



DTC eligibility and trading Canadian company stocks in the U.S.

What is DTC?

The Depository Trust Company ("DTC") is a depository for securities and facilitates electronic trading in the United States. It was created to eliminate the reliance on paper certificates. DTC electronically records changes of ownership using an electronic book entry system and delivers those securities to customer accounts. After a broker/dealer initiates an order to buy or sell securities, the information is sent to the National Securities Clearing Corporation ("NSCC") to confirm trade details, issue a summary of the trades, and then sends instructions to DTC to settle the trade. Essentially, DTC is the U.S. equivalent of CDS Depository Clearing Services Inc. in Canada.

What does it mean if a company's shares are "DTC eligible?"

If a company's shares are DTC eligible, a buyer or seller in the U.S. making a trade in such company's securities is not required to produce the physical stock certificate in order to settle the trade. In fact, the only physical stock certificate probably resides at DTC. Instead, the trade will take place electronically through the buying broker and selling broker's accounts, saving time and money. If a company's shares are not DTC eligible, it may take days for the trade in the U.S. to be settled and most often the trade will be reflected in the volume of the company's shares traded on the Canadian exchange, rather than on the U.S. exchange or over-the-counter market ("OTC").

What are the benefits to making a company's shares DTC eligible?

DTC eligible shares are traded more quickly, with less cost, and most often the status of the shares as DTC eligible increase a company's stock trading volume. Some broker/dealers in the U.S. have firm-wide policies that prohibit the broker/dealer from trading any shares that are not DTC eligible. In addition, the cost of trading and clearing non DTC eligible stock can oftentimes run ten times what it would cost to execute a trade with a DTC eligible stock. Also, it is more likely that a DTC eligible stock traded in the U.S. will increase the volume of the stock on the U.S. exchange or the OTC.

How do I know whether my company's shares are DTC eligible?

A company can contact a DTC participant, usually any large broker/dealer, investment bank or transfer agent to inquire about the status of the company's shares. If there is a DTC position in a company's shares, that will be reflected on a report of shareholders of record. DTC positions are held in the nominee name of "Cede & Co."

How can I make my company's shares DTC eligible?

A company will need to contact a DTC participant to submit the application for eligibility of the company's shares. Our transactional attorneys at Burns, Figa & Will, P.C. regularly represent cross-border clients and can assist with the DTC application process. Most often Canadian companies will be required to submit an opinion from a U.S. attorney that the shares have either been registered in the U.S. or do not contain any restrictions on sale. The entire DTC eligibility process can take approximately 4 to 6 weeks, depending on the ability of DTC to process the application.

What does it mean if there is a "chill" on a company's shares?

DTC will "chill" a company's shares for many reasons, one of which is if DTC believes that some of the shares held by DTC are not freely transferrable. In this case, DTC may require that a DTC participant submit a new application and will typically require an opinion from U.S. counsel that the shares are not restricted.

Are there any ongoing costs to maintaining a stock's DTC eligibility?

Not typically. If a company enters into a transaction that requires that a new CUSIP be issued for the shares, such as a name change, DTC will require an opinion from a U.S. attorney but no application or fee is required. If a company is planning a name change or entering into a merger, it is best to alert DTC to the change so that the shares with the new CUSIP are DTC eligible effective the date of the corporate transaction.

For further inquiry or assistance with DTC eligibility, please contact Victoria Bantz or Theresa Mehringer at 303-796-2626 or vbantz@bfwlaw.com or tmehring@bfwlaw.com. The firm's website is located at www.bfwlaw.com.