

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 Because the terms of the Third Order now govern, the terms of the prior Orders are no longer in force, and the pending motions are moot.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.

[FR Doc. 2022-14983 Filed 7-13-22; 8:45 am]

BILLING CODE 8011-01-P

## 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.

Event”) <sup>12</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>13</sup> The proposed rule 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.

#### Proposed New Type of Tax Event Announcement for 1042–S Classifications

Pursuant to Rule 1.1446–4(b)(4) under the Code <sup>14</sup>, issuers of publicly traded partnerships <sup>15</sup> that are Eligible Securities,<sup>16</sup> starting with distributions on or after January 1, 2023, will be required to provide DTC’s nominee, Cede & Co., as registered holder of the Security,<sup>17</sup> with “qualified notices” that

<sup>12</sup> Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depositary 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>13</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) (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>14</sup> 26 CFR 1.1446–4(b)(4).

<sup>15</sup> 26 CFR 1.1446–4(b)(1) (providing definition of publicly traded partnership).

<sup>16</sup> Pursuant to Rule 5, Section 1 of the DTC Rules, an Eligible Security shall only be a Security accepted by DTC, in its sole discretion, as an Eligible Security. DTC shall accept a Security as an Eligible Security only (a) upon a determination by DTC that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledges when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as DTC may, in its sole discretion, determine from time to time. DTC Rules, Rule 5, *supra* note 7. See also DTC Operational Arrangements Necessary for Securities to Become and Remain Eligible for DTC Services (“OA”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>, at 6–9 (setting forth DTC eligibility requirements).

<sup>17</sup> DTC holds eligible securities on behalf of Participants and reflects the transfer of interests in those securities among Participants by computerized book-entry. Eligible securities deposited with DTC for book-entry transfer services are registered in the name of its nominee, Cede & Co. (“Cede”), a New York partnership. When the certificates are registered in the name of Cede, DTC acquires legal title to the securities and, when DTC credits interests in these securities to the securities accounts of Participants, those Participants acquire a beneficial interest in the securities. A Participant does not have a right to any particular security; each Participant has a proportionate interest in the fungible total inventory of the issue held by DTC. See DTC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (December 2021), available at [http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf), at 9.

classify a distribution into multiple components for tax withholding and Internal Revenue Service Form 1042–S <sup>18</sup> reporting purposes. For example, on a \$1.00 distribution, the qualified notice may state that \$0.60 is considered dividend income and \$0.40 is income effectively connected with the conduct of a trade or business in the United States. DTC would forward to Participants such qualified notices that it receives from issuers, as discussed below.

Meanwhile, other issuers may not be required to provide DTC with classification information for Form 1042–S reporting purposes. For example, a regulated investment company may classify a portion of a distribution as representing interest-related dividends or as a short-term capital gain dividend but would not be required to provide a “qualified notice” to DTC pursuant to Rule 1.1446–4(b)(4).<sup>19</sup> This classification information would not be reported to DTC on a “qualified notice” and currently could not be made available to Participants through the facilities of DTC. Rather, to obtain the information needed to fulfill any tax reporting obligations a Participant or its customer may have with regard to such classifications, DTC understands that Participants and their customers obtain the necessary information from the respective issuers’ websites or from 3rd party vendors. Based on discussions with issuers and Participants, DTC understands that having to obtain this information on an individual CUSIP-by-CUSIP basis from issuers’ websites or getting this information after the distribution from a vendor, may create inefficiencies for Participants and their customers that would be mitigated if such information were made available in a more centralized format.

To facilitate the distribution of this classification information in a centralized format to Participants holding such Securities at DTC, DTC proposes to create a new Tax Event “Sub Event Type” (*i.e.*, the “1042–S Classification”) with the various tax components that make up a distribution, as more fully described below. Subject to requirements described below, DTC would (i) receive 1042–S Classification information that issuers voluntarily provide to DTC for this purpose and (ii) distribute the information to Participants that hold the applicable

[www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf), at 9.

<sup>18</sup> See Form 1042–S, available at <https://www.irs.gov/pub/irs-pdf/f1042s.pdf>.

<sup>19</sup> See *supra* note 14.

securities. Information that issuers are required to provide to DTC pursuant to Rule 1.1446–4(b)(4) would also be included in the 1042–S Classification Sub Event Type.

#### Proposed Rule Change

Pursuant to the proposed rule change, the Distributions Guide would be revised to reflect the addition of “1042–S Classifications” as a “Sub Event Type” under the Tax Event Announcement feature. The new 1042–S Classification would include a template to facilitate an issuer’s transmission of the distribution information that the issuer wishes be made available to Participants through the facilities of DTC, broken down by applicable classifications corresponding to the applicable income codes for a Distribution Event.

The Distributions Guide would provide that an issuer that wishes to have such 1042–S Classifications made available to Participants through the facilities of DTC, would be required to utilize this template. However, issuers making payments subject to Rule 1.1446–4(b)(4) under the Internal Revenue Code may provide a “qualified notice” in lieu of the template. In addition, to promote timeliness and accuracy of issuer information, the Distributions Guide would provide that the breakdown of the classifications must be provided to DTC prior to the record date (“Record Date”) <sup>20</sup> and should not be subject to change. The Distributions Guide would also provide that by providing DTC with this template, the issuer certifies that the information provided in the template is not subject to change. However, the text would provide that DTC will accept and distribute updated information to Participants to the extent an issuer notifies DTC that the issuer entered an error in the applicable template or qualified notice provided by it to DTC and the issuer provides DTC with a corrected template or qualified notice, as applicable. In addition, the text would provide that DTC reserves the right not to accept classification information from issuers that do not abide by the requirements included in the Distributions Guide.

The proposed text would also state that each issuer and its affiliates, in the aggregate, may provide templates for up to, but no more than, 12 CUSIP numbers

<sup>20</sup> The Record Date is the date set by an issuer of a security by which an investor must own the security in order to be eligible to receive an upcoming distribution. See OA, *supra* note 16, at 26.

per month (“CUSIP Limit”).<sup>21</sup> The number of qualified notices provided by an issuer would not be included in the determination of the CUSIP Limit for that issuer or its affiliates, because it is mandatory under Rule 1.1446–4(b)(4)<sup>22</sup> for issuers to deliver such notices to DTC, as described above.

The text of the Distributions Guide also would be updated to clarify that “305(c) Deemed Dividends” and “871(m) Dividend Equivalent Amounts” are Sub Event Types.

In addition, text in the Distributions Guide that describes a “Cash Rate” field<sup>23</sup> that is included in a Tax Event Announcement would be expanded and clarified to describe the field’s contents for each Sub Event Type. In this regard, three items would be added below the description of Cash Rate as follows:

- field used for the amount of the deemed distribution for sub event type of 305(c) Deemed Dividends
- field used to provide the dividend equivalent amount for sub event type of 871(m) Dividend Equivalent Amount
- Events with 1042–S Classifications will include multiple cash rates with each cash rate having a corresponding income code per the instructions for Form 1042–S, as applicable.”

Finally, DTC would add text to the Distributions Guide as it relates to Tax Event Announcements to clarify that DTC does not independently verify the accuracy and/or completeness of Tax Event Announcement information it receives from issuers and agents, and that it is the sole responsibility of each Participant to ensure the accuracy and completeness of Tax Event Announcement information that it uses for any purpose, including but not limited to tax withholding and reporting.

#### Applicability of Tax Event Fee

As with DTC’s distribution of other Tax Event information to Participants, the distribution of 1042–S Classification information would be subject to the

<sup>21</sup> Depending on demand for the transmittal of 1042–S Classifications through the facilities of DTC, and general availability of processing resources at DTC, DTC may submit a future proposed rule change to amend the Distributions Guide to increase the CUSIP Limit. Given this limitation, the text would note that to the extent 1042–S Classification information applicable to a Participant’s holdings is not made available through Tax Events Announcements, the Participant should obtain such information from the issuer outside of DTC.

<sup>22</sup> See *supra* note 14.

<sup>23</sup> The Cash Rate field is used to display the amount of a deemed distribution or dividend equivalent payment. See Distributions Guide, *supra* note 7, at 15.

“Tax Event Announcement Fee” of \$12 per Announcement, as set forth in the Fee Guide.<sup>24</sup>

#### 2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)<sup>25</sup> of the Act.

Section 17A(b)(3)(F) of the Act requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>26</sup> As described above, the proposed rule change would update the Distributions Guide to enhance the Distributions Service by including the distribution of Announcements for Tax Events for Securities subject to “1042–S Classification” requirements to Participants and make certain related clarifying changes described above. By providing for the distribution of such information, the proposed rule change would help facilitate Participants’ compliance with federal tax withholding obligations for Eligible Securities subject to Tax Events that are on Deposit at DTC and making use of DTC’s book-entry transfer and settlement services. This would further facilitate Participants’ ability to continue to maintain Eligible Securities subject to 1042–S Classifications on Deposit at DTC and make use of DTC’s book-entry transfer and settlement services with respect to those Securities, in accordance with DTC Rules requirements relating to the use of DTC services by Participants.<sup>27</sup> Therefore, by facilitating Participant’s ability to continue to use DTC’s book-entry transfer and settlement services at DTC with respect to Eligible Securities that are subject to 1042–S Classifications, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

#### (B) Clearing Agency’s Statement on Burden on Competition

DTC believes that the proposed rule change to amend the Distributions

<sup>24</sup> See DTC Fee Guide, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/2022-DTC-Fee-Schedule-FINAL>, at 15.

<sup>25</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>26</sup> *Id.*

<sup>27</sup> In connection with their use of DTC’s services, Participants must comply with all applicable laws, including, but not limited to, all applicable laws relating to taxation. See DTC Rule 2, Section 8, *supra* note 7.

Guide to update fields used by DTC to report Tax Events, as described above, could impose a burden on competition by subjecting Participants that hold Eligible Securities that may be subject to 1042–S Classifications to additional fees which may negatively affect such Participant’s operating costs.

DTC believes any burden on competition imposed by the proposed rule changes would not be significant, and to the extent the proposed rule change may impose a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Act.<sup>28</sup>

DTC has discussed the proposal with Participants that hold Eligible Securities that may be subject to 1042–S Classifications, and issuers of those Securities, and DTC understands that Participants and their customers obtain the necessary information from the respective issuers’ websites or from 3rd party vendors. DTC understands that having to obtain this information on an individual CUSIP-by-CUSIP basis from issuers’ websites or getting this information after the distribution from a vendor, creates inefficiencies and timing issues for Participants and their customers relating to the piecemeal nature of the retrieval of such information, that would be mitigated if such information were made available in a more centralized format through DTC.

DTC believes that any burden on competition imposed by the proposal would be necessary because the proposed rule change would provide Participants with a centralized means to timely (in relation to Record Date) receive 1042–S Classification announcement information needed to facilitate their compliance with tax withholding and reporting obligations relating to payments on Eligible Securities for which issuers provide 1042–S Classification information to DTC, as described above.

DTC believes that any burden on competition imposed by the proposal would be appropriate because the fees are intended to provide revenue that is close to the costs to DTC of building and providing the services described above. DTC believes the Tax Event Announcements feature has a positive effect on competition among Participants because the service allows Participants to receive applicable tax information in a more efficient manner, thereby reducing the resources they would need to allocate to obtain the applicable tax-related information on a CUSIP-by-CUSIP basis through issuers

<sup>28</sup> 15 U.S.C. 78q–1(b)(3)(I).

and 3rd party vendors. The service also provides issuers with a more efficient method of providing Tax Event information to parties that need to see such information in order to facilitate timely tax withholding and reporting. DTC believes this enhances competition among Participants by allowing parties to receive such information more quickly and in a more streamlined manner. Based on experiences with existing services provided through the Tax Event Announcements feature and discussions with Participants, DTC believes that despite the Tax Event Fee that would be charged to Participants holding affected securities for the distribution of 1042-S Classification information, the distribution of such information through the facilities of DTC would provide benefits to Participants in terms of processing and timing efficiencies that should mitigate the impact of any such fees charged. As such, DTC believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.

DTC does not believe that the aspect of the proposed rule change to make certain clarifying changes to the Distributions Guide, as described above, would have an impact on competition.<sup>29</sup> Having a clear and accurate Distributions Guide would facilitate Participants' understanding of the Distributions Guide and provide Participants with increased predictability and certainty regarding their obligations regarding DTC Tax Event Announcement feature. Therefore, DTC believes that the proposed rule change to make clarifying changes to the Rules and the Settlement Guide would not have an impact on competition.<sup>30</sup>

DTC does not believe that the aspect of the proposed rule change to establish the CUSIP Limit for an issuer and its affiliates to be able to submit up to 12 templates per month, as described above, would have any impact, or impose any burden on competition, because issuers and their affiliates would be subject to the same CUSIP Limit for submission of templates per month, and all Participants holding the applicable issues would be able to receive the same aggregate amount of notices for any issuer and its affiliates as all other Participants holding the same issues. However, to the extent the proposed rule change could cause a burden because certain issuers may reach the CUSIP Limit, DTC does not

believe the burden would have a significant impact on competition because issuers that reach the CUSIP Limit in a given month would be able to continue to make 1042-S Classification information available outside DTC, and Participants would be able to retrieve the information, as they do today. To the extent the proposed rule change could cause a burden because certain issuers may have issuances that are not subject to the CUSIP Limit because distributions for those issues are subject to the requirements of Rule 1.1446-4(b)(4),<sup>31</sup> and therefore may be able to submit qualified notices for more than 12 CUSIPS per month, as described above, DTC does not believe burden would have a significant impact on competition because DTC understands from conversations with issuers, and its own observations of activity of issuers that may be subject to Rule 1.1446-4(b)(4),<sup>32</sup> that such issuers and their affiliates would likely supply an amount of qualified notices, if any, that is well below the amount of the CUSIP Limit that would be established for issuers that would otherwise submit templates that are subject to the CUSIP Limit. Also, due to their status as publicly traded partnerships that are subject to Rule 1.1446-4(b)(4),<sup>33</sup> DTC understands that such issuers and their affiliates would not have a need to submit templates that could cause them in the aggregate to issue notices for 1042-Classification information that would exceed 12 CUSIPS per month. DTC also believes any burden on competition imposed by this exception of the CUSIP Limit would be necessary and appropriate in furtherance of the purposes of the Act because, as indicated above, such issuers are under a regulatory obligation to provide qualified notices to DTC regardless of the amount of issuances they may have that are subject to such requirements.

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

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

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the

Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>34</sup> of the Act and paragraph (f)<sup>35</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2022-008 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-DTC-2022-008. This file number should be included on the

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See *supra* note 14.

<sup>32</sup> See *supra* note 14.

<sup>33</sup> See *supra* note 14.

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-2022-008 and should be submitted on or before August 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

[FR Doc. 2022-15002 Filed 7-13-22; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95234]

### 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, From Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail

July 8, 2022.

#### I. Introduction

In July 2012, the Securities and Exchange Commission (the

"Commission" or the "SEC") adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (the "Participants")<sup>1</sup> to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the "CAT").<sup>2</sup> The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities. On November 15, 2016, the Commission approved the national market system plan required by Rule 613 (the "CAT NMS Plan").<sup>3</sup>

The Commission recognizes that the Participants have expended, and continue to expend, substantial resources and effort towards the development and implementation of the CAT. To provide the Participants with more time to meet certain requirements of the CAT NMS Plan and thereby allow the Participants to prioritize and focus resources on meeting other implementation goals, the Commission issued two exemptive orders on December 16, 2020 (collectively, the

<sup>1</sup> The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., 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, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

<sup>2</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release").

<sup>3</sup> Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696, (Nov. 23, 2016) ("CAT NMS Plan Approval Order"). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943-85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (the "Company"). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on Aug. 29, 2019, which they designated as effective on filing. Under the amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC serves as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

"prior Orders"). In the first order, in response to a request from the Participants, the Commission granted temporary conditional relief from certain performance requirements related to the online targeted query tool ("OTQT").<sup>4</sup> The second order granted temporary conditional relief from the following requirements: (1) requirements for lifecycle linkages timeframes; (2) requirements for re-processing of corrected data received after T+5; (3) linkage requirements for Securities Information Processor data ("SIP Data"); (4) reporting requirements for port-level settings; (5) requirements for lifecycle linkages between customer orders and "representative" orders; and (6) requirements for Participant reporting of rejected orders.<sup>5</sup> Although the Participants did not request the relief granted in the Second Order, the Commission believed that granting such relief was necessary in order to "provide Participants the time to develop the necessary technological, system or procedural changes to meet the CAT NMS Plan requirements" at stake.<sup>6</sup>

On February 14, 2021, a subset of the Participants filed motions requesting that the Commission stay the December 2020 orders, based on their concern that portions of the orders "interpret and apply the Plan in ways that will produce unintended adverse consequences, present implementation challenges, or both."<sup>7</sup> Corresponding petitions for judicial review were also filed with the D.C. Circuit by a smaller subset of the Participants.<sup>8</sup> In their motions to stay and supporting materials, the Participants urged the Commission to consider their "arguments and supporting evidence and to reevaluate whether the Order[s] [were] appropriate in light of that

<sup>4</sup> See Securities Exchange Act Release No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (the "First Order"); see also Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Dec. 1, 2020, available at <https://catnmsplan.com/sites/default/files/2020-12/12.01.20-CAT-Exemption-Request-OTQT.pdf> ("Participant Letter").

<sup>5</sup> See Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020) (the "Second Order").

<sup>6</sup> *Id.* at 83634.

<sup>7</sup> See Motion for Partial Stay of Order 34-90689, at 2 ("First Motion"); Motion for Partial Stay of Order 34-90688, at 2 ("Second Motion"). Financial Industry Regulatory Authority, Inc. and Long-Term Stock Exchange, Inc. did not join these motions.

<sup>8</sup> See Petition for Review, USCA Case No. 21-1065; Petition for Review, USCA Case No. 21-1066. Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC did not join these petitions.

<sup>36</sup> 17 CFR 200.30-3(a)(12).