

The Participants also proposed to update certain cross-references to exchanges rules relating to re-opening procedures.

III. Discussion

After careful review, the Commission finds that the Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.¹³ In particular, the Commission finds that the Amendment is consistent with Section 11A of the Act which provides, among other things, that the Commission may prescribe rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities and the fairness and usefulness of the form and content of such information.¹⁴ The Commission also finds that the Amendment is consistent with Rule 608 of Regulation NMS, which provides that the Commission shall approve an amendment to a Plan if it finds that such amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.¹⁵

The Commission believes that the Amendment furthers these goals by eliminating any burden on the Processor to determine whether a trade that is reported to the Processor during a race condition occurred before or after the Participant who reported the trade had received notice of a Regulatory Halt. Under the Amendment, the Processor could presume that any such trades occurred before the Regulatory Halt, thereby allowing the Processor to continue publishing those trade reports to the consolidated tape. The Commission believes that market observers could derive benefits from continuing to learn about trades occurring just before a Regulatory Halt that, under the existing Plan provisions, the Plan Processor might not print to the consolidated tape.

The Commission notes that it is also approving today a similar proposal by the Nasdaq/UTP Plan Participants to

eliminate an ambiguity in that Plan regarding how the Processor handles last-sale price reports during a Regulatory Halt.¹⁶ As a result, both Plans will have uniform provisions in this regard. The Commission believes that approving these two Plan amendments furthers the principle set forth in Section 11A of the Act that “[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors’ orders, and contribute to best execution of such orders”¹⁷ by harmonizing across the entire national market system how last-sale price reports for all NMS stocks are printed to the consolidated tape during race conditions and by eliminating any ambiguity in the duties of the Plan Processors in this regard.

Finally, the Commission finds that updating cross-references in the Plan is consistent with the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act and the rules thereunder that the Amendment to the Plan (File No. SR-CTA-2019-02) is approved.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88380; File No. SR-DTC-2020-005]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the DTC Fee Guide To Add Fees Relating to the Provision of Status Information for Institutional Transactions to a Matching Utility

March 13, 2020.

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 March 6,

2020, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act.³ 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 of DTC is attached hereto as Exhibit 5. The proposed rule change would amend the Guide to the DTC Fee Schedule (“Fee Guide”)⁴ to add a fee and other charge relating to the provision of status information (“Status Information”) for institutional transactions in Eligible Securities (“Institutional Transactions”)⁵ to an entity providing a matching service⁶ (“Matching Utility”), as described below.

Pursuant to an approved DTC rule change (“Status Information Rule Change”),⁷ DTC will implement changes to the DTC Settlement Service Guide⁸ (“Settlement Guide”) to allow DTC to provide Status Information for an Institutional Transaction to a Matching Utility. Upon implementation of the Status Information Rule Change, the related amendment to the Settlement Guide will allow the Matching Utility to further provide the Status Information to the counterparties to an Institutional Transaction to facilitate coordination of

³ 15 U.S.C. 78s(b)(3)(A).

⁴ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Fee Guide and the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁵ An Institutional Transaction is a securities transaction between a broker-dealer and its institutional customer (e.g., sell-side firms, buy-side institutions, and custodians).

⁶ A “matching service” is an electronic service to match trade information, centrally, between a broker-dealer and its institutional customer. The matching service intermediary matches (i.e., reconciles) trade information from the counterparties to an Institutional Transaction, to generate an affirmed transaction (“Affirmed Transaction”) which is then used to provide settlement instructions for the Affirmed Transactions to the central securities depository, such as DTC, at which the Affirmed Transaction settles. See Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 (April 13, 1998) at 17946 (providing interpretive guidance on types of entities that may provide a matching service).

⁷ See Securities Exchange Act Release No. 86589 (August 7, 2019), 84 FR 40107 (August 13, 2019) (SR-DTC-2018-010).

⁸ Available at <http://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf>.

¹³ The Commission has considered the Amendment’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ See 15 U.S.C. 78k-1(c)(1)(B).

¹⁵ See 17 CFR 240.608(b)(2).

¹⁶ See Securities Exchange Act Release No. 34-88385 (March 13, 2020) (File No. S7-24-89).

¹⁷ 15 U.S.C. 78k-1(a)(1)(D).

¹⁸ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the resolution of a processing exception (“Exception”) between the counterparties. Pursuant to the Status Information Rule Change, the Status Information Rule Change will become effective upon the filing of the amendment to the Fee Guide proposed herein, and therefore would become effective upon the filing of the of proposed rule change.

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

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

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

1. Purpose

The proposed rule change would amend the Fee Guide to add a fee and other charge relating to provision of Status Information for Institutional Transactions to a Matching Utility, as described below.

Pursuant to the Status Information Rule Change, DTC will implement changes to the Settlement Guide to allow DTC to provide Status Information for an Institutional Transaction to a Matching Utility. Upon implementation of the Status Information Rule Change, the related amendment to the Settlement Guide will allow the Matching Utility to further provide the Status Information to the counterparties to an Institutional Transaction to facilitate coordination of the resolution of an Exception between the counterparties. Pursuant to the Status Information Rule Change, the Status Information Rule Change will become effective upon the filing of the amendment to the Fee Guide proposed herein, and therefore would become effective upon the filing of the proposed rule change.

Background

DTC may accept Institutional Transactions from a Matching Utility that is (i) a clearing agency registered pursuant to Section 17A of the Act,⁹ (ii) an entity that has obtained an exemption from such registration from

the Commission, or (iii) a “qualified vendor” for trade confirmation/affirmation services as defined by the rules of a self-regulatory organization.¹⁰

The submission of an Affirmed Transaction by the Matching Utility to DTC, on behalf of a Participant, constitutes the duly authorized instruction of the Participant to DTC to process the Affirmed Transaction in accordance with the Rules and Procedures.¹¹

A transaction submitted to DTC for processing may be subject to a processing Exception, causing it to recycle in the DTC system or not be processed because the transaction does not satisfy certain requirements and/or controls set forth in the Rules and Settlement Guide.¹² A Matching Utility that has submitted an Institutional Transaction to DTC or is otherwise involved with the matching of a transaction, does not receive Status Information regarding the transaction and is therefore unable to provide services to facilitate resolution of processing Exceptions occurring at DTC. Therefore, to resolve an Exception, the Participants to an Institutional Transaction must (i) access Status Information directly through the DTC Settlement User Interface and (ii), as necessary, supply the information to their customers that are counterparties to the transaction on their books, to facilitate the coordination of the resolution of the Exception among the counterparties. Pursuant to the Status Information Rule Change,¹³ DTC will implement changes to the Settlement Guide to allow DTC to provide Status Information for an Institutional Transaction to a Matching Utility. The proposal would allow the Matching Utility to further provide the Status Information to the counterparties to the Institutional Transaction to facilitate coordination of the resolution of Exceptions among counterparties.¹⁴ The

¹⁰ See Settlement Guide, *supra* note 8 at 36, available at <http://www.dtcc.com/legal/rules-and-procedures>.

¹¹ *Id.*

¹² See Settlement Guide, *supra* note 8, at 55–62 for addition information relating to recycling processing of transactions.

¹³ See *supra* note 7.

¹⁴ DTC has been informed by its Matching Utility affiliate, ITP Matching (US) LLC (“ITP”), that institutional clients are expected to realize enhanced efficiencies in terms of time for resolution of exceptions. This is due to the ability institutional clients would have through the matching utility to view exceptions in a central interface rather than having to obtain exception information separately by each DTC Participant they engage with for the matching of transactions. The proposed rule change would not change or have any effect on Participants’ ability to continue to access Status Information directly through the DTC Settlement User Interface.

Status Information Rule Change would provide that DTC may charge a fee (“Status Information Fee”) to a Matching Utility that receives Status Information as set forth in the DTC Fee Guide.¹⁵

In addition, pursuant to the Status Information Rule Change, DTC would develop the mechanism (“Non-Submitting Matching Utility Interface”) necessary for DTC to directly provide Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility, regardless of whether or not that Matching Utility submitted the transaction to DTC, subject to (i) the agreement by the Matching Utility to pay DTC for the reasonable cost (“Status Information Development Charge”) to cover the development of the mechanism by DTC and (ii) the Matching Utility subscribing to receive Status Information, as described above. To the extent that the transaction is an interoperable transaction submitted to DTC by another Matching Utility, then to receive Status Information for the interoperable transaction, the Matching Utility would be required to submit an indicator to DTC for notifying DTC that a customer of the Matching Utility is a party to the transaction.

Any Matching Utility that satisfies requirements set forth in the Status Information Rule Change may become a subscriber to receive Status Information. DTC is aware of three Matching Utilities, specifically Bloomberg STP LLC (“Bloomberg”), ITP and SS&C Technologies, Inc (“SS&C”), that would be eligible to subscribe to receive Status Information.¹⁶

Proposed Rule Change

Pursuant to the proposed rule change, DTC would amend the Fee Guide to implement the following fee and other charge, as follows:

a. To cover the cost of providing a Matching Utility with Status Information, DTC would amend the Fee

¹⁵ See *supra* note 7.

¹⁶ In 2001, the Commission issued an order providing for exemption from registration as a clearing agency for ITP’s predecessor. See Securities Exchange Act Release No. 44188 (April 17, 2001), 66 FR 20494 (April 23, 2001) (600–32) (Global Joint Venture Matching Services—US, LLC; Order Granting Exemption from Registration as a Clearing Agency). In 2015, the Commission issued an order providing for exemption from registration as a clearing agency for both Bloomberg and SS&C. See Securities Exchange Act Release No. 76514 (November 24, 2015), 80 FR 75387 (December 1, 2015) (600–33, 600–34) (Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption from Registration as a Clearing Agency; Notice).

⁹ 15 U.S.C. 78q–1.

Guide to add the Status Information Fee in the amount of \$90,000 per year. The proposed Status Information Fee is structured to use a flat annual fee rather than a volume-based fee, because DTC's ongoing estimated support costs relating to providing Status Information to a Matching Utility are fixed and are not expected to fluctuate based on message volume. DTC expects to incur a unique cost of \$90,000 annually for each Matching Utility that subscribes to receive Status Information and therefore the Status Information Fee would be charged on an annual basis to each Matching Utility that subscribes to receive Status Information in accordance with the Status Information Proposal.¹⁷

b. DTC would amend the Fee Guide to add the Status Information Development Charge. The Status Information Development Charge would be listed in the Fee Guide as a one-time charge, charged "At cost",¹⁸ and would be billed to a Matching Utility in the amount to cover the reasonable cost to DTC to develop a Non-Submitting Matching Utility Interface for the Matching Utility that agrees in writing ("Agreement") to pay the Status

¹⁷ As mentioned above, the proposed Status Information Fee is structured to use a flat annual fee rather than a volume-based fee, because DTC's ongoing estimated support costs relating to providing Status Information to a Matching Utility are fixed and are not expected to fluctuate based on message volume. The cost assumptions used by DTC to calculate the Status Information Fee include direct technology costs to support the provision of Status Information to a Matching Utility, plus allocated costs based on anticipated indirect support. The direct technology costs include basic production support, as well as enhancements and maintenance required as part of ongoing production support. The allocated indirect costs are estimated using the actual indirect cost attribution for the Settlement business within DTC, including costs relating to product support, risk management, client support, infrastructure support and other internal support services.

¹⁸ "At cost" for this purpose means that the Status Information Development Charge would equal the total cost for DTC to establish the interface with respect to a given Matching Utility. In this regard, the amount of the Status Information Development Charge charged to a Matching Utility would be calculated based on actual cost to DTC to establish the interface once the total development and testing of the interface for the Matching Utility is complete and the actual cost to DTC is known. DTC estimates the total cost to DTC to produce the Non-Submitting Matching Utility Interface for the first subscriber that requests it as approximately \$300,000. This cost estimate is based on estimated costs to DTC related to applications development, end to end functional testing, user acceptance testing and performance testing. However, costs to DTC could vary depending in part on specifications requested by the Matching Utility and the variability in development expenses over time. If DTC's calculation of the Status Information Development Charge for any Matching Utility materially differs in an amount greater than the estimate of \$300,000 stated above, DTC would submit a proposed rule change that includes a new estimate.

Information Development Charge and subscribes to receive Status Information, as described above.¹⁹

DTC believes that the cost to DTC to establish access to the Non-Submitting Matching Utility Interface for a second or subsequent Matching Utility that subscribes once the interface has been established may be substantially less than the initial development cost. Therefore, the Status Information Development Charge charged to a second or subsequent Matching Utility that requests access to the interface may be lower than the Status Information Development Charge charged to the initial Matching Utility that requests the initial development of the Non-Submitting Matching Utility Interface. This presumes that DTC would be able to leverage prior work done by it to establish the interface and depends in part on specifications requested by a Matching Utility and the variability in development expenses over time. In this regard, the Status Information Development Charge charged to a Matching Utility would reflect the actual cost to DTC to provide that Matching Utility with access to the Non-Submitting Matching Utility Interface, including, but not limited to, as applicable, taking into account available cost reductions resulting from DTC's prior development of the Non-Submitting Matching Utility Interface with respect to the initial requester and additional development and testing costs incurred by DTC in order to meet specifications requested by the Matching Utility.

Implementation Timeframe

The proposed rule change would become effective upon filing with the Commission.

2. Statutory Basis

Section 17A(b)(3)(F)²⁰ of the Act requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision because the proposed fees would offset costs incurred by DTC in providing Status Information to Matching Utilities. As described above, the Status Information Fee is designed

¹⁹ The Agreement would include any related terms and conditions as negotiated between DTC and the Matching Utility and be accompanied by a statement of work prepared by DTC that outlines work to be performed by DTC to develop the interface and includes an estimate of the related costs used by DTC to calculate the Status Information Development Charge.

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

to cover the costs to DTC for the continued offering of Status Information to a Matching Utility and the Status Information Development Charge is designed to cover the costs to DTC for development of the Non-Submitting Matching Utility Interface.

By allowing DTC to cover the costs associated with providing Status Information to Matching Utilities, the proposed rule change would facilitate the distribution of information on Exceptions to these parties. This distribution of Status Information would allow for enhanced communication among the parties to an Eligible Transaction to address an Exception so that the Eligible Transaction may be processed. Therefore, by allowing DTC to cover its costs associated with its facilitating the distribution of Status Information to a Matching Utility, and thereby facilitating the ability of a Matching Utility to provide this information to the applicable parties to an Eligible Transaction that may address related Exceptions and resolve related issues so that a transaction may be processed for settlement, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act.²¹

Section 17A(b)(3)(D)²² of the Act requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Status Information Fee and Status Information Development Charge proposed herein are not participant fees but rather would be charged to Matching Utilities. Nonetheless, DTC believes that the proposed rule change would provide for the equitable allocation of reasonable fees among Matching Utilities that subscribe to receive Status Information.

As described in Item II.(A) above, the proposed Status Information Fee is structured to use a flat annual fee rather than a volume-based fee, because DTC's ongoing estimated support costs relating to providing Status Information to a Matching Utility are fixed and are not expected to fluctuate based on message volume. As described in Item II.(A) 1. above, the cost assumptions used by DTC to calculate the Status Information Fee include direct technology costs to support the provision of Status Information to a Matching Utility, plus allocated costs based on anticipated indirect support. The direct costs are based on required technology support

²¹ *Id.*

²² 15 U.S.C. 78q-1(b)(3)(D).

for the new service. The allocated indirect costs are estimated using the actual indirect cost attribution for the Settlement business within DTC. DTC believes the proposed flat fee would be equitably allocated because it would require a Matching Utility to pay DTC a fee for the cost DTC believes would be directly attributable to the Matching Utility's request to receive Status Information, as described above.²³ DTC believes the proposed Status Information Fee is reasonable because, as described above, it is based the actual direct and attributed costs DTC expects to incur by providing the information to a Matching Utility that subscribes to receive it consistent with Section 17(A)(b)(3)(D) of the Act.²⁴

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

DTC believes that the proposed changes to the Fee Schedule could impose a burden on competition because it would implement a new fee and a new charge payable by a Matching Utility that subscribes for a voluntary service to receive Status Information from DTC, thereby potentially creating costs to a Matching Utility not previously charged for a voluntary service not previously provided.

DTC believes the primary benefit a Matching Utility would realize from its receipt of Status Information from DTC would be the added value the Matching Utility could provide in its services to its customers through the reduction of costs to those customers, as described below. In this regard, if the Status Information received by a Matching Utility from DTC was provided by the Matching Utility to its customers, it would facilitate the ability of customers of the Matching Utility to efficiently monitor and resolve Exceptions by accessing Status Information from a centralized point of access as opposed to through multiple entities. In this regard, DTC does not believe that any burden on competition imposed by the proposed changes to the Fee Schedule would be significant in relation to the benefit a Matching Utility could realize by receiving Status Information from DTC. By allowing DTC to meet its costs

²³ If the fee was structured differently, such as by using a volume-based fee, it is possible that a Matching Utility could be charged less or more than the actual cost for DTC to provide the service to that Matching Utility, which DTC believes would not be equitable, because by DTC establishing the fee using a volume-based structure, a Matching Utility could end up paying total fees that are higher or lower than those paid by another Matching Utility for a product that costs DTC the same amount to provide to the Matching Utility, regardless of the transaction volume associated with the Matching Utility.

²⁴ 15 U.S.C. 78q-1(b)(3)(D).

in providing Status Information to a Matching Utility in a centralized format, as described above, the proposed rule change would allow DTC to provide Status Information to a Matching Utility, which would facilitate the Matching Utility's ability to provide its customers with enhanced value in its services, by facilitating reductions in costs incurred by the Matching Utility's customers regarding the monitoring of Exceptions by providing a centralized point of access to Status Information rather than receiving information through multiple entities.

DTC believes that any burden on competition that is created by the proposed changes to the Fee Schedule would be necessary and appropriate in furtherance of the purposes of the Act,²⁵ as described below.

Any burden on competition that is created by the proposed rule changes would be necessary in order to facilitate DTC's ability to provide Status Information to Matching Utilities, as described above, which would facilitate the prompt and accurate clearance and settlement of related transactions, as described in Item II.(A) 2. above.

DTC believes that any burden on competition imposed by the proposed changes to the Fee Schedule would be appropriate because (i) the Status Information Fee and Status Information Development Charge relate to the use by a Matching Utility of a voluntary service of DTC and (ii)(a) the Status Information Fee would only be billed to a Matching Utility that subscribes to receive Status Information and (b) the Status Information Development Charge would only be charged to a Matching Utility that requests that DTC develop a Non-Submitting Matching Utility Interface for the Matching Utility and agrees in writing to pay the charge and subscribes to receive Status Information, as described above.

DTC does not believe the proposed rule change would unduly disadvantage one Matching Utility versus another, because if a Matching Utility does not believe Status Information would provide it, or its customers, with enough benefit under its own business model, it could choose not to subscribe and not incur the costs of fees proposed above.

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

Written comments relating to this 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 Act²⁶ and paragraph (f) of Rule 19b-4 thereunder.²⁷ 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-DTC-2020-005 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-2020-005. 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

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

²⁵ 15 U.S.C. 78q-1(b)(3)(I).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2020-005 and should be submitted on or before April 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Matthew J. DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 33817/March 13, 2020]

Investment Company Act of 1940; Order Under Section 6(C) and Section 38(A) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery

The current outbreak of coronavirus disease 2019 (COVID-19) was first reported on December 31, 2019. The disease has led to disruptions to transportation, including buses, subways, trains and airplanes, and the imposition of quarantines around the world. The Commission has heard from industry representatives that COVID-19 may present challenges for boards of directors of registered management investment companies and business development companies ("BDCs") to travel in order to meet the in-person voting requirements under the Investment Company Act of 1940 (the "Investment Company Act" or "the Act") and rules thereunder. In addition, we recognize that registered management investment companies and unit investment trusts (together, "registered funds") may face challenges if, as a result of COVID-19, personnel of registered fund managers or other third-party service providers that are necessary to prepare these reports become unavailable, or only available

on a limited basis, in: (i) Preparing or transmitting annual and semi-annual shareholder reports; and/or (ii) timely filing Forms N-CEN and N-PORT. We also understand that due to recent market movements certain registered closed-end funds ("closed-end funds") and BDCs may seek to call or redeem securities and may face challenges in providing the advance notice required under Rule 23c-2. Finally, we appreciate that there may be difficulties in the timely delivery of registered fund prospectuses. In light of the current situation, we are issuing this Order providing an exemption from certain requirements of the Investment Company Act and a statement regarding prospectus delivery obligations of registered funds.

Section 6(c) of the Investment Company Act provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Investment Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. Section 38(a) of the Investment Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Investment Company Act.

I. Time Period for the Exemptive Relief

The time period for the relief specified in this Order is as follows:

- For the relief in Sections II and V of this Order, the relief is limited to the period from and including the date of this Order to June 15, 2020.
- For the relief in Sections III and IV of this Order, the relief is limited to filing or transmittal obligations, as applicable, for which the original due date is on or after the date of this Order but on or prior to April 30, 2020.

The Commission intends to continue to monitor the current situation. The time period for any or all of the relief may, if necessary, be extended with any additional conditions that are deemed appropriate, and the Commission may issue other relief as necessary or appropriate.

II. In-Person Board Meeting Requirements for Registered Management Investment Companies and BDCs

In light of the current and potential effects of COVID-19, the Commission finds that the exemptions set forth below:

are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act; and are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act.

The necessity for prompt action of the Commission does not permit prior notice of the Commission's action.

Accordingly, it is *ordered*, pursuant to Sections 6(c) and 38(a) of the Act:

That for the period specified in Section I, a registered management investment company or BDC and any investment adviser of or principal underwriter for such registered management investment company or BDC is exempt from the requirements imposed under sections 15(c) and 32(a) of the Investment Company Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) under the Investment Company Act that votes of the board of directors of either the registered management investment company or BDC be cast in person, provided that:

(i) Reliance on this Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;

(ii) the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and

(iii) the board of directors, including a majority of the directors who are not interested persons of the registered management investment company or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.

III. Forms N-CEN and N-PORT Filing Requirements

Disruptions to transportation, and limited access to facilities, personnel, and third party service providers as a result of COVID-19 could hamper the efforts of registered funds with filing obligations to meet their filing deadlines. At the same time, investors and the Commission have an interest in the timely availability of required information about their investments, and we remind registered funds who are

²⁸ 17 CFR 200.30-3(a)(12).