descendants who are not Family Members to whom the Applicant would provide Advisory Services if relief were granted. The Applicant estimates that if the Additional Family Clients' assets were managed by the Applicant, the assets owned by the Additional Family Clients would represent less than five percent (5%) of the Applicant's assets under management. From the perspective of the Dewan Family, allowing the Applicant to provide Services to the Additional Family Clients is consistent with the existing familial relationship among family members.

4. The Applicant also submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant states that the office is a private organization that was formed to be the ''family office'' for the Dewan Family and that the office does not have any public clients. The Applicant maintains that the office's Advisory Services are exclusively tailored to the needs of the Extended Dewan Family. The Applicant argues that the provision of Advisory Services to the Additional Family Clients, does not create any public interest that would require the office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a ''family office'' that complies in all respects with the Family Office Rule.

5. The Applicant argues that although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition, and that certain issues would be more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability.

6. The Applicant maintains that, based on its circumstances—desiring to provide Advisory Services to certain Additional Family Clients who are relatives that have been considered and treated as family members for twenty-five (25) years and whose status as clients of the office would not change the nature of the office's operations to that of a commercial advisory business—an exemptive order is appropriate based on the Applicant's specific facts and circumstances.

7. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

The Applicant's Conditions

1. The Applicant will offer and provide Advisory Services only to Family Clients and to the Additional Family Clients, who generally will be deemed to be, and be treated as if they were, Family Clients; provided, however, that the Additional Family Clients will be deemed to be, and treated as if they were, Family Members for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.

2. The Applicant will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Clients' Family Entities) as defined in paragraph (d)(5) of the Family Office Rule.

3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Clients' Family Entities), will account for at least 95% of the assets for which the Applicant provides Advisory Services.

4. The Applicant will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–24956 Filed 11–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90368; File No. SR–DTC–2020–801]

Self-Regulatory Organizations; The Depository Trust Company; Notice of No Objection To Advance Notice To Amend Rule 4

November 6, 2020.

On September 9, 2020, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2020–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to amend Rule 4 of the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''). The Advance Notice was published for comment in the **Federal Register** on October 20, 2020,[4] and the Commission has not received comments regarding the changes proposed in the Advance Notice. This publication serves as notice of no objection to the Advance Notice.

I. The Advance Notice

A. Background

DTC is the central securities depository (''CSD'') for substantially all corporate and municipal debt and equity securities available for trading in the United States.[5] As a covered clearing agency that provides CSD services,[6] DTC provides a central

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] Securities Exchange Act Release No. 90169 (October 14, 2020), 85 FR 66666 (October 20, 2020) (SR–DTC–2020–801) (''Notice of Filing'').

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in DTC's rules, including, but not limited to, the Rules, By-Laws and Organization Certificate of DTC (the ''Rules'') and the DTC Settlement Service Guide (the ''Settlement Guide''), available at *http://www.dtcc.com/legal/rules-and-procedures.aspx.* The Settlement Guide is a Procedure of DTC filed with the Commission that, among other things, operationalizes and supplements the DTC Rules that relate to settlement.

[6] A covered clearing agency is defined as a registered clearing agency that provides the services of a central counterparty (''CCP'') or CSD. *See* 17 CFR 240.17Ad–22(a)(5). CSD services means services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act. *See* 17 CFR 240.17Ad–22(a)(3). Specifically, the definition of a clearing agency includes, in part, ''any person, such as a securities depository that (i) acts as a custodian of securities

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location in which securities may be immobilized, and interests in those securities are reflected in accounts maintained for its Participants, which are financial institutions such as brokers or banks.[7] DTC does not provide central counterparty services and therefore does not become party to its Participants' transactions or guarantee settlement on behalf of its Participants.[8]

DTC provides settlement services for virtually all broker-to-broker equity and listed corporate and municipal debt securities transactions in the U.S., as well as institutional trades, money market instruments and other financial obligations. For end-of-day net funds settlement, the DTC settlement system records money debits and credits to Participant settlement accounts throughout a Business Day.[9] At the end of a Business Day, a Participant's settlement account will have a net debit (*i.e.,* the sum of all money charges to a Participant's account exceeds the sum of all money credits), net credit (*i.e.,* the sum of all money credits to a Participant's account exceeds the sum of all money charges), or zero balance. This final balance will determine whether the Participant has an obligation to pay or to be paid as part of the process of DTC completing settlement on that Business Day. A Participant that fails to pay its net debit balance and therefore defaults on its settlement obligations on a Business Day will not have paid for the securities processed for delivery versus payment, and the securities will not be credited to its account.

DTC represents that there may be circumstances in which the amount of settlement payments received or available to DTC on a Business Day is not sufficient to pay all Participants with an end-of-day net credit balance on that Business Day (a ''settlement gap'').[10] A settlement gap could occur on a Business Day as a result of a Participant Default, where a Participant fails to pay its settlement obligation (a ''default gap''). A settlement gap could also occur on a Business Day as a result of causes other than a Participant Default (a ''non-default gap''). Examples of a non-default gap could include a scenario in which the funds required to complete settlement are not available to DTC due to an operational or data issue arising at DTC or at a Participant or Settling Bank, a cyber incident, or other business disruption.[11] According to DTC, its failure to complete settlement on a given Business day could cause significant market-wide effects.[12]

B. The Participants Fund and Rule 4

The Participants Fund is prefunded and represents the aggregate of the deposits that each DTC Participant is required to make under DTC's Rules.[13] The Rules provide for a minimum deposit to the Participants Fund, and Participants with higher levels of activity that impose greater liquidity risk to the DTC settlement system have proportionally larger required deposits.[14] DTC has stated that the Participants Fund is a mutualized pre-funded liquidity and loss resource, and that DTC does not have an obligation to repay the Participants Fund and the application of the Participants Fund does not convert to a loss.[15] Once DTC applies the Participants Fund, the Participants are required, upon the demand of DTC, to replenish their shares of the Participants Fund to satisfy their minimum deposits.[16] DTC further represents that the principal purpose of the Participants Fund is to be one of the foundational liquidity resources available to DTC to fund a shortfall in order to complete settlement on a Business Day.[17]

Currently, Section 4 of Rule 4 provides that, if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of Rule 4 [18] is not sufficient to complete settlement, DTC may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a ''non-defaulting Participant''), and apply such other liquidity resources as may be available to DTC, including, but not limited to, the End-of-Day Credit Facility.[19] DTC recognizes that currently, certain provisions of Rule 4 might be construed to narrow the scope of use of the Participants Fund (and any other liquidity resources) for settlement to a

in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.'' 15 U.S.C. 78c(a)(23)(A).

[7] *See, e.g.,* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45168 (October 3, 1983) (File No. 600–1) (''A securities depository is a ''custodial'' clearing agency that operates a centralized system for the handling of securities certificates. Depositories accept deposits of securities from broker-dealers, banks, and other financial institutions; credit those securities to the depositing participants *(sic)* accounts; and, pursuant to participant's *(sic)* instructions, effect book-entry movements of securities. The physical securities deposited with a depository are held in a fungible bulk; each participant or pledgee having an interest in securities of a given issue credited to its account has a pro rata interest in the physical securities of the issue held in custody by the securities depository in its nominee name. Depositories collect and pay dividends and interest to participants for securities held on deposit. Depositories also provide facilities for payment by participants to other participants in connection with book-entry deliveries of securities. . . .'').

[8] A clearing agency that provides central counterparty services interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer. 17 CFR 240.17Ad–22(a)(2).

[9] Credits to a Participant settlement account arise from deliveries versus payment, receipt of payment orders, principal and interest distributions in respect of securities held, intraday settlement progress payments and any other items or transactions that give rise to a credit. Debits to a Participant settlement account are primarily due to receives versus payment, as well as other types of charges to the account permitted under the Rules. *See* Notice of Filing, *supra* note 4, 85 FR at 66667.

[10] *See id.*

[11] DTC is subject to a number of regulatory requirements related to its operational and cyber risks, including Rule 17Ad–22(e)(17) and Regulation Systems Compliance and Integrity. DTC's overall approach to operational risk is summarized in its Disclosure Framework, available at *https://www.dtcc.com/legal/policy-and-compliance*. Among other things, DTC manages its operational risk pursuant to the Clearing Agency Operational Risk Management Framework, which the Commission approved in a separate rule filing. *See* Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014).

[12] *See* Notice of Filing, *supra* note 4, 85 FR at 66667 (citing, *e.g.,* Rule 9(B), *supra* note 5, which states: ''Each Participant and the Corporation shall settle the balance of the Settlement Account of the Participant on a daily basis in accordance with these Rules and the Procedures. Except as provided in the Procedures, the Corporation shall not be obligated to make any settlement payments to any Participants until the Corporation has received all of the settlement payments that Settling Banks and Participants are required to make to the Corporation.'').

[13] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 5.

[14] *See id.*

[15] Securities Exchange Act Release No. 83950 (August 27, 2018), 83 FR 44393 (August 30, 2018) (SR–DTC–2017–804).

[16] *See* Section 4 of Rule 4 (Participants Fund and Participants Investment), *supra* note 5.

[17] *See* Notice of Filing, *supra* note 4, 85 FR at 66668 (citing DTC's Settlement Guide which provides that the Participants Fund creates liquidity and collateral resources to support the business of DTC and to cover losses and liabilities incident to that business).

[18] Section 3 of Rule 4 provides that if a Participant is obligated to DTC pursuant to the Rules and the Procedures and fails to satisfy any such obligation, DTC shall, to the extent necessary to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default. *See* Section 3 of Rule 4, *supra* note 5.

[19] Section 2 of Rule 4 provides that ''End-of-Day Credit Facility'' is any credit facility maintained by DTC for the purpose of funding the end-of-day settlement of transactions processed through the facilities of DTC. *See* Section 2 of Rule 4, *supra* note 5. *Also see* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR–DTC–2017–802; NSCC–2017–802) (renewing the committed revolving credit facility of DTC and National Securities Clearing Corporation).

default gap only.[20] In order to ensure that DTC may use the Participants Fund and other liquidity resources to fund a settlement gap regardless of its cause, DTC has proposed revising Rule 4, as discussed below.

C. Description of Proposed Changes

DTC states that Section 4 of Rule 4 does not address the use of the Participants Fund to complete settlement when there is a non-default gap and could be construed as limiting the pro rata application of the Participants Fund to fund a settlement gap to default scenarios.[21] DTC further represents that, on each Business Day, settlement occurs during a tight timeframe, in conjunction with the Federal Reserve's National Settlement Service and Fedwire.[22] If there is a delay with the receipt or disbursement of funds for settlement, DTC would need to address those problems quickly in order to complete settlement on that Business Day.[23]

In the Advance Notice, DTC describes the proposed changes to address this situation and expressly ensure that the Participants Fund could be used to complete settlement in the event of a non-default gap. First, DTC proposes to amend Section 4 of Rule 4 to state that (i) the Participants Fund, (ii) the existing retained earnings or undivided profits of DTC, and (iii) any other liquidity resources as may be available (including, but not limited to, the End-of-Day Credit Facility), would be available to DTC as liquidity resources to fund settlement on a Business Day, regardless of whether the settlement gap is a default gap or a non-default gap. The proposal would state that DTC may apply its available resources to fund settlement, in such order and in such amounts as it determines, in its sole discretion. Second, DTC proposes to provide that a determination to apply the Participants Fund shall be made by either the Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, a member of any management committee, Treasurer or any Managing Director as may be designated by the Chief Risk Officer from time to time. The proposal also states that the Board of Directors (or an authorized Committee thereof) shall be promptly informed of the determination.[24] Third, DTC proposes to make certain clarifying and conforming changes, including to clarify that a Participant's pro rata share of an application of the Participants Fund would be the same whether there is a default gap or a non-default gap, and to make minor changes for conformity and readability.

II. Discussion and Recommendation

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[25]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[26] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[27]

- To promote robust risk management;
- To promote safety and soundness;
- To reduce systemic risks; and
- To support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[28]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[29] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[30] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[31] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(1), (e)(2)(i) and (v), and (e)(7).[32]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act,[33] because the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the broader financial system.

First, the Commission believes that the proposal is consistent with promoting robust risk management. DTC proposes to amend Section 4 of Rule 4 to provide expressly for the pro rata application of the Participants Fund, retained earnings, and any other liquidity resources, including DTC's credit facility, to any settlement gap, including a non-default gap. As noted above, settlement occurs during a tight timeframe on each Business Day. If there is a delay with the receipt or disbursement of funds for settlement, it would need to be addressed quickly in order to complete settlement on that Business Day. The proposal would clarify which resources DTC can access and use in the most time-efficient and effective manner to ensure settlement.[34]

[20] *See* Notice of Filing, *supra* note 4, 85 FR at 66668.

[21] *See* Notice of Filing, *supra* note 4, 85 FR at 66669.

[22] *See id.; see also,* Settlement Guide at 19–20, *supra* note 5.

[23] *See* Notice of Filing, *supra* note 4, 85 FR at 66669.

[24] The requirement that DTC would also promptly notify the Commission in the event that the Participants Fund were used to complete settlement would remain unchanged.

[25] *See* 12 U.S.C. 5461(b).

[26] 12 U.S.C. 5464(a)(2).

[27] 12 U.S.C. 5464(b).

[28] 12 U.S.C. 5464(c).

[29] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (Standards for Covered Clearing Agencies). DTC is a ''covered clearing agency,'' as defined in Rule 17Ad–22(a)(5). *See supra* note 6.

[30] *Id.*

[31] 12 U.S.C. 5464(b).

[32] 17 CFR 240.17Ad–22(e)(1) and (e)(2)(i).

[33] 12 U.S.C. 5464(b).

[34] The Commission further believes that use of the Participants Fund may be the most efficient method of completing settlement at the end of a Business Day on a tight timeframe, as it generally consists of cash which, pursuant to DTC's Investment Policy, must be held in demand deposit, savings or checking bank accounts that provide same day access to funds. *See* Exchange Act Release No. 88513 (March 30, 2020), 85 FR 19047, 19048 (April 3, 2020). The Commission observes that, as a general matter, it likely could take more time to

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Moreover, the proposal would specify the particular DTC personnel whose approval could authorize the use of the Participants Fund to finance a settlement gap. The Commission believes that the proposal is designed to allow DTC to take timely and effective action to fund a settlement gap, regardless of whether it is a default or non-default gap, and therefore complete settlement, by identifying and applying appropriate liquidity resources, which is consistent with the promotion of robust risk management.

Second, the Commission believes that the proposal is consistent with the promotion of safety and soundness of DTC and, by extension, the broader financial system. As stated above, the proposal would expressly provide that DTC may use the Participants Fund and other specified resources as a liquidity resources in the event of a settlement gap. With this proposal, DTC would expressly state how it would manage the potential liquidity risk that may arise from both the default of a Participant as well as a non-default event, including operational issues at DTC, a Participant, or a Settling Bank. With the proposal, DTC would be better positioned to timely complete settlement if a default or non-default gap arises. Accordingly, the Commission believes that the proposal is consistent with the promotion of safety and soundness.

Finally, the Commission believes that the proposal is consistent with reducing systemic risks and supporting the stability of the broader financial system. With clear authority to use the Participants Fund and other resources to address both a default and non-default settlement gap, DTC should be better positioned to access sufficient liquidity, and thus be better able to manage its liquidity risks in the event of a settlement gap. DTC is a SIFMU and serves as the only central securities depository in the United States, settling virtually all broker-to-broker equity and listed corporate and municipal debt securities transactions in the United States, as well as institutional trades, money market instruments and other financial obligations. This access to liquidity during a stress event would help mitigate any risk to settlement finality due to DTC having insufficient funds to meet payment obligations to its Participants. As such, access to this liquidity would help to strengthen the liquidity of DTC and mitigate potential risks to settlement finality, thereby reducing systemic risks and supporting the stability of the broader financial system.

For the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[35]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[36]

As discussed above, current Section 4 of Rule 4 does not address the use of the Participants Fund or other liquidity resources to complete settlement when there is a non-default gap, and DTC is concerned that it could be construed as limiting the pro rata application of the Participants Fund to fund a settlement gap to default scenarios. The proposal would amend Rule 4 to expressly state that the Participants Fund, DTC's retained earnings, and other liquidity resources may be used by DTC to fund a settlement gap to complete settlement on a Business Day, whether the settlement gap is the result of a Participant Default or otherwise. In addition, the proposal makes clarifying and conforming changes and provides governance regarding the application of the Participants Fund.

The Commission believes that the above changes are designed to ensure greater certainty in the Rules regarding what resources would be available to DTC to complete settlement in the event of a settlement gap. The proposal would provide a clear, transparent and enforceable legal basis for DTC to apply the Participants Fund, retained earnings, or other liquidity resources to any settlement gap. It would also clarify that a Participant's pro rata share of an application of the Participants Fund would be the same whether there is a default gap or a non-default gap, and expressly state that DTC may apply its available resources to fund settlement, in such order and in such amounts as it determines, in its sole discretion.

Therefore, the Commission believes the proposal is designed to help ensure that DTC's Rules remain well-founded, transparent, and legally enforceable in all relevant jurisdictions, consistent with Rule 17Ad–22(e)(1) under the Act.[37]

C. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rule 17Ad–22(e)(2) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that (i) are clear and transparent, and (v) specify clear and direct lines of responsibility.[38]

As discussed above, the proposal would provide that a determination to apply the Participants Fund shall be made by either the Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, a member of any management committee, Treasurer or any Managing Director as may be designated by the Chief Risk Officer from time to time. The proposal would also provide that the Board of Directors (or an authorized Committee thereof) shall be promptly informed of the determination. With this proposal, the Rules would expressly define who would be responsible for making the determination to apply the Participants Fund to a settlement gap and would require that the Board of Directors (or its authorized Committee) would be informed of such determination promptly.

Therefore, the Commission believes the proposal is designed to provide for governance arrangements regarding the use of the Participants Fund to complete settlement that are clear and transparent and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i) and (v) under the Act.[39]

D. Consistency With Rule 17Ad–22(e)(7)(i)

Rule 17Ad–22(e)(7)(i) under the Act requires, in part, that a covered clearing agency, like DTC, establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.[40]

As described above, the proposal would clarify that the Participants Fund and other resources may be applied by

access retained earnings or draw down on the credit facility.

[35] 12 U.S.C. 5464(b).

[36] 17 CFR 240.17Ad–22(e)(1).

[37] *Id.*

[38] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(7)(i).

DTC to fund settlement in the event of a default or non-default gap. The proposed change is designed to help ensure that DTC is able to manage its settlement and funding flows on a timely basis and effect same day settlement of payment obligations in certain foreseeable stress scenarios.

Therefore, the Commission believes that the proposal is reasonably designed to help DTC effectively manage liquidity risk in a timely manner to complete settlement, and accordingly is consistent with Rule 17Ad–22(e)(7)(i).[41]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission does not object to Advance Notice (SR–DTC–2020–801) and that DTC is authorized to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–DTC–2020–011, whichever is later.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–25006 Filed 11–10–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90355; File No. SR–NASDAQ–2020–017]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Nasdaq Rule 5704

November 5, 2020.

On July 23, 2020, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain listing requirements relating to maintaining a minimum number of beneficial holders and minimum number of shares outstanding. The proposed rule change was published for comment in the **Federal Register** on August 7, 2020.[3]

On September 10, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change. The Commission is issuing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Description of the Proposal

The Exchange proposes to amend Nasdaq Rule 5704 to: (1) Remove the requirement that, twelve months after the commencement of trading on the Exchange, a series of Exchange Traded Fund Shares must have 50 or more beneficial holders; and (2) replace its existing minimum number of shares requirement with a requirement that each series of Exchange Traded Fund Shares have a sufficient number of shares outstanding at the commencement of trading to facilitate the formation of at least one creation unit.[7]

The Exchange believes that the requirement that a series of Exchange Traded Fund Shares listed on the Exchange must have at least 50 beneficial shareholders is no longer necessary. The Exchange believes that the requirements of Rule 6c–11 under the Investment Company Act of 1940 (''1940 Act''), coupled with the existing creation and redemption process, mitigate the potential lack of liquidity that, according to the Exchange, the shareholder requirement was intended to address.[8] The Exchange further believes that requiring at least one creation unit to be outstanding at the commencement of trading, together with the daily portfolio transparency and other enhanced disclosure requirements of Rule 6c–11 under the 1940 Act,[9] will facilitate an effective arbitrage mechanism and provide market participants and investors with sufficient transparency into the holdings of the underlying portfolio, and ensure that the trading price in the secondary market remains in line with the value per share of a fund's portfolio.

Specifically with respect to arbitrage, the Exchange states that the arbitrage mechanism relies on the fact that shares of the Fund can be created and redeemed and that shares of the Fund are able to flow into or out of the market when the price of the Fund is not aligned with the net asset value per share of the portfolio. The resulting buying and selling of the shares of the Fund, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to converge. In addition, the Exchange states that the proper functioning of the arbitrage mechanism is reliant on the presence of authorized participants (''APs'') that are eligible to facilitate creations and redemptions with the fund and support the liquidity of the fund. As a result, the Exchange believes that the AP is able to buy and sell Exchange Traded Fund Shares from both the fund and investors. Because Exchange Traded Fund Shares can be created and redeemed ''in-kind'' and do not have an upper limit of the number of shares that can be outstanding, an AP can fulfill customer orders or take advantage of arbitrage opportunities regardless of the number of shares currently outstanding. Thus, the Exchange believes that, unlike common stock, the liquidity of Exchange Traded Fund Shares is not dependent on the number of shares currently outstanding or the number of shareholders, but on the availability of APs to transact in the Exchange Traded Fund Shares primary market.

To support these contentions, the Exchange provides information, during a two-month observation period, regarding how closely two funds—the SPY and QQQ—tracked their respective underlying indexes, as well as data regarding creation and redemption activity in those two funds during the same observation period. The Exchange asserts that a symbiotic relationship exists between the disclosure requirements of Rule 6c–11 under the

[41] *Id.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89464 (August 4, 2020), 85 FR 48012 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 89823, 85 FR 57895 (September 16, 2020). The Commission designated November 5, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Currently, Nasdaq Rule 5704(b)(1)(A) provides that the Exchange will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

[8] In contrast, Nasdaq believes that the shareholder requirement as it relates to common stock is a measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed. *See id.* at 48012, n.6.

[9] As an example, the Exchange notes that Rule 6c–11(c)(1)(vi) requires additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, so that there would be transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage mechanism.