

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 the Exchange. 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–NYSEMKT–2016–90 and should be submitted on or before November 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79224; File No. SR–DTC–2016–802]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of and Extension of Review Period of Advance Notice Relating to Processing of Transactions in Money Market Instruments

November 3, 2016.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> notice is hereby given that on September 23, 2016, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice SR–DTC–2016–802 (“Advance Notice”) as described in

Items I and II below, which Items have been prepared primarily by DTC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice, for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.<sup>4</sup>

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of modifications to (i) the DTC Rules, By-laws and Organization Certificate (“Rules”),<sup>5</sup> (ii) the DTC Settlement Service Guide (“Settlement Guide”),<sup>6</sup> and (iii) the DTC Distributions Service Guide (“Distributions Guide”),<sup>7</sup> annexed hereto as Exhibit 5 (“Proposal”). The Proposal would modify the Rules, Settlement Guide, and Distributions Guide to establish a change in the processing of transactions in money market instruments (“MMI”) that are processed in DTC's MMI Program (“MMI Securities”).<sup>8</sup> The Proposal would affect DTC's processing of issuances of MMI Securities (“Issuances”) by issuers of MMI Securities (“Issuers”) as well as Maturity Presentments, Income Presentments, Principal Presentments, and Reorganization Presentments (collectively, “Presentments”) (Issuances and Presentments, collectively “MMI Obligations”). The Proposal would amend the Rules and Settlement Guide to (i) eliminate intraday reversals of processed but not yet settled MMI Obligations resulting from an Issuing and Paying Agent (“IPA”)

<sup>3</sup> On September 23, 2016, DTC filed this Advance Notice as a proposed rule change (SR–DTC–2016–008) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4, 17 CFR 240.19b–4. Securities Exchange Act Release No. 34–79046 (October 5, 2016), 81 FR 70200 (October 11, 2016) (SR–DTC–2016–008).

<sup>4</sup> See 12 U.S.C. 5465(e)(1)(H).

<sup>5</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>6</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

<sup>7</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Distributions%20Service%20Guide%20FINAL%20November%202014.pdf>.

<sup>8</sup> Eligibility for inclusion in the MMI Program covers MMI, which are short-term debt Securities that generally mature 1 to 270 days from their original issuance date. MMI include, but are not limited to, commercial paper, banker's acceptances and short-term bank notes and are issued by financial institutions, large corporations, or state and local governments. Most MMI trade in large denominations (typically, \$250,000 to \$50 million) and are purchased by institutional investors. Eligibility for inclusion in the MMI Program also covers medium term notes that mature over a longer term.

notifying DTC of its refusal to pay (“RTP”) for Presentments of an Issuer's maturing MMI Securities for a designated Acronym;<sup>9</sup> (ii) eliminate the Largest Provisional Net Credit (“LPNC”) risk management control; (iii) provide that the IPA must acknowledge its funding obligations for Presentments and that Receivers of Issuances must approve their receipt of those Issuances in DTC's Receiver Authorized Delivery (“RAD”) system before DTC would process MMI Presentments; (iv) implement an enhanced process to test risk management controls under certain conditions with respect to an Acronym (to be referred to as MMI Optimization, as defined below); (v) make updates and revisions to the Settlement Processing Schedule in the Settlement Guide (“Processing Schedule”), as described below, (vi) eliminate the “receive versus payment NA” control (“RVPNA”), as described below, and (vii) make other technical and clarifying changes to the text, as more fully described below. In addition, the Proposal would amend the Distributions Guide to make changes to text relating to the processing of Income Presentments so that it is consistent with the changes proposed in the Settlement Guide in that regard, as more fully described below.<sup>10</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. 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 and B below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

DTC has not solicited and does not intend to solicit comments regarding the Proposal. DTC has not received any unsolicited written comments from

<sup>9</sup> Rule 1, *supra* note 5. MMI of an Issuer are designated by DTC using unique four-character identifiers employed by DTC referred to as Acronyms. An MMI Issuer can have multiple Acronyms representing its Securities. MMI Transactions and other functions relating to MMI (e.g., confirmations and RTP) instructed and/or performed by IPAs, Participants and/or DTC as described herein are performed on an “Acronym-by-Acronym” basis.

<sup>10</sup> Capitalized terms not otherwise defined herein have the respective meanings set forth in the Rules, the Settlement Guide, and the Distributions Guide.

<sup>34</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b–4(n)(1)(i).

interested parties. To the extent DTC receives written comments on the Proposal, DTC will forward such comments to the Commission. DTC has conducted industry outreach with respect to the proposal including discussion with industry associations and IPAs.

*(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing and Supervision Act*

Nature of the Proposed Change

DTC is proposing to (i) mitigate risk to DTC and Participants relating to intra-day reversals of processed MMI Obligations in the event of an IPA's RTP with respect to maturing obligations ("Maturing Obligations")<sup>11</sup> for an Acronym and/or income payments<sup>12</sup> relating to Presentments for an Acronym, and (ii) reduce blockage for the completion of MMI Obligations by eliminating the LPNC control, as more fully described below.

Background

When an Issuer issues MMI Securities at DTC, the IPA for that Issuer sends issuance instructions to DTC electronically, which results in crediting the applicable MMI Securities to the DTC Account of the IPA. These MMI Securities are then Delivered to the Accounts of applicable Participants that are purchasing the Issuance in accordance with their purchase amounts. These purchasing Participants typically include broker/dealers or banks, acting as custodians for institutional investors. The IPA Delivery instructions may be free of payment or, most often, Delivery Versus Payment. Deliveries of MMI are processed pursuant to the same Rules and the applicable Procedures<sup>13</sup> set forth in the Settlement Guide, as are Deliveries generally, whether free or versus payment. Delivery Versus Payment transactions are subject to risk management controls of the IPA and Receiving Participants for Net Debit Cap and Collateral Monitor sufficiency,<sup>14</sup>

<sup>11</sup> A Maturing Obligation is a payment owed in settlement by the IPA to the Participant on whose behalf DTC presents the matured MMI Securities.

<sup>12</sup> Principal and income for an Acronym are distributed by an IPA according to a cycle determined by the terms of the issue (e.g., monthly, quarterly, and semi-annually). Such distributions may be for interest only, principal only, or interest and principal.

<sup>13</sup> Pursuant to the Rules, the term "Procedures" means the Procedures, service guides, and regulations of the Corporation adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 5, at 15. The Procedures applicable to MMI settlement processing are set forth in the Settlement Guide. *Supra* note 6.

<sup>14</sup> Delivery Versus Payment transfers at DTC are structured so that the completion of Delivery of

and payment for Delivery Versus Payment transactions is due from the receiving Participants through DTC's net settlement process. To the extent, if any, that the Participant has a Net Debit Balance in its Settlement Account at end-of-day, payment of that amount is due to DTC.

When MMI Securities mature, the Maturity Presentment process is initiated automatically by DTC on maturity date, starting at approximately 6:00 a.m. Eastern Time ("ET"), for Delivery of matured MMI Securities from the applicable DTC Participants' Accounts to the applicable IPA Accounts. This automated process electronically sweeps all maturing positions of MMI Securities from Participant Accounts and debits the Settlement Account of the applicable IPA for the amount of the Maturing Obligations for Presentments for the Acronym and credits the Settlement Accounts of the Deliverers. In accordance with the Rules, payment is due from the IPA for settlement to the extent, if any, that the IPA has a Net Debit Balance in its Settlement Account at end-of-day.

With regard to DTC net settlement, MMI Issuers and IPAs commonly consider the primary source of payments for Maturing Obligations of MMI Securities to be funded by the proceeds of Issuances of the same Acronym by that Issuer on the same Business Day. Because Presentments are currently processed automatically at DTC, IPAs have the option to refuse to pay for Maturing Obligations to protect against the possibility that an IPA may not be able to fund settlement because it has not received funds from the relevant Issuer. An IPA that refuses payment for a Presentment (i.e., refuses to make payment for the Delivery of matured MMI Securities for which it is the designated IPA and/or pay interest or dividend income on an MMI Security

Securities to a Participant in end-of-day settlement is contingent on the receiving Participant satisfying its end-of-day net settlement obligation, if any. The risk of Participant failure to settle is managed through risk management controls, structured so that DTC may complete settlement despite the failure to settle of the Participant, or Affiliated Family of Participants, with the largest net settlement obligation. The two principal controls are the Net Debit Cap and Collateral Monitor. The largest net settlement obligation of a Participant or Affiliated Family of Participants cannot exceed DTC liquidity resources, based on the Net Debit Cap, and must be fully collateralized, based on the Collateral Monitor. This structure is designed so that DTC may pledge or liquidate Collateral of the defaulting Participant in order to fund settlement among non-defaulting Participants. Liquidity resources, including the Participants Fund and a committed line of credit with a consortium of lenders, are available to complete settlement among non-defaulting Participants.

for which it is the designated IPA) must notify DTC of its RTP in the DTC Settlement User Interface. An IPA may enter an RTP until 3:00 p.m. ET on the date of the affected Presentment.

Under the current Rules, the effect of an RTP is to instruct DTC to reverse all processed Deliveries of that Acronym, including Issuances, related funds credits and debits, and Presentments. This late day reversal of processed (but not yet settled) transactions may override DTC's risk management controls (i.e., Collateral Monitor and Net Debit Cap) and force a presenting Participant into a Net Debit Balance; this situation poses systemic risk with respect to the Participant's ability to fund its settlement and, hence, DTC's ability to complete end-of-day net funds settlement. Also, the possibility of intra-day reversals of processed MMI Obligations creates uncertainty for Participants.

Currently, to mitigate the risks associated with an RTP, DTC Rules and the Settlement Guide provide for the LPNC risk management control. DTC withholds credit intra-day from each Participant that has a Presentment in the amount of the aggregate of the two largest credits with respect to an Acronym. The LPNC is not included in the calculation of the Participant's Collateral Monitor or its Net Debit Balance. This provides protection in the event that MMI Obligations are reversed by DTC as a result of an RTP.<sup>15</sup>

DTC's Rules and Procedures relating to settlement processing for the MMI Program<sup>16</sup> were designed to limit credit, liquidity, and operational risk for DTC and Participants. In connection with ongoing efforts by DTC to evaluate the risk associated with the processing of MMI Obligations, DTC has determined that the risks presented by intra-day reversals of processed MMI Obligations should be eliminated to prevent the possibility that a reversal could override risk controls and heighten liquidity and settlement risk. Eliminating intra-day reversals of processed MMI Obligations would also enhance intra-day finality and allow for the elimination of the LPNC which creates intra-day blockage and affects liquidity through the withholding of settlement credits.

<sup>15</sup> See Securities Exchange Act Release No. 71888 (April 7, 2014), 79 FR 20285 (April 11, 2014) (SR-DTC-2014-02) (clarifying the LPNC Procedures in the Settlement Guide) and Securities Exchange Act Release No. 68983 (February 25, 2013), 78 FR 13924 (March 1, 2013) (SR-DTC-2012-10) (updating the Rules related to LPNC).

<sup>16</sup> The Procedures applicable to MMI settlement processing are set forth in the Settlement Guide. *Supra* note 6.

## Proposal

The Proposal would amend the Rules and the Settlement Guide to eliminate provisions for intra-day reversals of processed MMI Obligations based on an IPA's RTP or Issuer insolvency. In addition, the Proposal would amend the Distributions Guide to make changes to text relating to the processing of Income Presentments so that it is consistent with the changes proposed in the Settlement Guide in that regard, as more fully described below.

Pursuant to the Proposal, DTC would no longer automatically process Presentments (and Issuances and related deliveries). Rather, except as noted below, DTC would only process these transactions after an acknowledgment ("MMI Funding Acknowledgment") is made by the IPA to DTC whereby either: (i) The value of receiver-approved<sup>17</sup> Issuances alone,<sup>18</sup> or a combination of receiver-approved Issuances plus an amount the IPA(s) has acknowledged has been funded by the Issuer, exceeds the Acronym's Presentments; or (ii) the IPA acknowledges it has been funded for the entire amount of the gross value of an Acronym, regardless of Issuances.<sup>19</sup>

DTC anticipates that the Proposal would generally maintain the volume of transactions processed today in terms of the total number and value of transactions that have passed position and risk controls throughout the processing day. However, because of the requirement for the IPA to provide an MMI Funding Acknowledgment prior to processing of an Acronym, the reason why transactions do not complete during the processing day would shift. It is expected that the value and volume

<sup>17</sup> DTC subjects certain transactions to receiver approval in its RAD system.

<sup>18</sup> An affirmative MMI Funding Acknowledgment by the IPA would not be required in the case that the aggregate amount of RAD approved Issuances of an Acronym exceeds the aggregate amount of Presentments since these Issuances would provide the funding of the maturing obligations versus an Issuer having to fund the IPA. The Proposal would provide that in this instance, the IPA is deemed to provide a standing instruction to process transactions in the Acronym, subject to risk management controls. Any such instruction or deemed instruction by the IPA would be irrevocable once given.

<sup>19</sup> In the case where an affirmative MMI Funding Acknowledgment by the IPA would be required for Presentments to be processed, the MMI Funding Acknowledgment would be a notification provided by an IPA to DTC with respect to an Acronym that the IPA acknowledges and affirms its funding obligation for a maturing Acronym either (i) in the entire amount of the Acronym or (ii) for an amount at least equal to the difference between the value of Issuances and the value of the Presentments. In the case of (ii) above, the IPA may (later that day) increase the funding amount it acknowledges, but in no event may the IPA reduce the amount of its obligation previously acknowledged that day.

of MMI transactions recycling for risk management controls during the late morning and afternoon time periods would be reduced as a result of MMI transactions being held outside of the processing system awaiting an MMI Funding Acknowledgment decision. The non-MMI transactions and fully funded MMI transactions would also likely have a reduction in blockage from risk management controls as a result of the elimination of the LPNC control. The elimination of the LPNC control would no longer withhold billions of dollars of settlement credits until 3:05 p.m. ET as it does today, which would in turn permit these transactions to complete earlier in the day.

An IPA would make an MMI Funding Acknowledgment using a new Decision Making Application ("DMA"). When an MMI Funding Acknowledgment has occurred, it would constitute the IPA's instruction to DTC to attempt to process transactions in the Acronym. At this point, if the IPA has acknowledged that it would fully fund the Acronym, then the transactions would be sent to the processing system and attempted against position and risk management controls. If the IPA provides an MMI Funding Acknowledgment for only partial funding of the entire amount of Presentments for an Acronym, DTC would test risk management controls of Deliverers and Receivers with respect to that Acronym to determine whether risk management controls would be satisfied by all Deliverers and Receivers of the Acronym and determine whether all parties maintain adequate position to complete the applicable transactions, *i.e.*, "MMI Optimization". In the case that the aggregate amount of RAD approved Issuances of an Acronym exceeds the aggregate amount of Presentments, and thus an affirmative acknowledgment by the IPA would not be required, risk management controls for all Deliverers and Receivers would be tested using MMI Optimization as well.

As indicated above, if partial funding from the IPA is necessary, then transactions would be routed to MMI Optimization. Generally, in MMI Optimization, all Deliverers and Receivers of the Acronym must satisfy risk management controls and delivering Participants must hold sufficient position, in order for the transactions in that Acronym to be processed. However, as long as the Issuances that can satisfy Deliverer and Receiver risk controls for that Acronym are equal to or greater than the Maturing Presentments of that Acronym, the applicable transactions (*i.e.*, those that pass risk controls) would be processed.

If there are multiple IPAs for an Acronym, DTC would determine funding based on the satisfaction of conditions for all Receivers and Deliverers with respect to all Presentments, Issuances and applicable Delivery Orders in the Acronym and MMI Funding Acknowledgments for all IPAs with Issuances and Presentments in the Acronym. No instruction of an IPA to DTC to process the subject MMI transactions shall be effective until MMI Optimization is satisfied with respect to all transactions in the Acronym.

If there is no MMI Funding Acknowledgment for the IPA for an Acronym for which Maturing Obligations are due by 3:00 p.m. ET on that day and/or DTC is aware that the Issuer of an Acronym is insolvent ("Acronym Payment Failure"), then DTC would not process transactions in the Acronym.<sup>20</sup>

In the event of an Acronym Payment Failure, DTC would (i) prevent further issuance and maturity activity for the Acronym in DTC's system, (ii) prevent Deliveries of MMI Securities of the Acronym on failure date and halt all activity in that Acronym, (iii) set the Collateral Value of the MMI Securities in the Acronym to zero for purposes of calculating the Collateral Monitor of any affected Participant, and (iv) notify Participants of the Acronym Payment Failure. Notification would be made through a DTC broadcast through the current process.

Notwithstanding the occurrence of an Acronym Payment Failure, the IPA would remain liable for funding pursuant to any MMI Funding Acknowledgment previously provided for that Business Day.

A "Temporary Acronym Payment Failure" with respect to Income Presentments would occur when an IPA notifies DTC that it temporarily refuses to pay Income Presentments for the Acronym (typically due to an Issuer's inability to fund Income Presentments on that day). A Temporary Acronym Payment Failure would only be initiated if there are no Maturity Presentments, Principal Presentments and/or Reorganization Presentments on that Business Day. DTC expects the Issuer and/or IPA to resolve such a situation by the next Business Day. In the event of a Temporary Acronym Payment Failure, DTC would (i) temporarily devalue to zero all of the Issuer's MMI Securities for purposes of calculating

<sup>20</sup> DTC would automatically consider an Acronym Payment Failure occurring due to an IPA's failure to provide timely MMI Funding Acknowledgment (*i.e.*, provide the acknowledgment by 3:00 p.m. ET) as an RTP.

the Collateral Monitor, unless and until the IPA acknowledges funding with respect to the Income Payments on the following Business Day, (ii) notify Participants of the delayed payment through a DTC broadcast as is the current process today, and (iii) block from DTC's systems all further Issuances and maturities by that Issuer for the remainder of the Business Day on which notification of the Temporary Payment Failure was received by DTC.

An IPA would not be able to avail itself of a Temporary Acronym Payment Failure for the same Acronym on consecutive Business Days.

Also, in light of the proposed elimination of intra-day reversals of processed MMI Obligations, DTC would also eliminate the RVPNA control. The RVPNA control is provided for in the Settlement Guide and implements current Section 1(c) of Rule 9(B). RVPNA is used to prevent a Participant from Delivering free of value or undervalued any MMI Securities received versus payment on the same Business Day.<sup>21</sup> This protects DTC against being unable to reverse transactions for Deliveries Versus Payment of MMI Securities in the event of an RTP by the IPA.<sup>22</sup> The elimination of reversals of processed MMI Obligations would eliminate the need for the RVPNA control.

#### Proposed Changes to the Rules, Settlement Guide, and Distributions Guide

DTC would amend the text of Rule 1 (Definitions), Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), the Settlement Guide and the Distributions Guide to reflect the proposed changes described above. Specifically:

(i) Rule 1 would be amended to:

a. Delete the definition of LPNC; and  
b. Add a cross-reference to indicate that the terms MMI Funding Acknowledgment and MMI Optimization would be defined in Section 1 of Rule 9(C).

(ii) Rule 9(A) would be amended to add text providing that an instruction to DTC from a Participant for Delivery

Versus Payment of MMI Securities pursuant to Rule 9(C) shall not be effective unless and until applicable conditions specified in Rule 9(C) as set forth below have been satisfied.

(iii) Rule 9(B) would be amended to:

a. Eliminate text referencing the LPNC;  
b. Eliminate the provision precluding DTC from acting on an instruction for Delivery of MMI Securities subject of an Incomplete Transaction if the instruction involves a Free Delivery, Pledge or Release of Securities or a Delivery, Pledge or Release of Securities substantially undervalued; and  
c. Add text providing that an instruction to DTC from a Participant for Delivery Versus Payment of MMI Securities pursuant to Rule 9(C) shall not be effective unless and until the applicable conditions specified in Rule 9(C) described below have been satisfied.

(iv) Rule 9(C) would be amended to:

a. Add the definitions of MMI Funding Acknowledgment and MMI Optimization to reflect the meaning of these terms as described above;  
b. Add text that Delivery Versus Payment of MMI Securities would be affected in accordance with Rules 9(A), 9(B) and the Settlement Guide in addition to Rule 9(C);  
c. Add text indicating that instructions by a Presenting Participant for a Presentment or Delivery of MMI Securities would be deemed to be given only when any applicable MMI Funding Acknowledgment has been received by DTC;

d. Remove conditions and references relating to reversals of processed MMI Obligations;

e. Set forth conditions for the processing of Presentments, including:

i. The requirement for the IPA to provide an MMI Funding Acknowledgment, except in the case where the aggregate amount of Issuances exceeds Presentments;  
ii. Satisfaction of risk management controls and RAD;

iii. That an instruction to DTC with respect to an Issuance or Presentment shall become effective upon satisfaction of the provisions described in i. and ii. immediately above;

iv. That DTC shall comply with an effective instruction;

v. That the IPA acknowledges and agrees that DTC would process instructions with respect to Issuances and Presentments as described above and that the IPA's obligations in this regard are irrevocable; and

vi. That if the IPA notifies DTC in writing of its insolvency, or if DTC otherwise has notice, or if the IPA issues

a Payment Refusal for the Acronym, then the IPA would not be required to acknowledge its obligations and DTC would not be required to process any further instructions with respect to the applicable Acronym;

f. Eliminate references to MMI Securities being devalued in the event of an RTP because in the event of any payment failure by the IPA, DTC would then revert to the Acronym Payment Failure Process described below; and

g. Delete a reference indicating that DTC's Failure to Settle Procedure includes special provisions for MMI Securities.

(v) The Settlement Guide would be amended to:

a. Delete the description of, and all references and provisions related to, LPNC;

b. Delete: (A) The definition of RVPNA, (B) a provision that transactions for MMI Securities that are deemed RVPNA would recycle pending release of the LPNC control at 3:05 p.m. ET, and (C) a note that MMI Securities received versus payment are not allowed to be freely moved until the LPNC control is released;

c. Add a description of "Unknown Rate" to provide for a placeholder in the Settlement Guide for references to an interest rate where payment of interest by an IPA to Receivers is scheduled but the interest rate to be paid is not known at the time;

d. Change the heading of the section currently named "Establishing Your Net Debit Cap" to "Limitation of Participant Net Debit Caps by Settling Banks" to reflect the context of that section more specifically;

e. Revise the Settlement Processing Schedule to:

i. Add a cutoff time of 2:30 p.m. ET for an IPA to replace the Unknown Rate with a final interest rate and state that the IPA must successfully transmit the final rate to DTC before 2:30 p.m. ET;

ii. Add a cutoff time of 2:55 p.m. ET after which Issuances and Presentments cannot be processed on the given Business Day because the conditions described above for processing of MMI Obligations have not been met;

iii. Remove a reference for a cutoff relating to reversals of MMI Obligations since reversals would no longer occur as described above;

iv. Define 3 p.m. ET as the cutoff time for any required MMI Funding Acknowledgments to be received in order for DTC to be able to process for a given Acronym that day;

v. Add at cutoff time of 3 p.m. ET for an IPA to notify DTC of a Temporary Acronym Payment Failure;

<sup>21</sup> For purposes of RVPNA, MMI Securities are considered undervalued if they are Delivered Versus Payment for less than 10 percent below market value.

<sup>22</sup> For example, if A Delivers MMI Securities to B versus payment and B Delivers the same MMI Securities to C free of payment (subject to risk management controls), under Rule 9(B), Section 1, the Delivery to C is final when the securities are credited to C. DTC would therefore be unable to reverse the Delivery to C and thus it cannot reverse the Delivery from B to A.

vi. Delete a reference to the release of LPNC controls as LPNC would no longer exist; and

vii. Clarify that a 3:10 p.m. ET cutoff after which CNS transactions that cannot be completed would be dropped from the system, also applies to valued transactions in non-MMI Securities and fully paid for and secondary MMI Deliveries or Maturity Presentments;

f. Add a section describing MMI Processing to include a description of MMI Funding Acknowledgments and the MMI Optimization process as described above;

g. Revise the section referencing provisions for "Issuer Failure Processing" to instead describe Acronym Payment Failure Processing and Temporary Acronym Payment Failure Process, as these processes are described above, since the contingencies for processing a payment failure hinge on the failure of payment on an Acronym by an IPA regardless of whether it is ultimately caused by an Issuer insolvency or otherwise;

h. Remove a duplicate reference to the DTC contact number for Participants/IPAs to call in the event of an Acronym Payment Failure;

i. Remove the description of the "MMI IPA MP Pend" process which was designed to allow IPAs to minimize the impact of potential reversals of processed MMI Obligations; as such reversals would no longer occur; and

j. Change the name of the section named "Calculating Your Net Debit Cap" to "Calculation of Participant Net Debit Caps".

(vi) The Distributions Guide would be amended to (i) delete language reflecting that Income Presentments are processed at the start-of-day, and (ii) add a brief description of the processing of Presentments as proposed above and provide a cross-reference to the Settlement Guide relating to MMI settlement processing.

(vii) The Proposal would also make technical and clarifying changes to the texts of the Rules and Settlement Guide for consistency throughout the texts in describing the concepts and terms set forth above, make corrections to grammar and spacing and edit text to provide for enhanced readability.

#### Implementation

The Proposal would be implemented in phases whereby Acronyms would be migrated to be processed in accordance with the Proposal over a period of five months beginning in November 2016 and with all Acronyms expected to be implemented by the end of March 2017, except for the implementation of the elimination of the Rule and Settlement

Guide provisions relating to RVPNA which elimination would not occur until all other aspects of the Proposal are implemented with respect to all Acronyms. DTC would announce phased implementation dates for the Proposal via Important Notice upon all applicable regulatory approval by the Commission.

#### Expected Effect on Risks to DTC, Its Participants, or the Market

As described above, the Proposal would amend the Rules and the Settlement Guide to: (i) Eliminate provisions for intra-day reversals of processed MMI Obligations based on an IPA's RTP or Issuer insolvency, (ii) impose a new requirement on IPAs to provide DTC an MMI Funding Acknowledgment, (iii) remove the LPNC risk management control; and (iv) implement MMI Optimization.

#### Elimination of Intra-day Reversals

As noted above, under the current DTC Rules, intraday reversals of MMI Obligations may override DTC's risk management controls (*i.e.*, Collateral Monitor and Net Debit Cap) and force a presenting Participant into an otherwise unanticipated Net Debit Balance at the end-of-day; this situation poses systemic risk with respect to the Participant's ability to fund its settlement and, hence, DTC's ability to complete end-of-day net funds settlement. The proposed elimination of intra-day reversals of processed MMI Obligations would decrease risk to DTC, its Participants and the marketplace by eliminating the settlement risk associated with such reversals, improving settlement finality.

#### IPAs' Obligation To Provide an MMI Funding Acknowledgment

Pursuant to the Proposal, DTC would no longer automatically process Presentments (and Issuances and related deliveries). Rather, as applicable, DTC would only process these transactions after receiving an MMI Funding Acknowledgment from the IPA. In this regard, once an IPA provides an MMI Funding Acknowledgment, its ability to notify DTC of an RTP would be limited as it would not be allowed to reduce the amount of its obligation previously acknowledged that day.<sup>23</sup> This

<sup>23</sup> As noted above, an affirmative MMI Funding Acknowledgment by the IPA would not be required in the case that the aggregate amount of RAD approved Issuances of an Acronym exceeds the aggregate amount of Presentments since these Issuances would provide the funding of the maturing obligations versus an Issuer having to fund the IPA. The Proposal would provide that in this instance, the IPA is deemed to provide a standing instruction to process transactions in the Acronym, subject to risk management controls. Any

provision of the Proposal would facilitate the elimination of intra-day reversals, as described above, and, therefore, decrease settlement risk for DTC and its Participants.

#### Removal of the LPNC Control

Currently, the LPNC control exists to mitigate the risks associated with an RTP by withholding credit intra-day from each Participant in the amount of the aggregate of the two largest credits with respect to Presentment of an Acronym. DTC expects that the proposed elimination of the LPNC control and the attendant intraday withholding of credits would reduce the risk of intraday liquidity blockages within DTC's system for Participant activity, for both MMI and non-MMI transactions, because at any point intraday, Participants would have a true view of their Net Debit Balances or Net Credit Balances and be able to respond accordingly.

#### MMI Optimization

As described above, as applicable, DTC would test risk management controls of Deliverers and Receivers using the proposed MMI Optimization process with respect to the Acronym to determine whether risk management controls would be satisfied by all Deliverers and Receivers of the Acronym and determine whether all Deliverers maintain adequate position to complete the applicable transactions. As described above, the application of MMI Optimization to MMI transactions, as applicable, would facilitate timely processing of transactions under the proposal and reduce the risk to Participants that transactions may not settle due to failure to satisfy risk controls.

#### Management of Identified Risks

The proposed requirement for an IPA to provide DTC an MMI Funding Acknowledgment prior to DTC's processing of affected MMI transactions, as applicable, would replace DTC's current automatic processing of MMI Transactions. The fact that such transactions would not be processed until an MMI Funding Acknowledgment is provided by the IPA may create a risk of blockage of MMI transactions by Participants. However, DTC anticipates that the various aspects of the Proposal taken together would offset any such risk and reduce the risk of blockage overall for both MMI and non-MMI transactions because of the effect of (i) the removal of the LPNC control would

such instruction or deemed instruction by the IPA would be irrevocable once given.

eliminate the attendant withholding of settlement credits from Participants intraday net settlement balances, and (ii) increased efficiency in the testing of risk controls through the MMI Optimization process, as described above, would reduce the volume of MMI transactions that might otherwise recycle pending passing of risk management controls.

#### Consistency With the Clearing Supervision Act

DTC believes that the Proposal is consistent with Section 805(b) of the Clearing Supervision Act.<sup>24</sup> The objectives and principles of Section 805(b) of the Clearing Supervision Act are the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial system.<sup>25</sup>

DTC believes that the Proposal is consistent with the provisions of the Clearing Supervision Act because the elimination of reversals of MMI transactions would promote intraday settlement finality and protect end-of-day settlement from the risk of the failure to settle by IPAs or affected Participants by removing the risk exposure due to the override of DTC's risk management controls (*i.e.*, Collateral Monitor and Net Debit Cap) to process reversals under current rules. As such the Proposal would promote the robustness of DTC's risk management controls.

DTC also believes that the Proposal is consistent with the provisions of the Clearing Supervision Act because the elimination of the risk that a Participant could incur a Net Debit Balance that exceeds DTC's risk controls caused by an intra-day reversal of processed (but not yet settled) MMI Obligations would promote both the safety and soundness of DTC's system and reduce systemic risks by (i) reducing the risk of a shortfall in a defaulting Participant's collateral available for DTC to use to satisfy the defaulting Participant's settlement obligations, and (ii) reducing the risk that a Participant default could impose a strain on DTC's liquidity resources and affect DTC's ability to complete system-wide settlement that day.

In addition, DTC believes that the Proposal would be consistent with Rule 17Ad-22(d)(12) promulgated under the Act.<sup>26</sup> Rule 17Ad-22(d)(12) requires that each registered clearing agency shall establish, implement, maintain

and enforce written policies and procedures reasonably designed to, as applicable, ensure that final settlement occurs no later than the end of the settlement day; and requires that intraday or real-time finality be provided where necessary to reduce risks.<sup>27</sup> The Proposal would eliminate the intra-day reversals of processed MMI transactions that are pending for end of day system wide net settlement, thus promoting settlement finality and eliminating the possibility that an intraday reversal could heighten liquidity and settlement risk, as discussed above. As such, DTC believes the Proposal is consistent with Rule 17Ad-22(d)(12).

Taking each of the above points collectively (*i.e.*, the Proposal's promotion of robust risk management, safety and soundness, reduced systemic risk, and consistency with Rule 17Ad-22(d)(12)). [sic] DTC believes the Proposal supports the overall stability of the broader financial system consistent with the Clearing Supervision Act.

#### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received,<sup>28</sup> unless extended as described below. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,<sup>29</sup> the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.

Here, as the Commission has not requested any additional information, the date that is 60 days after DTC filed the Advance Notice with the Commission is November 22, 2016. However, the Commission finds it appropriate to extend the review period of the Advance Notice, for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.<sup>30</sup> The Commission finds the Advance Notice

is both novel and complex because the material aspects of the proposed changes to DTC's processing of MMI are detailed, substantial, a first for DTC, and are interrelated with other risk management practices at DTC.

Accordingly, the Commission, pursuant to 806(e)(1)(H) of the Clearing Supervision Act,<sup>31</sup> extends the review period for an additional 60 days so that the Commission shall have until January 21, 2017 to issue an objection or non-objection to the Advance Notice (File No. SR-DTC-2016-802).

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.<sup>32</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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-2016-802 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-2016-802. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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

<sup>24</sup> 12 U.S.C. 5464(b).

<sup>25</sup> *Id.*

<sup>26</sup> 17 CFR 240.17Ad-22(d)(12).

<sup>27</sup> *Id.*

<sup>28</sup> See 12 U.S.C. 5465(e)(1)(G).

<sup>29</sup> 12 U.S.C. 5465(e)(1)(H).

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

<sup>31</sup> *Id.*

<sup>32</sup> See *supra* note 3 (regarding filing of related proposed rule change).

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-2016-802 and should be submitted on or before November 25, 2016.

By the Commission.

**Brent J. Fields,**

Secretary.

[FR Doc. 2016-27030 Filed 11-8-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79228; File No. SR-NASDAQ-2016-144]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute a New Fee for the Distribution of Data

November 3, 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 October 20, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 Rule 7047 of the Exchange's transaction fees to institute a new fee for the distribution of data derived from Nasdaq Basic on third-party Web sites or other electronic platforms, as described further below.

The changes are being filed for immediate effectiveness and will become operative on October 20, 2016.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, 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 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 introduce a new pricing model to keep pace with an evolving practice. Distributors have increasingly used Nasdaq Basic to make "Derived Data" available on a Web site or other electronic platform that is branded by a third party, or co-branded by a Distributor and a third party, and available to external subscribers.

"Derived Data" is pricing data or other information that is created in whole or in part from Nasdaq information, but which cannot be reverse engineered to recreate Nasdaq information or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information. The type of Derived Data subject to the proposed fee is taken from Nasdaq Basic, a proprietary data product that provides best bid and offer and last sale information for all U.S. exchange-listed stocks using data from the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility.

The Derived Data subject to the proposed fee is made available to subscribers on a "Hosted Display Solution": A product, solution or capability provided by a Distributor in which the Distributor makes the Derived Data available on a platform that reflects either a brand of a third party, or is co-branded with a third party and a Distributor, and available for use by

external subscribers of the third party or the Distributor. The Distributor maintains control of the application's data, entitlements and display.

The Hosted Display Solution may take a number of forms. For example, the Distributor may host a "Widget," such as an iframe or applet, in which the Hosted Display Solution is a part or a subset of a Web site or platform. The Hosted Display Solution may also take the form of a "White Label," in which the Distributor hosts or maintains the Web site or platform on behalf of a third-party entity. Although the specific forms may vary, Hosted Display Solutions allow Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor, for the use of external subscribers.

Derived Data on a Hosted Display Solution may be used for a number of different purposes, to be determined by the Distributor. Possible uses include the display of information or data, or the creation of derivative instruments, such as swaps,<sup>3</sup> swaptions,<sup>4</sup> binary options,<sup>5</sup> or contracts for difference.<sup>6</sup> The specific use of the data will be determined by the Distributor, as the proposed fee will not depend on the purpose for placing the Derived Data on a Hosted Display Solution.

The Exchange proposes a flat fee of \$400 per month per Hosted Display Solution for each Distributor that makes Derived Data available on a Hosted Display Solution. The monthly fee will apply whenever such a Hosted Display Solution is employed at any time during the month. This fee will be in addition to the distributor fee owed for the distribution of Nasdaq Basic under Rule 7047(c)(1), as well as any fee that may be owed under Rule 7047(c)(2). Any Distributor that distributes Nasdaq data that is not Derived Data—*i.e.*, Nasdaq Basic for Nasdaq, Nasdaq Basic for NYSE, or Nasdaq Basic for NYSE Market—on a Hosted Display Solution would be liable for any applicable per-subscriber or per-query fees set forth in

<sup>3</sup> A swap is a derivative contract in which two parties agree to exchange financial instruments.

<sup>4</sup> A swaption, or swap option, is an option to enter into a swap at a specified time.

<sup>5</sup> A binary option is a type of contract in which the return depends on the outcome of a true/false proposition. If the proposition is true, the option purchaser would be entitled to predetermined compensation; otherwise, the purchaser would receive no compensation.

<sup>6</sup> A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

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

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