with respect to a Security credited to its Account”.

However, since DTC is not in fact crediting a Security to an Account of a Pledgee, the Pledgee is not an Entitlement Holder. However, the Pledgee maintains Control of the Pledged Securities as more fully described below. A key to a Pledgee exercising its Control is its ability to instruct DTC an Entitlement Order for the delivery, pledge release or withdrawal of a security.

Entitlement Order

The definition of an “Entitlement Order” in the Rules incorporates the definition of such term in Article 8 of the NYUCC that “[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order”.

Note that the definition of an Entitlement Order does not require that the Security be credited to a Securities Account of the instructor. The breadth of this definition allows

permitted entities, such as Pledges, to issue Entitlement Orders to DTC in respect of Securities credited to Securities Accounts belonging to others.

DTC Rule 9(B)¹³ provides that:

“[i]f [DTC] receives an instruction from a Pledgee to effect a Delivery or Withdrawal of Pledged Securities, such instruction shall have the effect of notifying [DTC] that the Pledgee elects not to Release the Pledged Securities but, rather, to assert its Control over the Pledged Securities by the transfer of a greater interest in the Pledged Securities to itself or another Person. [DTC] shall accept such an instruction as a representation that the Pledgee is acting in accordance with applicable law, rules or regulations, agreements or any adjudication thereof.”

Under NYUCC Section 8-507(a),¹⁴ a securities intermediary satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary. DTC satisfies its duty to comply with an Entitlement Order if it acts with respect to the duty as agreed upon by the Entitlement Holder and the Securities Intermediary. In the case of Security Entitlements pledged on the books of DTC, DTC satisfies its duty to comply with an Entitlement Order by complying with the Entitlement Order of the Pledgee.

Control

Under NYUCC Section 9-106(a),¹⁵ “[a] person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8-106”.¹⁶

¹³ See Rule 9(B), supra note 1.

¹⁴ NYUCC § 8-507(a).

¹⁵ See NYUCC § 9-106(a).

¹⁶ NYUCC § 8-106.

Under NYUCC Section 8-106(d), “[a] purchaser has “control” of a security entitlement if:

- (1) the purchaser becomes the entitlement holder;
- (2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
- (3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.”

Under NYUCC Section 1-102,¹⁷ a purchaser is “a person that takes by purchase” with “purchase” being defined as “taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property”.

NYUCC Section 8-106(f) further provides that “[a] purchaser has “control” under subsection (c)(2) or (d)(2) even if any duty of the issuer or the securities intermediary to comply with instructions or entitlement orders originated by the purchaser is subject to any condition or conditions (other than further consent by the registered owner or the entitlement holder).”

Official Comment 4 to NYUCC Section 8-106¹⁸ notes that:

“[s]ubsection (d)(2) provides that a purchaser has control if the securities intermediary has agreed to act on entitlement orders originated by the purchaser if no further consent by the entitlement holder is required. Under subsection (d)(2), control may be achieved even though the original entitlement holder remains as the entitlement holder.”

¹⁷ See NYUCC § 1-102.

¹⁸ See NYUCC § 8-106.

Example 6 of Official Comment 4 is illustrative:

“Able & Co., a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with Clearing Corporation. Able causes Clearing Corporation to transfer the shares into a pledge account, pursuant to an agreement under which Able will continue to receive dividends, distributions, and the like, but Alpha has the right to direct dispositions. As in Example 3, Alpha has control of the 1000 shares under subsection (d)(2).”

In the case of security entitlements pledged on the books of DTC, because DTC will comply with the instructions of a Pledgee as provided for in Rule 9(B),¹⁹ which is an agreement between DTC and its Participants and Pledgees, a Pledgee has control of such security entitlements under NYUCC § 8-106(d)(2) even when the Pledged Securities remain credited to the account of the Pledgor.

DTC’s pledge arrangements operate pursuant to the DTC Rules and the NYUCC. When Security Entitlements are pledged to a Pledgee through the facilities of DTC, the Pledgee has a security interest in such pledged Security Entitlements.²⁰ A Pledgee has “control” under Articles 8 and 9 of the NYUCC and under the DTC Rules of any Security

¹⁹ See Rule 9(B), *supra* note 1.

²⁰ The interest transferred is, however, only a security interest if the Pledgor and Pledgee have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied. The agreement is entered into by the parties outside of DTC, and DTC does not have knowledge or information on the existence of such an agreement between the parties.

Entitlements pledged to it through the facilities of DTC,²¹ and the Pledgee is empowered to issue Entitlement Orders²² to DTC to direct the release, delivery or withdrawal of any such pledged Security Entitlements.

Example of a Pledge by a Participant to a Pledgee

When Security Entitlements credited to Participant A's account at DTC are pledged to Pledgee B through the facilities of DTC, B has a security interest in such pledged security entitlements.²³

B does not itself have "security entitlements" to the underlying securities and B is not an "entitlement holder" as such terms are defined in the NYUCC.

However, B as Pledgee would have "control" under Articles 8 and 9 of the NYUCC and under the Rules of any Security Entitlements pledged to it through the facilities of DTC, and B is empowered to issue Entitlement Orders to DTC to direct the release, delivery or withdrawal of any such pledged Security Entitlements.

²¹ The definition of "Control" in the Rules incorporates the definition of such term in Article 8 of the NYUCC and notes that "[a] Pledgee has Control of Pledged Securities until they are Delivered, Released or Withdrawn by the Pledgee." See Rule 1, Section 1, *supra* note 1.

²² The definition of an "Entitlement Order" in the Rules incorporates the definition of such term in Section 8-102 of the NYUCC and notes that "[a]n instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order". As noted above, Pursuant to Section 8-102, "entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement. See NYUCC 8-102.

²³ As mentioned above, the interest transferred is, however, only a security interest if A and B have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied.

Proposed Rule Change

Proposed change to text of Settlement Guide

Pursuant to the proposed rule change, DTC would revise the text of the Settlement Guide to reflect that Pledged Securities do not move to an Account of the Pledgee. As discussed above, the movement of the securities is not required to effect a Pledge and does not impact the rights of Pledgor or Pledgee under the Rules or the NYUCC. Rather a Pledged Securities continues credited to the pledgor's account, however with a system notation showing the status of the position as pledged by the pledgor to the pledgee. This status systemically prevents the pledged position from being used to complete other transactions, which is consistent with the Pledgees Control over the Pledge Securities, as discussed above. Likewise, the release of a pledged position results in the removal of notation of the pledge status of the position and the position would become available to the pledgor to complete other transactions.

The changes to the Settlement Guide text are technical in nature, and while enhancing clarity with respect to the book entries performed by DTC as they relate to pledge activity, the change would not impact the rights or obligations of Participants and Pledgees. In this regard, the applicable sections of the Settlement Guide would be revised to (1) clarify the text with respect operational aspect of book entries of pledges, as discussed above, and (2) make changes to text for readability necessary in the context of the proposed clarification, as follows (**bold, underlined** text indicates additions; ~~**bold strike through**~~ text indicates deletions):

- (a) Text included in Item 3 (Collateral Loans) set forth under the heading

“Settlement Transactions”²⁴ would be revised as follows:

“[w]hen pledging securities to a pledgee, the pledgor’s position ~~is moved from the pledgor’s general free account to the pledgee’s account~~ **continues to be credited to the pledgor’s account, however with a system notation showing the status of the position as pledged by the pledgor to the pledgee. This status systemically** ~~which~~ prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position ~~would move the pledged position back to the~~ **results in the removal of notation of the pledge status of the position and the position would become pledgor’s general free account where it would** ~~then be~~ available to **the pledgor to** complete other transactions.”

- (b) Text included under the heading “About the Product” that appears under the heading “Collateral Loan Program”²⁵ would be revised as follows:

“The Collateral Loan Program allows you to pledge securities ~~from~~ **held in** your general free account as collateral for a loan or for other purposes (such as Letters of Credit) to a pledgee participating in the program. You can also request the pledgee to release pledge securities ~~back to your general free account~~. These pledges and releases can be free (when money proceeds are handled outside DTC) or valued (when money proceeds are applied as debits

²⁴ See Settlement Guide, supra note 2 at 3-4.

²⁵ See Settlement Guide, supra note 2 at 8-9.

and credits to the pledgee's and pledgor's money settlement accounts). A Pledgee may, but need not be, a Participant. Only a Pledgee which is a Participant may receive valued pledges.”

- (c) Text included under the heading “Pledges to the Options Clearing Corporation”²⁶ would be revised as follows:

“A Participant writing an option on any options exchange may fully collateralize that option by pledging the underlying securities by book-entry through DTC to the Options Clearing Corporation (OCC). If the option is called (exercised), the securities may be released and delivered to the holder of the call. If the option contract is not exercised, OCC validates a release of the pledged securities, ~~which are then returned to the Participant's general free account.~~”

- (d) Text included under the heading “Release of Deposits with Options Clearing Corporation on Expired Options” would be revised as follows:

OCC automatically releases securities deposited with it to cover margin requirements on an option contract when the option contract expires. ~~The securities are then allocated to your general free account.~~ Notification of the released securities is received via the Collateral Loan Services functionality in the Settlement User Interface or automated output.

- (e) Text included under the heading “Shared Control Accounts”²⁷ would be revised as follows: In addition to changes made for the purposes described in

²⁶ See Settlement Guide, supra note 2 at 10.

²⁷ See Settlement Guide, supra note 2 at 15-16.

(x) and (y) above, DTC would also delete text shown below that states”
“Pledgee account continue to be available at DTC.” This sentence was added to the text when Shared control account arrangements were added to the Procedures²⁸ to clarify that the existing pledge services would continue to be offered. As both the original pledge program and the Shared control account process are both established programs, DTC believes the sentence is no longer necessary:

About the Product

Shared control accounts are available as an alternative to “agreement to pledge” arrangements.

Background

When a Participant pledges securities to ~~the pledgee account of~~ a pledgee at DTC (sometimes called a “hard pledge”), the securities are under the sole control of the pledgee. Only the pledgee can redeliver or release the securities.

~~Pledgee accounts continue to be available at DTC.~~

Shared control accounts are available at DTC as an alternative to agreement to pledge (sometimes called “agreement to deliver”) arrangements. A pledgee has control over securities delivered by a Participant to the Participant’s shared control account at DTC since the pledgee has the ability to redeliver the securities without further consent by the Participant. Until the pledgee redelivers the securities, the Participant has the flexibility to redeliver or make

²⁸ See Securities Exchange Act Release No. 40191 (July 10, 1998), 63 FR 38444 (July 16, 1998) (SR-DTC-98-5).

substitutions for the securities without obtaining the pledgee's release of the securities.

Shared controls are separately identified in DTC's Reference Directory.

Participants interested in establishing a shared control account should contact their Relationship Manager.

Procedures for DTC Shared Control Accounts

The following procedures are an addition to DTC's Procedures for Pledges.

1. Any Participant may establish a shared control account at DTC and may designate any DTC pledgee to be the pledgee for that shared control account. A Participant may deliver securities (or other financial assets) by a free pledge from any of its DTC accounts (the "original account") to its shared control account in order to grant a security interest or other interest in the securities to the pledgee. The shared control account is an account of the Participant and is identified with a separate account number from any other account of the Participant. A Participant may establish multiple shared control accounts, but only one pledge can be designated for each shared control account.
2. Except as modified by these procedures, the operation of a shared control account is identical to the operation of a DTC pledge ~~account~~ and all DTC procedures applicable to pledges ~~accounts~~ are applicable to shared control accounts. No deliveries vs. payment, pledges vs. payment, or physical deposits can be made to a shared control account and no deliveries vs. payment, pledges vs. payment, or physical

withdrawals can be made from a shared control account. A Participant should not deliver securities to another Participant's shared control account. In the instructions for a delivery of securities to a shared control account, the mandatory hypothecation code field should be completed in the same manner as it is for a pledge made without the use of a shared control ~~delivery to a pledge~~ account. The DTC fees and charges for a transaction involving a shared control account are the same as the fees and charges for a pledge transaction that does not involving involve a pledge account. The DTC monthly account usage charges applicable to a shared control account are charged to the Participant. The DTC reports and statements to the Participant and the pledge for a transaction involving a shared control account are the same as the reports and statements for a transaction involving a pledge that does not involve a shared control account.

3. ~~As with a pledge account, voting~~ Voting rights on the securities credited to a shared control account are assigned to the Participant. Cash dividend and interest payments and other cash distributions on such securities are credited to the original account. Distribution of securities for which the ex-distribution date is on or prior to the payable date or in which the distribution is payable in a different security are also credited to the original account. Any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date are credited to the shared control account.

4. The securities credited to a shared control account cannot be designated as or included in the collateral for any obligation of the Participant or the pledgee to DTC. DTC has no lien or other interest in any securities credited to a shared control account”

Proposed change to text of the Pledgee’s Agreement

Pursuant to the proposed rule change, DTC would revise the text of the Pledgee’s Agreement to reflect that Pledged Securities do not move to a pledgee account. The change is technical in nature and while enhancing clarity with respect to the book entries performed by DTC as they relate to pledge activity, the change would not impact the rights or obligations of Participants and Pledgees pursuant to the Rules, Service Guide and/or the Pledgee’s Agreement. In this regard, the applicable text of the Pledgee’s Agreement would be revised as follows (**bold, underlined** text indicates additions; **~~bold strike through~~** text indicates deletions):

“[s]o long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books **to indicate the pledge of** ~~transferring~~ the securities from ~~the account of~~ such depositor to the ~~account of~~ Pledgee and shall maintain such securities ~~in the account of~~ **with a notation that the securities are pledged by the depositor to the** Pledgee until instructed by Pledgee to release such securities to the ~~account of the~~ pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.”

Effective Date

The proposed rule change would become effective upon filing.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (“Act”),²⁹ requires that the rules of the clearing agency be designed, inter alia, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act. DTC believes that the proposed rule change is consistent with this provision of the Act for the reasons described below.

As described above, the proposed rule change would allow Participants and Pledges to more readily understand the Rules and Procedures relating to the processing of book entries of Pledges at DTC by (1) clarifying text to more accurately reflect the operational process of how book entries of pledges are entered on DTC’s system, and (2) making changes to text for readability necessary in the context of the proposed clarification. By clarifying the Rules to facilitate Participants ability to understand the operational processes relating to pledge services, DTC believes that the proposed changes would facilitate Participants’ and Pledges’ ability to process pledge transactions and related understand DTC system functionality designed to accommodate key aspects of the pledge process, including the ability of the Pledgee to release Pledged Securities or make a demand for collateral relating to the Pledged Securities, as described above. Therefore, by facilitating the ability of Participants to understand the related Rules and pledge functionality, DTC believes the proposed rule change would promote the prompt

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(f) of the Act.³⁰

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (“Act”),³¹ requires that the rules of the clearing agency be designed, inter alia, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act. DTC believes that the proposed rule change is consistent with this provision of the Act for the reasons described below.

As described above, the proposed rule change would allow Participants and Pledges to more readily understand the Rules and Procedures relating to the processing of book entries of Pledges at DTC by (1) clarifying text to more accurately reflect the operational process of how book entries of pledges are entered on DTC’s system, and (2) making changes to text for readability necessary in the context of the proposed clarification. By clarifying the Rules to facilitate Participants ability to understand the operational processes relating to pledge services, DTC believes that the proposed changes would facilitate Participants’ and Pledges’ ability to process pledge transactions and related understand DTC system functionality designed to accommodate key aspects of the pledge process, including the ability of the Pledgee to release Pledged Securities or make a demand for collateral relating to the Pledged Securities, as described above. Therefore, by facilitating the ability of Participants to understand the related Rules and

³⁰ Id.

³¹ 15 U.S.C. 78q-1(b)(3)(F).

pledge functionality, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(f) of the Act.³²

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

DTC does not believe that the proposed rule change would have any impact on competition because it would merely make technical clarifying changes and changes for enhanced readability to the text of the Settlement Service Guide and the Pledgee's Agreement that do not otherwise affect Participants' and Pledgee's rights or obligations.

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

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

³²

Id.

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)³³ of the Act and paragraph (f)³⁴ 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.

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-2021-005 on the subject line.

Paper Comments:

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

³³ 15 U.S.C 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-DTC-2021-005. 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-2021-005 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.³⁵

Secretary

³⁵ 17 CFR 200.30-3(a)(12).

~~Struck through, boldface text~~ indicates deleted language
Bold and underlined text indicates added language.

Settlement Service Guide

Settlement Transactions

There are three main types of transactions processed through the Settlement system.

- 3. Collateral loans:** The collateral loan service allows a Participant (the pledgor) to pledge securities as collateral for a loan or for other purposes and also request the release of pledged securities. This service allows such pledges and pledge releases to be made free, meaning that the money component of the transaction is settled outside of the depository, or valued, meaning that the money component of the transaction is settled through DTC as a debit/credit to the pledgor's and pledgee's DTC money settlement account. When pledging securities to a pledgee, the pledgor's position ~~is moved from the pledgor's general free account to the pledgee's account~~ **continues to be credited to the pledgor's account, however with a system notation showing the status of the position as pledged by the pledgor to the pledgee. This status systemically which** prevents the pledged position from being used to complete other transactions. Likewise, the release of a pledged position ~~would move the pledged position back to the~~ **results in the removal of notation of the pledge status of the position and the position would become pledgor's general free account where it would then be** available to **the pledgor to** complete other transactions.

Collateral Loan Program

About the Product

The Collateral Loan Program allows you to pledge securities ~~from held in~~ **from held in** your general free account as collateral for a loan or for other purposes (such as Letters of Credit) to a pledgee participating in the program. You can also request the pledgee to release pledge securities ~~back to your general free account~~. These pledges and releases can be free (when money proceeds are handled outside DTC) or valued (when money

proceeds are applied as debits and credits to the pledgee's and pledgor's money settlement accounts). A Pledgee may, but need not be, a Participant. Only a Pledgee which is a Participant may receive valued pledges.

Pledges to the Options Clearing Corporation

A Participant writing an option on any options exchange may fully collateralize that option by pledging the underlying securities by book-entry through DTC to the Options Clearing Corporation (OCC). If the option is called (exercised), the securities may be released and delivered to the holder of the call. If the option contract is not exercised, OCC validates a release of the pledged securities, ~~which are then returned to the Participant's general free account.~~

Release of Deposits with Options Clearing Corporation on Expired Options

OCC automatically releases securities deposited with it to cover margin requirements on an option contract when the option contract expires. ~~The securities are then allocated to your general free account.~~ Notification of the released securities is received via the Collateral Loan Services functionality in the Settlement User Interface or automated output.

Shared Control Accounts

About the Product

Shared control accounts are available as an alternative to “agreement to pledge” arrangements.

Background

When a Participant pledges securities to ~~the pledgee account of~~ a pledgee at DTC (sometimes called a “hard pledge”), the securities are under the sole control of the pledgee. Only the pledgee can redeliver or release the securities. ~~Pledgee accounts continue to be available at DTC.~~

Shared control accounts are available at DTC as an alternative to agreement to pledge (sometimes called “agreement to deliver”) arrangements. A pledgee has control over securities delivered by a Participant to the Participant’s shared control account at DTC since the pledgee has the ability to redeliver the securities without further consent by the Participant. Until the pledgee redelivers the securities, the Participant has the flexibility to redeliver or make substitutions for the securities without obtaining the pledgee’s release of the securities.

Shared controls are separately identified in DTC's Reference Directory. Participants interested in establishing a shared control account should contact their Relationship Manager.

Procedures for DTC Shared Control Accounts

The following procedures are an addition to DTC's Procedures for Pledges.

1. Any Participant may establish a shared control account at DTC and may designate any DTC pledgee to be the pledgee for that shared control account. A Participant may deliver securities (or other financial assets) by a free pledge from any of its DTC accounts (the "original account") to its shared control account in order to grant a security interest or other interest in the securities to the pledgee. The shared control account is an account of the Participant and is identified with a separate account number from any other account of the Participant. A Participant may establish multiple shared control accounts, but only one pledge can be designated for each shared control account.
2. Except as modified by these procedures, the operation of a shared control account is identical to the operation of a DTC pledge ~~account~~ and all DTC procedures applicable to pledges ~~accounts~~ are applicable to shared control accounts. No deliveries vs. payment, pledges vs. payment, or physical deposits can be made to a shared control account and no deliveries vs. payment, pledges vs. payment, or physical withdrawals can be made from a shared control account. A Participant should not deliver securities to another Participant's shared control account. In the instructions for a delivery of securities to a shared control account, the mandatory hypothecation code field should be completed in the same manner as it is for a **pledge made without the use of a shared control delivery to a pledge** account. The DTC fees and charges for a transaction involving a shared control account are the same as the fees and charges for a **pledge** transaction ~~that does not involving involve~~ a pledge account. The DTC monthly account usage charges applicable to a shared control account are charged to the Participant. The DTC reports and statements to the Participant and the pledge for a transaction involving a shared control account are the same as the reports and statements for a transaction involving a pledge **that does not involve a shared control** account.
3. ~~As with a pledge account, voting~~ **Voting** rights on the securities credited to a shared control account are assigned to the Participant. Cash dividend and interest payments and other cash distributions on such securities are credited to the original account. Distribution of securities for which the ex-distribution date is on or prior to the payable date or in which the distribution is payable in a different security are also credited to the original account. Any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date are credited to the shared control account.
4. The securities credited to a shared control account cannot be designated as or included in the collateral for any obligation of the Participant or the pledgee to DTC. DTC has no lien or other interest in any securities credited to a shared control account.

Pledgee's Agreement

AGREEMENT as of [Date], between The Depository Trust Company (Depository Trust) and [Pledgee Name] (Pledgee).

WHEREAS, Depository Trust maintains a centralized securities depository within which transfers and pledges of securities are effected by book entry methods;

WHEREAS, Pledgee desires to have the benefits of a Depository Trust account in order that it may be designated from time to time as a pledgee of securities within the system; and

WHEREAS, subject to the terms and conditions hereof, Depository Trust is willing to provide Pledgee with a Depository Trust account.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained the parties

hereto do hereby agree as follows:

1. So long as Depository Trust makes available to Pledgee a Depository Trust account, Pledgee agrees to pay Depository Trust the charges and fees from time to time in effect for Depository Trust applicable to Pledgee and to participate in Depository Trust in accordance with such Rules and procedures as may from time to time be established by Depository Trust, provided, however, that Pledgee may terminate this agreement at anytime, upon written notice delivered to Depository Trust, accompanied by a written demand for delivery of the certificates representing the securities, or for transfer by book entry of the securities, then being held by Depository Trust for Pledgee's Depository Trust account and payment of any charges or fees then owing to Depository Trust. Immediately upon such notice and demand Pledgee's participation in Depository Trust shall cease. Pledgee shall thereafter be under no obligation to pay any further charges or fees referred to in this paragraph and Depository Trust shall promptly arrange for delivery of Pledgee's certificates representing the securities, or for transfer by book entry of the securities, then being held by Depository Trust for Pledgee's account, such delivery or transfer to be at Pledgee's expense.
2. So long as Pledgee shall maintain a Depository Trust account, Depository Trust, upon the pledge to Pledgee of securities held by Depository Trust for the account of any depositor in Depository Trust, will make appropriate entries on its books **to indicate the pledge of transferring** the securities from ~~the account of~~ such depositor to the ~~account of~~ Pledgee and shall maintain such securities **in the account of with a notation that the securities are pledged by the depositor to the** Pledgee until instructed by Pledgee to release such securities to the ~~account of the~~ pledgor, to deliver such securities to the order of Pledgee or to transfer such securities on the books of Depository Trust to the account of a depositor in Depository Trust other than the pledgor.

3. Pledgee agrees to indemnify and hold harmless Depository Trust, its officers, directors, employees and agents against any and all loss, liability, damage, cost and expense, including reasonable attorneys' fees, arising out of any act or omission by Pledgee, or any of its employees or agents, or the Pledgee's or any of its employee's or agent's error, negligence or fraud relating to Pledgee's Depository Trust account.

4. This agreement and any transactions hereunder shall be governed by and construed in accordance with the laws of the State of New York.

5. This agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

6. This agreement shall be effective upon the date when it is executed by both parties hereto and a fully executed copy hereof has been delivered to the box of the Pledgee maintained by Depository Trust on its premises or has been deposited in the United States Postal Service, with postage thereon prepaid, directed to the Pledgee at its address specified below.
