

and enforce written policies and procedures reasonably designed to have the covered clearing agency's management regularly review the efficiency and effectiveness of its use of technology and communication procedures.<sup>33</sup>

As mentioned above, DTC maintains multiple network and communication methods to interact with its participants, including certain outdated communication technologies necessary to support participants that continue to use such older technologies. DTC believes that continuing to use such outdated technologies could render communications between DTC and some of its participants vulnerable to cyber risks. Additionally, participants' use of outdated technology delays DTC's implementation of its own internal system upgrades, which by doing so, risks losing connectivity between DTC and a number of its participants. Finally, DTC states that it currently expends unnecessary resources to maintain outdated communications channels. In other words, DTC has subjected its network communication methods to review for efficiency and effectiveness. As a result, to enhance the efficiency and effectiveness of its technology and communication procedures, DTC proposes to require its participants to upgrade and maintain network technology, communication technology, and protocol standards, in accordance with applicable technology standards that DTC would identify and publish via Important Notice on its website. Because the Proposed Rule Change is an outgrowth of DTC's review of the efficiency and effectiveness of its technology and communication procedures, the Commission finds the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(21)(iv) under the Act.<sup>34</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>35</sup> and the rules and regulations promulgated thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>36</sup> that

Proposed Rule Change SR-DTC-2022-004, be, and hereby is, *approved*.<sup>37</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934: Release No. 34-95235/July 8, 2022]

**In the Matter of the: Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail; In the Matter of the: Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act, From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail; Order Denying Stay**

On December 16, 2020, the Commission issued two orders pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS under the Exchange Act: (1) an Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-90688 (Dec. 16, 2020) (the “First Order”); and (2) an Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS Under the Exchange Act From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-90689 (Dec. 16, 2020) (the “Second Order”) (together, the “prior Orders”). On February 14, 2021, Petitioner Consolidated Audit Trail, LLC (“Petitioner” or “CAT LLC”), on behalf

of itself and a majority of the Participants in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”) (together, “Petitioners”)<sup>1</sup> filed with the Commission the pending motions for partial stays of the prior Orders. That same day, Petitioners<sup>2</sup> filed petitions in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the Orders. See Case Nos. 21-1065, 21-1066. Petitioners sought a partial stay of the prior Orders until the Commission “had an opportunity to consider all the Participants’ arguments and supporting evidence” and “reevaluate whether the Order[s] [are] appropriate in light of that information,” or, in the alternative, pending resolution of the petitions for judicial review. Since that time, the Participants and Commission staff have been engaged in ongoing discussions with the goal of resolving or narrowing their differences with respect to the issues raised in the Participants’ stay motions. On January 12, 2022, the Participants requested that the Commission supplement the record to include certain additional materials prepared in connection with those discussions.<sup>3</sup>

On July 8, 2022, after careful review of the arguments and evidence proffered by the Participants, the Commission issued an Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS under the Exchange Act, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail (the “Third Order”), which supersedes the prior Orders. The Third Order clarifies certain aspects of the prior Orders and modifies

<sup>1</sup> The Participants joining the motion include BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc.; Investors Exchange LLC; MEMX LLC; Miami International Securities Exchange LLC, MIAx Emerald, LLC, MIAx PEARL, LLC; NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. Participants FINRA and Long-Term Stock Exchange, Inc. did not approve the stay motions.

<sup>2</sup> The following Participants joined in the stay motions but did not approve the filing of a petition for judicial review: Investors Exchange LLC, MEMX LLC, Miami International Securities Exchange LLC, MIAx Emerald, LLC, and MIAx PEARL, LLC. Participants FINRA and Long-Term Stock Exchange, Inc. did not approve the stay motions or the filing of a petition for judicial review.

<sup>3</sup> See Letter from K. King, Counsel for Consolidated Audit Trail, LLC, Covington & Burling LLP, to Vanessa Countryman, Secretary, Commission (January 12, 2022).

<sup>33</sup> 17 CFR 240.17Ad-22(e)(21)(iv).

<sup>34</sup> *Id.*

<sup>35</sup> 15 U.S.C. 78q-1.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>38</sup> 17 CFR 200.30-3(a)(12).

other aspects of the prior Orders in light of subsequent developments and/or additional information provided by the Participants. It also gives the Participants until July 31, 2024 to either come into compliance with the relevant provisions of the CAT NMS Plan or to develop alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner. Because the terms of the Third Order now govern, the terms of the prior Orders are no longer in force, and the pending motions are moot.<sup>4</sup>

Accordingly, it is *ordered* that the motions for a stay of the prior Orders be denied as moot.

By the Commission.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95231; File No. SR-DTC-2022-008]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Immediate Effectiveness of a Proposed Rule Change To Amend the DTC Distributions Guide To Enhance the Tax Event Announcements Feature of the Distributions Service and Make Related Clarifying Changes

July 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2022, 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 Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit

<sup>4</sup> On February 14, 2021, the Participants also filed a motion for a protective order shielding from public disclosure certain documents submitted in connection with their stay motions as well as portions of the motions that refer to those documents, pursuant to SEC Rule of Practice 322. Finding that the harm resulting from disclosure of that material would outweigh the benefits of disclosure, we grant the motion for a protective order.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

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 would amend the Procedures<sup>5</sup> set forth in the Distributions Guide to accommodate Participants’ tax reporting and withholding obligations, by setting forth a proposed enhancement to DTC’s Procedure for the Tax Events Announcements feature (“Tax Event Announcements”) of DTC’s Distributions Service,<sup>6</sup> as described below.<sup>7</sup>

#### Announcements

The Distributions Service includes the announcement, collection, allocation and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC (“Announcements”). This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements (“Distribution Event”)<sup>8</sup> from multiple issuers and agents.

DTC also provides a Participant holding a Security in its DTC account with Tax Events Announcements for distributions subject to Sections 305(c) and 871(m) of the Internal Revenue Code (“Code”).<sup>9</sup> The proposed rule

<sup>5</sup> Pursuant to the DTC 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 7. DTC’s Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules. See Rule 27, *infra* note 7.

<sup>6</sup> Tax Event Announcements provides Participants with information-only announcements regarding taxable events that may give rise to information and/or withholding obligations which occur even in the absence of an actual distribution of dividend and interest payments (“Tax Events”). See Distributions Guide, *infra* note 7, at 14.

<sup>7</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (“DTC Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the DTC Corporate Actions Distributions Service Guide (“Distributions Guide”), available at <https://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Service-Guide-Distributions.pdf>.

<sup>8</sup> Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depository receipts, return of capital, dividend with option, stock splits, stock dividends, automatic dividend reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. See Distributions Guide, *supra* note 7, at 12.

<sup>9</sup> See Distributions Guide, *supra* note 7, at 14–15. See also Securities Exchange Act Release No. 81871 (October 13, 2017), 82 FR 48734 (October 19, 2017)

change would enhance Tax Event Announcements by adding a new type of Tax Event to be referred to as a “1042-S Classification,” as more fully described below.

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

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The proposed rule change would amend the Procedures<sup>10</sup> set forth in the Distributions Guide to accommodate Participants’ tax reporting and withholding obligations, by setting forth a proposed enhancement to DTC’s Procedure for the Tax Events Announcements feature (“Tax Event Announcements”) of DTC’s Distributions Service,<sup>11</sup> as described below.

##### (a) Announcements

The Distributions Service includes the announcement, collection, allocation and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC (“Announcements”). This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements (“Distribution

(SR-DTC-2017-018) and Securities Exchange Act Release No. 87729 (December 12, 2019), 84 FR 69424 (December 18, 2019) (SR-DTC-2019-011).

<sup>10</sup> Pursuant to the DTC Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 7. DTC’s Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules. See Rule 27, *supra* note 7.

<sup>11</sup> Tax Event Announcements provides Participants with information-only announcements regarding taxable events that may give rise to information and/or withholding obligations which occur even in the absence of an actual distribution of dividend and interest payments (“Tax Events”). See Distributions Guide, *supra* note 7, at 14.