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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99264; File No. SR-DTC-2023-014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the DTC Fee Schedule To Revise Certain Fees Charged to Participants for (i) Participants Fund Maintenance; (ii) Underwriting Services; (iii) Asset Services; and (iv) Settlement Services

January 2, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 2023, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ would modify the DTC Fee Schedule⁶ (“Fee Guide”) to revise certain fees charged to Participants for (i) Participants Fund Maintenance; (ii) Underwriting Services;⁷ (iii) Asset Services; and (iv) Settlement Services, as described below.

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

Purpose

The proposed rule change would modify the Fee Guide to revise certain fees charged to Participants for (i) Participants Fund Maintenance; (ii) Underwriting Services; (iii) Asset Services; and (iv) Settlement Services, as described below.

Overview

DTC operates a “low cost” pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation during the annual budget process. The budget is approved annually by the Board. DTC’s fees are cost-based plus a low-margin markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. The markup is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements. When estimating expected revenues and costs,

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at www.dtcc.com/legal/rules-and-procedures.aspx.

⁶ Available at www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf.

⁷ Pursuant to Rule 2, Section 1, each Participant shall pay to DTC the compensation due it for services rendered to the Participant based on DTC’s fee schedules. See Rule 2, *supra* note 5.

DTC typically uses historical, current, and expected usage and market trends to determine revenue outlook and apply current budgeted assumptions on costs.

In addition to assessing the overall impact of fee changes at DTC, the Board also considers impacts of fee changes from an individual product/service category (*e.g.*, Underwriting, Asset Services, Participants Fund Maintenance) perspective, taking cost and capital considerations relating to a given category into account. After evaluation of DTC’s short-term and long-term financial position in consideration of expected Participant activity, revenues, cost of funding, market volatility, and the financial markets more broadly, DTC has determined that it should increase the overall amount it collects from Participants through fees. In this regard, the proposed rule change would increase certain fees relating to Participants Fund maintenance and Underwriting Services, and it would eliminate and consolidate other Asset Services fees included in the Fee Guide, to better align cost and revenue, as described below.

Participant Fund Maintenance Fee Increase

DTC maintains a pool of funds used for liquidity purposes consisting of mandatory and voluntary contributions by Participants (“Participants Fund”). The Participants Fund creates liquidity and collateral resources to support the business of DTC and to cover losses and liabilities incident to that business. For this purpose, every Participant has a Required Participants Fund Deposit based on the Participant’s activity at DTC. The Participants Fund is held in cash at DTC and is used in the event a Participant fails to settle.

In support of maintaining the Participants Fund, DTC charges a Participants Fund Maintenance Fee, which is a monthly fee calculated, in arrears, as the product of (A) 0.25 percent and (B) the average of each Participant’s Actual Participants Fund Deposit, as of the end of each day, for the month, multiplied by the number of days for that month and divided by 360.⁸ DTC proposes to increase the rate used to calculate the Participants Fund Maintenance Fee by 10 basis points from 0.25 percent to 0.35 percent. DTC is proposing this increase in order to cover its costs for servicing the fund and to maintain the appropriate low-margin markup above costs.

All 193 Participants are projected to incur a 40 percent increase to their

⁸ See Fee Guide, *supra* note 6 at 20.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

individual Participants Fund Maintenance Fee as a result of the increase. Of these Participants, six would see an increase between \$100,000 and \$130,000; 27 would see an increase between \$10,000 and \$100,000; and 160 would see an increase of less than \$10,000.

Underwriting Fee Increase

DTC, through its Underwriting Department, serves the financial

industry by making securities eligible for depository services. Through DTC, Participants have the ability to distribute new and secondary offerings quickly and economically by electronic book-entry delivery and settlement. These securities are then available for depository services.

Due to decreasing issuance volumes since 2021, strategic investments in modernization, and continued inflationary headwinds, DTC's

Underwriting fees, which have not changed in 10 years, are not covering its costs. DTC proposes to amend the Fee Guide to increase the Underwriting eligibility fees charged to Participants to better align costs and revenue.

Specifically, DTC proposes to increase eligibility fees by approximately 20 percent across the following Underwriting fees (bold, underlined text indicates additions and bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Eligibility Fees		

Equity Eligibility Fee	750.00 <u>900.00</u>	Per new issue with one CUSIP plus Additional CUSIP Fee 728

Equity Eligibility – Additional CUSIP Fee	250.00 <u>300.00</u>	Per additional CUSIP
Debt Eligibility Fee	350.00 <u>425.00</u>	Per new issue with one CUSIP plus Additional CUSIP Fee 729
Debt Eligibility – Additional CUSIP Fee	250.00 <u>300.00</u>	Per additional CUSIP
Municipal Eligibility Fee – Single CUSIP	350.00 <u>425.00</u>	Per new issue with one CUSIP
Municipal Eligibility Fee – Multi CUSIP	800.00 <u>975.00</u>	Per new issue with two or more CUSIPs
Certificate of Deposit (CD)	175.00 <u>225.00</u>	Per CUSIP
Municipal and corporate insured custodial receipt	200.00 <u>250.00</u>	Per CUSIP
Unit Investment Trust (UIT)	35.00 <u>40.00</u>	Per CUSIP
Small Business Administration (SBA) loan pool	200.00 <u>250.00</u>	Per issue

Sixty-five Participants would see an increase in Underwriting fees. Of these Participants, 14 would see an increase between \$100,000 and \$800,000; 26 would see an increase between \$10,000 and \$100,000; and 25 would see an increase of less than \$10,000.

Asset Services—Simplification and Consolidation of Fees

Asset Services is comprised of diverse asset events outside of clearance and settlement. It encompasses over 1.3 million DTC-eligible equity and debt securities, and provides efficient and

effective centralization, simplification, and automation in the handling of physical securities. It also processes principal, income, and corporate actions for these instruments.

DTC conducted an extensive review of the current DTC Fee Schedule to ensure alignment with current practice and to streamline DTC's fee structure for a better client experience. The proposed changes to both eliminate and consolidate several Asset Services fees would improve customer billing transparency and provide clearer

guidance on when fees are applied. The proposed changes also further reduce the complexity of tiered fee structures and eliminate fees for outdated and non-value-add services. These changes will not have a material impact on the total dollar amount of Asset Services fees charged to Participants.

Specifically, the following entries in the Asset Services section of the Fee Guide would be revised (bold, underlined text indicates additions and bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Securities Processing	****	
General Asset Services	****	
Researching Fee	100.00	Per hour or per CUSIP, depending on nature of research
Invitation to Cover Short Request (ICSR)	300.00	Per submission

Corporate Actions	****	

Allocation Fees	****	

Mandatory Corporate Actions	75.00 80.00	Mandatory exchanges, including mandatory puts, name changes/swings and sale of Rights per participant position

Agent Fees		

Consent Only – Base Processing Fee Consent, Voting or Blocking base processing fee	2,000.00	Per election
Consent Only – Additional Elections on Event Add Election on Event – Consent, Voting or Blocking	1,000.00	Per election
Consent Only – Payment Processing Payment Processing – Consent, Voting or Blocking	200.00	Per election
Consent Only – Event Extension Event Extension – Consent, Voting, Blocking	200.00	Per election
Late Notification of Voluntary Events, tier 1 Late Notice of Vol Events received 5-9 days	2,000.00	Notification received within 5 to 9 days of the expiration
Late Notification of Voluntary Events, tier 2 Late Notice of Vol Events received <5 days	5,000.00	Notification received less than 5 days of the expiration
Non-Standard Corporate Actions Asset Services Exception Processing & Research	Varies	Based on structure of the offer
Rate Change (Post-Payable) And Manual Allocations Rate Change and Manual Allocations	2,000.00	Per CUSIP
Deposit Services		

Deposit Automation Management (DAM)		

Transfer Agent Charges	Varies	Chargeback of fees charged by the transfer agent, plus \$1.00 transaction fee; Applies to cancellation and issuance of certificates of certain issues

New York Window Services (including Envelope Settlement Service, Intercity Envelope Settlement Service, Funds-Only Settlement Service, Dividend Settlement Service)		

Other Services		

Settlement Services

The following entries in the Settlement Services section of the Fee

Guide would be revised (bold, underlined text indicates additions and

bold strikethrough text indicates deletions):

Return of security	0.30	Per security
Transportation	12.00	Per trip

Reorganization Services		
Reorganization		

Processing of dissent letter shareholder demand	400.00	Per dissent letter or shareholder demand processed

Secondary market issue eligibility research (older issues) Secondary Market Issue Eligibility	2,000.00	Per issue; fee is assessed at request for eligibility of an issue that is currently in the secondary market and does not depend on success of request
Submission of a LOR in lieu of a BLOR	300.00	Per letter
Modification to MMI	300.00	Per CUSIP
Consultation/ Research Fee	To be negotiated	Expenses related to eligibility requests that require consultation, research, use of third parties or any other deal-specific handling

Settlement Services		

Other		

Participants Fund Maintenance Fee	Varies	Per month; Calculated, in arrears, as the product of (A) 0. 235 and (B) the average of each Participant's Actual Participants Fund Deposit, as of the end of each day, for the month, multiplied by the number of days for that month and divided by 360.

Participant Outreach

DTC has conducted ongoing outreach to each Participant in order to provide them with notice of the proposed changes and the anticipated impact for the Participant. The impact of the proposed changes was provided to

Participants using year to date July 2023 annualized data. Participants asked clarifying questions but did not express concerns.

Implementation Timeframe

DTC would implement this proposal on January 1, 2024. To that effect, a legend would be added to the Fee Guide stating there are changes that have become effective upon filing with the but have not yet been implemented. The

proposed legend also would include a date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Guide.

2. Statutory Basis

DTC believes this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes the proposed changes to modify fees charged to Participants for (i) Participants Fund Maintenance; (ii) Underwriting Services; (iii) Asset Services; and (iv) Settlement Services, as described above, are consistent with Section 17A(b)(3)(D) of the Act,⁹ for the reasons described below. DTC also believes that the proposed changes to update the Fee Guide with the new fees are consistent with Rule 17Ad–22(e)(23)(ii),¹⁰ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires, *inter alia*, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among Participants.¹¹ DTC believes the proposed rule change to revise fees charged to Participants for (i) Participants Fund Maintenance; (ii) Underwriting Services; (iii) Asset Services; and (iv) Settlement Services, would provide for the equitable allocation of reasonable fees. Because all 193 Participants would see an increase in fees, and those increases are equally shared (*e.g.*, in the case of the Participants Fund Maintenance with a consistent 40 percent increase per Participant) and directly proportional to the Participants' use of DTC's services (*e.g.*, in the case of the Underwriting and Asset Service fees), DTC believes the fees continue to be equitably allocated.

DTC also believes that the proposed fees would continue to be reasonable under the described changes. As described above, DTC's fees are cost-based plus a low-margin markup. As such the proposed fee changes are simply designed to better align to the projected operating costs and expenses of DTC relating to its services. For this reason, DTC believes that the proposed fee changes, as described above, are reasonable and consistent with Section 17A(b)(3)(D) of the Act.¹²

Rule 17Ad–22(e)(23)(ii) under the Act¹³ requires DTC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed fees would be clearly and transparently published in the Fee Guide, which is available on a public website,¹⁴ thereby enabling Participants to identify the fees and costs associated with participating in DTC. As such, DTC believes the proposed rule change is consistent with Rule 17Ad–22(e)(23)(ii) under the Act.¹⁵

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

The proposed rule change may impact competition and that impact may be a burden because it would result in increased fees paid by Participants, as described above. However, DTC does not believe such a burden would be significant because the fees would be charged equally to all Participants that utilize DTC's services and would merely reflect the Participants' activity at DTC. Regardless, DTC believes any burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.¹⁶

DTC believes any such burden would be necessary because the proposed fee increases would better align the fees with DTC's associated costs, helping DTC to achieve and maintain its net income margin. Meanwhile, DTC also believes that any such burden would be appropriate because the fees would continue to be equitably and reasonably allocated among all Participants, as described above.

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

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not

edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at* www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202–551–5777.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–DTC–2023–014 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–DTC–2023–014. 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

⁹ 15 U.S.C. 78q–1(b)(3)(D).

¹⁰ 17 CFR 17Ad–22(e)(23)(ii).

¹¹ 15 U.S.C. 78q–1(b)(3)(D).

¹² *Id.*

¹³ 17 CFR 240.17Ad–22(e)(23)(ii).

¹⁴ See *supra* note 6.

¹⁵ 17 CFR 240.17Ad–22(e)(23)(ii).

¹⁶ 15 U.S.C. 78q–1(b)(3)(I).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 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 (<https://www.dtcc.com/legal/sec-rule-filings>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-DTC-2023-014 and should be submitted on or before January 29, 2024.

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

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99260; File No. 4-818]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC

January 2, 2024.

On November 17, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") and Nasdaq PHLX LLC ("PHLX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated November 12, 2023 ("17d-2 Plan" or the "Plan"). The Plan was published for comment on December 7, 2023.¹ The Commission received no comments on

the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 ("Act"),² among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.³ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁴ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁶ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁷ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial

responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.⁸ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both PHLX and FINRA.⁹ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "PHLX Certification of Common Rules," referred to herein as the "Certification") that lists every PHLX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to PHLX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to

² 15 U.S.C. 78s(g)(1).

³ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁴ 15 U.S.C. 78q(d)(1).

⁵ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁷ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁸ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

⁹ The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ See Securities Exchange Act Release No. 99065 (December 1, 2023), 88 FR 85338.