

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76870; File No. SR-DTC-2016-001]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the DTC Custody Service Guide To Codify Its Current Procedures for Assigning a Value to Custody Service Securities for Shipping Insurance Valuation Purposes

January 11, 2016.

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 January 4, 2016, 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>4</sup> The proposed rule change was effective upon filing with the Commission. 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 would update DTC’s Custody Service Guide (“Custody Guide”) to codify DTC’s current procedures for assigning a value to securities held in DTC’s Custody Service for shipping insurance valuation purposes, as more fully described below.<sup>5</sup> The text of the proposed rule change to update the Custody Guide is set forth in Section II(A)(1) below.

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

In its filing with the Commission, DTC 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. DTC 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 filing submitted by DTC is to update the text of the Custody Guide to codify its current procedures for assigning a value to securities held in DTC’s Custody Service for shipping insurance valuation purposes only, as described below.

The Custody Service enables Participants that hold physical securities that are not presently eligible for book-entry services at DTC to deposit those securities with DTC for safekeeping and certain limited depository services.<sup>6</sup> Generally, DTC does not price securities held in DTC’s Custody Service.<sup>7</sup> However, DTC applies pricing when instructed by a Participant to ship a Custody Service security from DTC to the Participant or to the Participant’s customers or agents, to ensure that its applicable insurance coverage limit is not exceeded. In response to internal review and to be more transparent with respect to its current procedures for assigning a value to securities held in its Custody Service, DTC is proposing to codify its current practice with respect to assigning such values. Following is an excerpt from the applicable section in the Custody Guide, text which is in bold and underlined indicates additions to the Custody Guide pursuant to the proposed rule change:

#### Insurance and Replacement of Certificates

DTC carries insurance relating to the replacement of certificates lost in transit or on its premises. Based on DTC’s insurance coverage, it is recommended that the depositing Participant review its holdings and, when possible, submit these high value certificates for breakdowns so that the dollar value remains within DTC’s insurance limits.

Prior to shipping high value certificates, when possible, arrangements are made with transfer agents or issuers to cancel these

certificates before shipment. DTC limits its liability for loss with respect to high-value certificates to the Limit, as defined below; however DTC’s liability for loss is not limited to the Limit to the extent that such loss is caused directly by DTC’s gross negligence or willful misconduct; provided that in no event shall DTC be liable for any special, consequential, exemplary, incidental, or punitive damages in this regard. The “Limit” is defined as DTC’s insurance coverage at the time of the loss in question, provided that with respect to a loss during shipment, the Limit is the lesser of DTC’s insurance coverage at the time of the loss in question and \$100 million. Participants may request from time to time information regarding the Limit.

DTC has internal procedures to control, safeguard and limit the risk of potential loss of a high value certificate. For example, DTC staff will work with the depositing Participant’s staff to breakdown the deposit into smaller workable denominations so that they fall within a more acceptable range of value. In addition, where possible, arrangements will be made with transfer agents/issuers to cancel these certificates prior to their shipment.

#### Shipping Insurance Valuation

*Securities held by Participants through the Custody Service are segregated from DTC’s fungible mass held by Cede & Co., are not eligible for book-entry services, and cannot be used as collateral for DTC transactions.*

*DTC does not generally price securities held in the Custody Service. However, when DTC is instructed by a Participant to ship securities held in the Custody Service, DTC assigns a price to the securities being shipped to ensure that DTC’s Limit is not exceeded when shipping certificates. If a security being shipped is also a full depository eligible security, DTC will assign the full depository eligible security’s previous day’s closing price, to ensure that its Limit is not being exceeded. When DTC does not have a price for a Custody Service security based on the price of a full depository eligible security, and DTC is instructed by its Participant to ship the security, DTC will assign a price as follows:*

- *DTC will use a default price of \$1.00 per share for equity issues and face value for debt issues (each, “Default Pricing”).*
- *Where Default Pricing would otherwise apply, Participants may instead provide DTC with a price for DTC to assign to the security for shipping insurance valuation purposes. DTC’s assignment of that price for*

<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)(1).

<sup>5</sup> Each term not otherwise defined herein has its respective meaning as set forth in the DTC Rules, By-laws, and Organization Certificate (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the DTC Custody Service Guide, available at <http://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Custody.pdf>.

<sup>6</sup> See Custody Guide at pp. 5 and 12 for the types of securities and assets eligible for deposit to the Custody Service, *supra* note 5. DTC holds certain non-standard assets in its Custody Service, however, those are not the subject of this proposed rule change.

<sup>7</sup> DTC typically only prices securities that are eligible for book-entry services.

shipping insurance valuation purposes shall not be deemed as an agreement to the price or valuation of the security, and in no event shall DTC be bound or required to use such price for this or any other purpose.

Default Pricing and Participant-provided pricing are subject to DTC's internal procedures to control, safeguard and limit the risk of potential loss of a high value certificate, as set forth above. Participants should consider use of their own insurance for high value certificates in excess of the Limit or in appropriate circumstances they deem to be appropriate, in their discretion.

#### Implementation Date

The proposed rule change would become effective immediately.

#### 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed, *inter alia*, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>8</sup> By codifying DTC's current Default Pricing practice and the option for Participants to provide their own pricing, the proposed rule change provides transparency to DTC's shipping insurance valuation procedure for Custody Service securities, facilitating Participants' consideration of their insurance options for such securities. Therefore, DTC believes that the proposed rule change would aid in assuring the safeguarding of Custody Service securities and is consistent with the requirements of the Act, in particular, Section 17A(b)(3)(F) of the Act, cited above.

Rule 17Ad-22(d)(15) promulgated under the Act requires, *inter alia*, that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.<sup>9</sup> DTC believes the proposed rule change is consistent with this provision because codifying DTC's current practice would provide transparency with respect to DTC's procedures for assigning a value to physical securities held in the Custody Service for shipping insurance valuation purposes, and therefore is reasonably designed to identify and manage risks

associated with shipments of Custody Service securities.

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

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because it merely codifies DTC's current practice with respect to shipping insurance valuation of Custody Service securities and DTC's identification and management of the risks therein and does not otherwise impact users of DTC's services.

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

Written comments relating to the 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>11</sup> 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-2016-001 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-DTC-2016-001. 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 Web site (<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 Web site 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 Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2016-001 and should be submitted on or before February 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Robert W. Errett,  
Deputy Secretary.

[FR Doc. 2016-00646 Filed 1-14-16; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76867; File No. SR-Phlx-2015-115]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VIII of the Pricing Schedule

January 11, 2016.

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 December 29, 2015, NASDAQ OMX PHLX LLC

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

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

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

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 CFR 240.17Ad-22(d)(15).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).