

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change to provide an additional risk protection imposes any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that adding an optional risk protection benefits all Members on the Exchange that use a FOI connection as any Member with a FOI connection can elect to use the risk protection described in the proposed rule.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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. Please include File Number SR-EMERALD-2022-35.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2022-35. This file number should be included on the 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 the Exchange. 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-EMERALD-2022-35, and

should be submitted on or before January 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96542; File No. SR-NASDAQ-2022-076]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 4754 Regarding Close Eligible Interest

December 20, 2022.

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 December 12, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rule 4754. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 4, Rule 4754³ as it relates to Close Eligible Interest.⁴ Specifically, the Exchange proposes to amend (a)(1) of Rule 4754 to specify that: (1) the System will delay processing any full cancellation request⁵ for Close Eligible Interest made during the Nasdaq Closing Cross until such time as the Nasdaq Closing Cross concludes, except for securities in a halt or pause; and (2) during a halt or pause, the System will process any cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross.

The Nasdaq Closing Cross is a transparent auction process that determines a single price for the close. Members can submit Limit on Close ("LOC") Orders,⁶ Market on Close ("MOC") Orders,⁷ and Imbalance Only ("IO") Orders⁸ that are available to participate in the Nasdaq Closing Cross along with Close Eligible Interest. LOC Orders, MOC Orders, and IO Orders cannot be cancelled or modified at or after 3:58 p.m. ET (or at or after two minutes prior to the early closing time on a day when Nasdaq closes early).⁹ In contrast, currently, Close Eligible Interest on the continuous book is eligible for cancellation during the Nasdaq Closing Cross.

³ Hereinafter, references to the Rule 4000 Series shall mean the Rule Series set forth in Equity 4 of the Exchange's Rulebook.

⁴ "Close Eligible Interest" means any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC. See Rule 4754(a)(1).

⁵ Partial cancellation requests for Close Eligible Interest would continue to be processed during the Nasdaq Closing Cross.

⁶ A "Limit On Close Order" or "LOC Order" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross or the LULD Closing Cross, and only if the price determined by the Nasdaq Closing Cross or the LULD Closing Cross is equal to or better than the price at which the LOC Order was entered. See Rule 4702(b)(12).

⁷ A "Market On Close Order" or "MOC Order" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. See Rule 4702(b)(11).

⁸ An "Imbalance Only Order" or "IO Order" is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. See Rule 4702(b)(13).

⁹ See Rule 4702(b)(11)–(13).

At 4:00 p.m. ET (or at the early closing time on a day when Nasdaq closes early), the Exchange executes the Nasdaq Closing Cross at a price determined in accordance with Rule 4754(b)(2). The cross in each security is performed sequentially in a random order each day and in total takes approximately 700 milliseconds on average. Therefore, the time between the commencement and conclusion of the Nasdaq Closing Cross for a particular security can range from less than one millisecond up to 700 milliseconds or greater. During this gap, currently, cancellations of Close Eligible Interest on the continuous book can continue to take place, which can affect the closing price of a security.

In addition to impacting the closing price of the security, allowing cancellations of Close Eligible Interest during the Nasdaq Closing Cross has another negative impact in that it causes divergence between the closing price and the Order Imbalance Indicator. The Order Imbalance Indicator disseminates information about MOC Orders, LOC Orders, IO Orders, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. The Exchange disseminates an Order Imbalance Indicator every second until market close beginning at 3:55 p.m. ET (or five minutes prior to the early closing time on a day when Nasdaq closes early). The Order Imbalance Indicator is intended to facilitate participation in the close. Therefore, full cancellations of Close Eligible Interest during the Nasdaq Closing Cross that cause divergences between the Order Imbalance Indicator and the closing price are undesirable.¹⁰

The proposed rule change to delay processing of any full cancellation request for Close Eligible Interest made during the Nasdaq Closing Cross until the Nasdaq Closing Cross concludes (except for securities in a halt or pause) would better align with the practice to not allow cancellations of other orders available to participate in the Nasdaq Closing Cross (*i.e.*, LOC Orders, MOC Orders, and IO Orders) during the Nasdaq Closing Cross. In addition, this change would provide for a more stable closing price that is more in line with the Order Imbalance Indicator and participants' expectations. The

¹⁰ Although partial cancellations of Close Eligible Interest during the Nasdaq Closing Cross could also impact the closing price of the security and cause a divergence between the closing price and the Order Imbalance Indicator, in practice, partial cancellations of Close Eligible Interest during the Nasdaq Closing Cross occur less frequently and have less impact on the closing price than full cancellations.

proposed rule change would also clarify that, during a halt or pause, the System would process any cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross, consistent with current practice.

Implementation Date

The Exchange will issue an Equities Trader Alert to provide notification of the change and relevant date of implementation prior to introducing the new functionality.¹¹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposal will promote just and equitable principles of trade because it will create a more standardized process that does not allow for full cancellation of Close Eligible Interest during the Nasdaq Closing Cross. As explained above, the Exchange currently allows for cancellation of Close Eligible Interest during the Nasdaq Closing Cross yet does not allow for full or partial cancellation of other orders during the Nasdaq Closing Cross. The Exchange believes that the proposed change to no longer allow for full cancellation of Close Eligible Interest during the Nasdaq Closing Cross (unless the securities are in a halt or pause) will benefit investors by providing a more consistent experience for members and investors, and reducing any potential confusion regarding Nasdaq's closing processes.

Furthermore, the current process of allowing for cancellations of Close Eligible Interest during the Nasdaq Closing Cross can impact the closing price of the security and cause divergence from the Order Imbalance Indicator. The Exchange believes that delaying full cancellations until the end of the Nasdaq Closing Cross (unless the securities are in a halt or pause) would facilitate fair and orderly pricing at the Nasdaq Closing Cross, consistent with participants' expectations, thereby removing impediments to and

¹¹ The proposed functionality herein was recently produced and taken out of production, pending filing with the Commission.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

perfecting the mechanism of a free and open market and a national market system. The Exchange's proposal to clarify that, during a halt or pause, the System will process any cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross, will provide increased clarity and help limit any potential confusion in the future, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to create a more standardized process and improve the Nasdaq Closing Cross process by delaying the processing of any full cancellation request for Close Eligible Interest made for any securities not halted or paused during the Nasdaq Closing Cross until such time as the Nasdaq Closing Cross concludes. The change would apply to all full cancellation requests in Close Eligible Interest (except for securities in a halt or pause) and would benefit participants by providing for a more stable closing price that is more in line with the Order Imbalance Indicator, consistent with expectations. The proposed rule change would also clarify that, during a halt or pause, the System will process any cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross, benefiting participants by providing increased clarity and helping to limit any potential confusion in the future.

The Exchange does not believe that the proposed change to (a) delay the processing of any full cancellation request for Close Eligible Interest made during the Nasdaq Closing Cross until the Nasdaq Closing Cross ends (except for securities in a halt or pause) and (b) clarify that, during a halt or pause, the System will process any cancellation request for Close Eligible Interest made for such halted or paused security during the Nasdaq Closing Cross, will have any significant impact on competition. The Exchange operates in a highly competitive market in which market participants can easily direct their Orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review and consider adjusting the services it offers and the requirements it imposes to remain competitive with other venues.

Therefore, the Exchange believes that the proposed change in interpretation reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the proposal may become operative immediately upon filing. The proposed rule will permit Nasdaq to delay processing full cancellation requests for Close Eligible Interest during the Nasdaq Closing Cross until conclusion of the Nasdaq Closing Cross (except for securities in a halt or pause). Nasdaq represents that the proposal will help prevent divergence from the Order Imbalance Indicator and facilitate fair and orderly pricing at the Nasdaq Closing Cross, consistent with participants' expectations. The Commission thus believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the

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. Please include File Number SR-NASDAQ-2022-076 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NASDAQ-2022-076. This file number should be included on the 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 the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–076, and should be submitted on or before January 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96543; File No. SR–DTC–2022–013]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Reorganizations Guide and the Fee Guide

December 20, 2022.

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 December 15, 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 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 purpose of the proposed rule change is to amend the Reorganizations Guide to (i) provide Participants with the option to submit instructions for the withdrawal of an earlier acceptance of an Automated Tender Offer Program (“ATOP”)–eligible⁵ offer (each, an “ATOP Offer”) via Application Program Interface (“API”) and ISO 20022 real-

time messaging (collectively, “Automated Instruction Messaging”), (ii) postpone the retirement of DTC’s legacy computer-to-computer facility (“CCF”) files for corporate actions entitlements and allocations (“CCF Entitlements and Allocations Files”)⁶ to July 1, 2024, and (iii) make technical and ministerial changes. In addition, DTC is proposing to amend the Fee Guide to continue to charge Participants that consume CCF Entitlements and Allocations Files after December 31, 2022 the CCF File Fee of \$50,000, as described in greater detail below.⁷

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 purpose of the proposed rule change is to amend the Reorganizations Guide to (i) provide Participants with the option to submit instructions for the withdrawal of an earlier acceptance of an Automated Tender Offer Program (“ATOP”)–eligible⁸ offer (each, an “ATOP Offer”) via Application Program Interface (“API”) and ISO 20022 real-time messaging (collectively, “Automated Instruction Messaging”), (ii) postpone the retirement of DTC’s legacy computer-to-computer facility

(“CCF”) files for corporate actions entitlements and allocations (“CCF Entitlements and Allocations Files”)⁹ to July 1, 2024, and (iii) make technical and ministerial changes. In addition, DTC is proposing to amend the Fee Guide to continue to charge Participants that consume CCF Entitlements and Allocations Files after December 31, 2022 the CCF File Fee of \$50,000, as discussed more fully below.

(i) Automated Instruction Messaging A. Background

On July 7, 2021, DTC filed a rule filing¹⁰ (the “ATOP Automated Messaging Filing”) that provided Participants with the option to use Automated Instruction Messaging to submit acceptance, protect, and cover of protect instructions (each, an “Acceptance Instruction”) for ATOP Offers instead of submitting those instructions through the Participant Tender Offer Program (“PTOP”) or Voluntary Tenders and Exchanges functions through PTS and PBS, respectively.¹¹

As described in the ATOP Automated Messaging Filing, the submission of voluntary reorganizations instructions through PTS and PBS is a nonautomated key-entry process, and there are certain potential risks and costs associated with manual processing, particularly in connection with voluntary reorganizations instructions. Nonautomated input may increase the likelihood of errors, which can result in rejected instructions or erroneous

⁹ There are three types of CCF files representing the corporate actions lifecycle: corporate actions announcements (“CCF Announcements Files”); the CCF Entitlements and Allocations Files; and corporate actions instructions from Participants through CCF files (“CCF Corporate Actions Instructions Files”). All CCF Announcement Files were retired as of December 31, 2018. See Securities Exchange Act Release No. 79746 (January 5, 2017), 82 FR 3372 (January 11, 2017) (SR–DTC–2016–014).

¹⁰ See Securities Exchange Act Release No. 92339 (July 7, 2021), 86 FR 36810 (July 13, 2021) (SR–DTC–2021–010). In addition, DTC subsequently filed a rule filing that similarly provided Participants with the option to use Automated Instruction Messaging to submit acceptance, protect, and cover of protect instructions for Automated Subscription Offer Program and APUT offers. See Securities Exchange Act Release No. 95197 (July 5, 2022), 87 FR 41153 (July 11, 2022) (SR–DTC–2022–007).

¹¹ PTS (Participant Terminal System) and PBS (Participant Browser System) are user interfaces for DTC settlement and asset services functions. PTS is mainframe-based, and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent. PTOp and Voluntary Tenders and Exchanges are functions of PTS and PBS, respectively, that are currently used by Participants to submit instructions, submit protects, submit cover of protects, submit cover of protects on behalf of another Participant, and submit withdrawals on various voluntary reorganization events.

¹⁷ 17 CFR 200.30–3(a)(12), (59).

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 ATOP is a DTC program through which Participant instructions are transmitted to the agent for an ATOP offer and through which a participant can tender its securities to the agent’s account at DTC.

⁶ There are three types of CCF files representing the corporate actions lifecycle: corporate actions announcements (“CCF Announcements Files”); the CCF Entitlements and Allocations Files; and corporate actions instructions from Participants through CCF files (“CCF Corporate Actions Instructions Files”). All CCF Announcement Files were retired as of December 31, 2018. See Securities Exchange Act Release No. 79746 (January 5, 2017), 82 FR 3372 (January 11, 2017) (SR–DTC–2016–014).

⁷ Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), the Guide to the DTC Fee Schedule (“Fee Guide”), and the Reorganizations Service Guide (the “Reorganizations Guide”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁸ ATOP is a DTC program through which Participant instructions are transmitted to the agent for an ATOP offer and through which a participant can tender its securities to the agent’s account at DTC.