

using a balanced formula, to assess a fee that is reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, NSCC believes the proposed rule change to modify the "value out of the net" component of the Clearance Activity Fee would be appropriate because it would allow NSCC to assess a fee that is better aligned with NSCC's increased costs and expenses while generating a low net income operating margin.

NSCC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Members. As described above, this proposed rule change, as modified by Amendment No. 1, would replace outdated information currently in the Fee Structure with an updated description of NSCC's current rebate practice. As described in the proposed language, under its current practice, rebates are allocated to eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Members. The proposed change to provide Members with transparency into this practice would not cause any increase or decrease in the rebates Members may receive. Therefore, this proposed rule change, as modified by Amendment No. 1, would not have any impact, or impose any burden, on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, as Modified by Amendment No. 1, Received From Members, Participants, or Others*

Written comments relating to this proposed rule change, as modified by Amendment No. 1, have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

### III. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 1, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>29</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>30</sup> At any time within 60 days of the filing of the proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2020-018 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-NSCC-2020-018. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC 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-NSCC-

2020-018 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90546; File No. SR-DTC-2020-014]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Guide to the DTC Fee Schedule

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2020, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On November 30, 2020, DTC filed Amendment No. 1 to the proposed rule change, which revised a portion of the rule text and corresponding description in the notice relating to DTC's current policy regarding the issuance of rebates to Participants. DTC filed the proposed rule change, as modified by Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, as Modified by Amendment No. 1

The proposed rule change, as modified by Amendment No. 1,<sup>5</sup>

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f).

consists of amendments to the Guide to the DTC Fee Schedule<sup>6</sup> (“Fee Guide”) to (i) revise and/or consolidate certain Fees charged to Participants for certain settlement services,<sup>7</sup> (ii) modify the existing Participants Fund Maintenance Fee (“Maintenance Fee”) and (iii) include a description of DTC’s current policy regarding the issuance of rebates to Participants, as described below.

## II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change, as modified by Amendment No. 1, and discussed any comments it received on the proposed rule change, as modified by Amendment No. 1. 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, as Modified by Amendment No. 1

#### 1. Purpose

The proposed rule change, as modified by Amendment No. 1, would amend the Fee Guide to (i) revise and/or consolidate certain Fees charged to Participants for certain settlement services, (ii) modify the Maintenance Fee and (iii) include a description of DTC’s policy regarding the issuance of rebates to Participants, as described below.

#### Overview

DTC is a central securities depository, and as such, provides a central location in which Eligible Securities<sup>8</sup> may be

(the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

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

<sup>7</sup> 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.

<sup>8</sup> Pursuant to Rule 5, Section 1, an Eligible Security shall only be a Security accepted by the Corporation, in its sole discretion, as an Eligible Security. The Corporation shall accept a Security as an Eligible Security only (a) upon a determination by the Corporation that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledges when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as the Corporation may, in its sole discretion, determine from time to time. See Rule 5, *supra* note 5. See also, DTC Operational

immobilized, or through which Securities may be dematerialized, and interests, in the form of Security Entitlements,<sup>9</sup> in those Securities reflected in Accounts maintained for Participants.<sup>10</sup> DTC also provides for end-of-day net funds settlement relating to these Deliveries.<sup>11</sup>

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 typically during the annual budget process. The budget is approved annually by the Board. DTC’s fees are cost-based plus a markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup of “low margin” is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements.

After evaluation of DTC’s short- 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 would be able to reduce the overall amount it collects from Participants through fees relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs. In this regard, the proposed rule change, as modified by Amendment No. 1, would amend the Settlement Services section<sup>12</sup> of the Fee Guide to reduce and/or consolidate fees, as described below.

In addition, DTC proposes to (i) amend the Maintenance Fee<sup>13</sup> and (ii) add a description of DTC’s current

Arrangements Necessary for Securities to Become and Remain Eligible for DTC Services (“OA”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

<sup>9</sup> Pursuant to Rule 1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8–102 of the New York Uniform Commercial Code. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See Rule 1, *supra* note 5.

<sup>10</sup> See also DTC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at [https://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf), at 5.

<sup>11</sup> See Rule 9(A), Rule 9(B), Rule 9(C) and Rule 9(D), *supra* note 5, and Settlement Service Guide (“Settlement Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>, at 17–30.

<sup>12</sup> See Fee Guide, *supra* note 6, at 19–21.

<sup>13</sup> DTC has provided confidential info to the Commission in connection with this proposed rule change to support the proposed fee changes.

policy regarding the issuance of fee rebates to Participants.

#### Fee Revisions and Consolidations for Certain Settlement Services

#### Fee Reduction for Deliver Orders and Consolidation of Reclaim Fees With the Deliver Order Fees

A Participant may submit an instruction (“Deliver Order”) to DTC to make a Delivery<sup>14</sup> of Eligible Securities via book-entry to another Participant’s account.<sup>15</sup> DTC reduces the Deliverer’s<sup>16</sup> position and increases the Receiver’s<sup>17</sup> position without the need to move physical certificates. Deliveries can be made Delivery Versus Payment<sup>18</sup> or as a Free Delivery,<sup>19</sup> depending on the applicable Participant’s delivery instructions provided in the Deliver Order.

A Participant is charged a fee, named in the Fee Guide as “Day Deliver Order (excluding stock loans),” (“Day Deliver Order Fee”) of 45 cents for a Deliver Order, except the charge is 17 cents for Deliver Orders submitted by the Participant for processing in the night cycle.<sup>20</sup> The latter fee, named the “Night

<sup>14</sup> Pursuant to Rule 1, the term Delivery, as used with respect to a Security held in the form of a Security Entitlement on the books of DTC, means debiting the Security from an Account of the Deliverer and crediting the Security to an Account of the Receiver. A Delivery may be a Delivery Versus Payment or a Free Delivery, or both collectively, as the context may require. See Rule 1, *supra* note 5.

<sup>15</sup> See Rule 9(B), *supra* note 5.

<sup>16</sup> Pursuant to Rule 1, the term “Deliverer”, as used with respect to a Delivery of a Security, means the Person which Delivers the Security. See Rule 1, *supra* note 5.

<sup>17</sup> Pursuant to Rule 1, the term “Receiver”, as used with respect to a Delivery of a Security, means the Person which receives the Security. See *id.*

<sup>18</sup> Pursuant to Rule 1, the term “Delivery Versus Payment” means a Delivery against a settlement debit to the Account of the Receiver, as provided in Rule 9(A) and Rule 9(B) and as specified in the Procedures. See Rule 1, *supra* note 5.

<sup>19</sup> Pursuant to Rule 1, the term “Free Delivery” means a Delivery free of any payment by the Receiver through the facilities of the Corporation, as provided in Rule 9(B) and as specified in the Procedures. See *id.*

<sup>20</sup> See Fee Guide, *supra* note 6, at 19. On the night before settlement day (“S–1”) DTC commences “night cycle” processing. During the night cycle, DTC operates a process (“Night Batch Process”) that utilizes a settlement processing algorithm capable of evaluating each Participant’s transaction obligations, available positions, transaction priorities and risk management controls. Specifically, at approximately 8:30 p.m. on S–1, DTC subjects all transactions eligible for processing to the Night Batch Process. The Night Batch Process runs “off-line” (*i.e.*, is not visible to Participants), allowing DTC to run multiple processing scenarios until the optimal processing scenario is identified. Once the optimal scenario is identified, the results are incorporated back into DTC’s core processing environment on a transaction-by-transaction basis prior to the start of daytime processing. Transactions that have satisfied DTC’s risk controls will be staged for settlement. However, as was the

Deliver Order” fee<sup>21</sup> (“Night Deliver Order Fee”), is lower than the former because it is designed to encourage earlier submission of transactions by Participants, which results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.<sup>22</sup>

The Receiver of the Delivery is charged 11 cents, regardless of time, per receive. This fee is named in the Fee Guide as “Receive, regardless of time (excluding reclaims and stock loans and returns)”<sup>23</sup> (“Receive Fee”). The Participant may reclaim a Delivery that it receives, meaning it enters an instruction for the Delivered Security to be returned to the original Deliverer. The Deliverer and Receiver of a reclaim are each charged 26 cents, referred to in the Fee Guide under the name “Reclaims” (“Reclaim Fee”).

Pursuant to the proposed rule change, as modified by Amendment No. 1, DTC would reduce the Day Deliver Order Fee from 45 cents to 40 cents. The proposed

fee reflects an amount that would facilitate DTC’s ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs.

In addition, DTC would eliminate the Reclaim Fee and consolidate charges for reclaims into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable for the given reclaim activity. The fees as consolidated would replace the Reclaim Fee of 26 cents that, as mentioned above, is currently charged to the Deliverer and Receiver of a reclaim. As such, a Participant submitting reclaim instructions would incur the proposed Day Deliver Order Fee of 40 cents, except during the night cycle where it would incur the Night Deliver Order Fee of 17 cents. All receives relating to reclaims would cause the Receiver to be charged a Receive Fee of 11 cents per reclaim received. The proposed consolidation of the Reclaim Fee with the other fees relating to Deliver Orders and receives

as described above, would promote consistency and transparency within the Fee Guide by causing Deliveries and receives to be charged for at one fee amount for each Delivery and one fee amount for each receive, regardless of whether the related Delivery was instructed as an original Deliver Order or as a reclaim.

In light of the consolidation of the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable for the given reclaim activity, the Fee Guide would be revised such that the three latter fees would be renamed to reflect the inclusion of reclaims and the Reclaim Fee would be removed.

As a result of the above described proposed changes, the Fee Guide entries for the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee would be revised and the Reclaim Fee would be deleted, as follows (Bold, italicized text indicates additions, Bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Night Deliver Order <b>(including reclaims)</b>	0.17	Per item; charged to deliverer; applies to each DO submitted
Day deliver order <b>(including reclaims;</b> <del>(excluding stock loans)</del>	<del>0.45</del> <b>0.40</b>	Per item; charged to deliverer; applies to each DO submitted
Receive, regardless of time <b>(including reclaims;</b> <del>(excluding reclaims and stock loans and returns)</del>	0.11	Per item; charged to receiver
<b>Reclaims</b>	<del>0.26</del>	<del>Per delivery or receive</del>

case prior to this change, if a transaction cannot satisfy DTC’s control functions initially, then it will recycle throughout the day, continuously attempting to satisfy the controls until

approximately 3:10 p.m. for valued transactions and until 6:35 p.m. for free transactions. See Settlement Guide, *supra* note 11 at 5 and 68.

<sup>21</sup> See *id.*

<sup>22</sup> See Securities Exchange Act Release No. 84768 (December 10, 2018), 83 FR 64401 (December 14, 2018) (File No. SR-DTC-2018-011).

<sup>23</sup> See Fee Guide, *supra* note 6, at 19.

For clarity regarding the changes relating to the consolidation of the Reclaim Fee into other fees as described above, the following chart compares the charges Participants incur for a given reclaim pursuant to the current Fee Guide and the charge that would be incurred pursuant to the proposed rule change, as modified by Amendment No. 1.

Reclaim	Current fee name	Current fee amount	Proposed fee under which reclaim would be charged (proposed)	Proposed fee amount
Daytime Reclaim Delivery Instruction ...	Reclaims .....	26 cents .....	Day deliver order (including reclaims; excluding stock loans).	40 cents.
Night Delivery Reclaim Instruction .....	Reclaims .....	26 cents .....	Night deliver order (including reclaims)	17 cents.
Reclaim Receive (Regardless of Time)	Reclaims .....	26 cents .....	Receive, regardless of time (including reclaims; excluding stock loans and returns).	11 cents.

As a result of its review of pricing levels against costs of operation, DTC believes that the proposed fee changes would enable DTC to offset its cost and expense while generating a low margin.

Fee Reduction for Deliveries and Receives of Securities to and From CNS and Consolidation of Existing Fee for ACATS Deliveries and Receives With the Reduced Fee

Another important use of DTC book-entry transfer services is the interface of DTC with its affiliate National Securities Clearing Corporation (“NSCC”) for the processing of trades that are cleared and settled in the NSCC Continuous Net Settlement (“CNS”) system and are processed as Free Deliveries at DTC.<sup>24</sup> DTC also processes Free Deliveries as instructed by NSCC to DTC relating to

NSCC’s Automated Customer Account Transfer Service (“ACATS”).<sup>25</sup>

A Participant is charged 16 cents for the Delivery of a Security to the NSCC CNS account at DTC (“CNS Account”) on the Participant’s behalf.<sup>26</sup> Likewise, the receiving Participant of a Security from the CNS Account is charged 16 cents for the Delivery of the Securities from the CNS Account to its account.<sup>27</sup> This fee is named in the Fee Guide as “Delivery to/from CNS.”<sup>28</sup>

Separately, a Participant is charged 12 cents if it is Delivering or Receiving a Delivery from ACATS.<sup>29</sup> This fee is named in the Fee Guide as “Delivery to/from CNS ACAT.” This fee would be consolidated into a modified Delivery to/from CNS ACAT fee, as described below.

Specifically, pursuant to the proposed rule change, as modified by Amendment

No. 1, DTC would reduce the Delivery to/from CNS fee from 16 cents to 7 cents. In addition, the Delivery to/from CNS ACAT fee would be consolidated into the proposed reduced Delivery to/from CNS fee, and thus would reduce the charge for ACATS-related deliveries and receives from 12 cents to 7 cents. This proposed fee change reflects an amount that would facilitate DTC’s ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs.

As a result of the above described proposed changes, the text of the Fee Guide relating to these fees would be revised as follows (Bold, italicized text indicates additions, Bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Delivery to/from CNS <b><u>(including ACATS)</u></b>	<del>0.16</del> <b><u>0.07</u></b>	Per delivery or receive
<del>Delivery to/from CNS ACAT</del>	<del>0.12</del>	<del>Per receive or delivery</del>

As a result of its review of pricing levels against costs of operation, DTC believes that these proposed fee amounts would enable DTC to offset its cost and expense while generating a low margin.

Participants Fund Maintenance Fee

The Maintenance Fee was implemented in 2016 in order to (i) diversify DTC’s revenue sources, mitigating its dependence on revenues

driven by settlement volumes, and (ii) add a stable revenue source that would contribute to DTC’s operating margin by offsetting increasing costs and expenses.<sup>30</sup> The fee is charged to all Participants in proportion to the Participant’s Actual Participants Fund Deposit, as described below.

The Maintenance Fee is calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Participant’s Actual Participants

Fund Deposit as of the end of each day, for the month, multiplied by the number of days in that month and divided by 360. However, by its terms, the fee is waived if the monthly rate of return on DTC’s investment of the Participants Fund is less than 0.25 percent for the month (“Waiver Provision”).

The Waiver Provision was included for the benefit of Participants. DTC believed that if its monthly rate of return on the investment of the

<sup>24</sup> See Settlement Guide, *supra* note 11, at 15–17.

<sup>25</sup> See *id.* at 17.

<sup>26</sup> See Fee Guide, *supra* note 6, at 19.

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

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Securities Exchange Act Release No. 78530 (August 10, 2016), 81 FR 54639 (August 16, 2016) (SR-DTC–2016–006).

Participants Fund was less than 0.25 percent, then Participants would likely be experiencing similarly low interest income on their deposits, including excess reserves, if applicable; in which case, DTC would waive the fee. Although this approach exposed DTC to the risk of not receiving revenue from the Maintenance Fee, DTC did not believe that such an exposure would be common, significant, or long-term.

#### Proposed Modification to the Maintenance Fee

Due to the coronavirus global pandemic and overall reaction by the financial markets, the rate of return on DTC's investment of the Participants Fund has fallen below 0.25 percent, triggering the Waiver Provision. However, application of the Waiver Provision in this instance has proven to be longer and more significant than what DTC originally contemplated when drafting the provision, resulting in a drop in DTC's revenues. If unaddressed, DTC's revenue could continue to deteriorate and negatively impact DTC's long-term financial health.

To address this issue, DTC is removing the Waiver Provision so that DTC will be able to generate revenue from the Maintenance Fee even if DTC's monthly rate of return on the investment of the Participants Fund is less than 0.25 percent. The ability to generate such revenue under such circumstances is important in helping DTC offset its costs and expenses in any economic environment. Additionally, the proposed change would help provide consistent pricing between DTC and its affiliate clearing agencies, NSCC and Fixed Income Clearing Corporation ("FICC"),<sup>31</sup> as both NSCC and FICC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective Maintenance Fee.<sup>32</sup>

To effectuate the proposed change described above, the Maintenance Fee entry in the Settlement Services section of the DTC Fee Guide<sup>33</sup> would be updated to remove the Waiver Provision.

<sup>31</sup> The Depository Trust & Clearing Corporation is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

<sup>32</sup> See NSCC File No. SR-NSCC-2020-018 and FICC File No. SR-FICC-2020-014 available at <https://www.dtcc.com/legal/sec-rule-filings>.

<sup>33</sup> See Fee Guide, *supra* note 6 at 21.

#### Rebate Policy

DTC is also proposing to amend the Fee Guide to include a description of its current policy regarding the issuance of rebates to Participants. DTC views its practice of providing a rebate to its Participants as a corporate function, and not related to its operation as a self-regulatory organization. A DTC rebate is essentially a return of the revenue that DTC collects through the fees it charges Participants for its services (as set forth in the Fee Guide). Rebates are not related to the amounts Participants deposit with DTC as their Participants Fund Deposit. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual Participant.

Following the financial recession of 2008, DTC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019, DTC determined to reinstitute its practice of discounting Participants' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, DTC is proposing to include a description of its current rebate practice in the Fee Guide. This proposed change would not change DTC's rebate practice but would provide Participants with transparency into this practice and the governance around rebates.

First, the proposed language would describe that DTC may provide Participants with a rebate of excess net income, and would define excess net income as income of either DTC or income related to one business line of DTC after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, and DTC is not obligated to provide a rebate.

Second, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining if a rebate is appropriate, the Board would consider, one or more of the following, as appropriate: DTC's regulatory capital requirements,<sup>34</sup> anticipated expenses,

<sup>34</sup> DTC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). DTC maintains a Clearing Agency Policy on Capital Requirements which

investment needs, anticipated future expenses with respect to improvement or maintenance of DTC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Third, the proposed language would state that, if it determined to issue a rebate, the Board would set a rebate period and a rebate payment date, both of which are used to determine which Participants are eligible for a rebate. The proposed language would state that Participants that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible Participants. The proposed language would state that rebates are applied to all eligible Participants, on a pro-rata basis, based on such Participants' gross fees paid to DTC within the applicable rebate period, excluding pass-through fees and interest earned on Participants Fund Deposits. The proposed language would also state that rebates are applied to eligible Participants' invoices on the rebate payment date as either a reduction in fees or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

#### Participant Impact

The proposed rule change, as modified by Amendment No. 1, is expected to increase DTC's annual revenue by approximately \$12.7 million.

In general, DTC anticipates that the proposal would result in fee decreases for approximately 63% of impacted affiliated families of Participants and fee increases for approximately 37% of impacted affiliated families of Participants. Of the impacted affiliated families of Participants that may have their fees decrease, 25% of impacted affiliated families of Participants would have a decrease of less than \$1,000, 49% of impacted affiliated families of Participants would have a decrease of between \$1,000 and \$100,000, and 26% of impacted affiliated families of Participants would have a decrease greater than \$100,000.

defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89361 (July 21, 2020), 85 FR 45263 (July 27, 2020) (SR-DTC-2020-010) (amending original filing).

### 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. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

### Implementation Timeframe

DTC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure stating there are changes that have become effective upon filing with the Commission 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 Structure.

### 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 certain settlement service fees and the Maintenance Fee, as described above, are consistent with Section 17A(b)(3)(D) of the Act,<sup>35</sup> for the reasons described below. DTC believes that the proposed change to include a description of DTC's current policy regarding the issuance of rebates to Participants is consistent with Rule 17Ad-22(e)(23)(ii),<sup>36</sup> 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.<sup>37</sup> For the reasons set forth below, DTC believes that each of the proposed rule changes, as modified by Amendment No. 1, described above would provide for the equitable allocation of reasonable dues, fees, and other charges among Participants.

DTC believes the proposed rule change to (i) reduce the Day Deliver Order Fee and consolidate the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable, and (ii) reduce the Delivery to/from CNS fee and consolidate the CNS ACAT-related fee

into the Delivery to/from CNS fee as described above, would provide for the equitable allocation of reasonable fees. Because the proposed change would not alter how these fees are charged to Participants, DTC believes that the fees would continue to be equitably allocated because they would continue to be charged based on volume of transaction activity for a given Participant. More specifically, as mentioned above, the Day Deliver Order Fee and the Night Deliver Order Fee are charged based on a Participant's volume of Deliveries during the applicable timeframes, as described above. As such, and as is currently the case, Participants that provide a greater number of Delivery instructions, or receive a greater number of Deliveries, would generally be subject to a higher overall charge for Deliveries and/or Receives, as applicable, based on volume of related transactions. Conversely, Participants that make fewer Deliveries and or receive few Deliveries would generally be a smaller overall charge for Deliveries and receives based on volume.

Similarly, DTC believes that the Day Deliver Order Fee, Night Deliver Order Fee, Receive Fee, and the Delivery to/from CNS fee would continue to be reasonable fees under the proposed change described above. As described above, the fee amounts as proposed reflect an amount that would facilitate DTC's ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain an appropriate low margin above costs. For this reason, DTC believes that the proposed rule change to (i) reduce the Day Deliver Order Fee and consolidate the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee as applicable, and (ii) reduce the Delivery to/from CNS fee and consolidate the ACATS-related fee into the Delivery to/from CNS fee, as described above, would be reasonable fees charged by DTC for these services and is consistent with Section 17A(b)(3)(D) of the Act.<sup>38</sup>

DTC believes that the proposed change to the Maintenance Fee is consistent with this provision of the Act.<sup>39</sup>

As described above, the proposal would modify the Maintenance Fee to remove the Waiver Provision. Because the proposed change would not alter how the Maintenance Fee is currently allocated (*i.e.*, charged) to Participants,

DTC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and would continue to be charged to all Participants in proportion to the Participant's average monthly Actual Participants Fund Deposits. As such, and as is currently the case, Participants that make greater use of DTC's services would generally be subject to a larger Maintenance Fee because such Participants would typically be required to maintain larger Participants Fund deposits pursuant to the Rules.<sup>40</sup> Conversely, Participants that use DTC's services less would generally be subject to a smaller Maintenance Fee because such Participants would typically be required to maintain smaller Participants Fund deposits pursuant to the Rules.<sup>41</sup> The described change would not adjust that allocation. For this reason, DTC believes the Maintenance Fee would continue to be equitably allocated among Participants.

Similarly, DTC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. Although removal of the Waiver Provision means that Participants could be assessed a Maintenance Fee at times when they may not otherwise have been assessed the fee, the removal of the provision would enable DTC to collect needed revenue from the fee even in a difficult economic environment. Additionally, the proposed change would help establish consistent pricing between DTC and its affiliates, NSCC and FICC, regarding each of their respective Maintenance Fees, as concurrent proposals by NSCC and FICC would result in the same calculation.<sup>42</sup> For this reason, DTC believes the Maintenance Fee would continue to be reasonable.

Based on the forgoing, DTC believes the proposed rule change relating to the modification of certain settlement service fees and the Maintenance Fee, as described above, is consistent with Section 17A(b)(3)(D).<sup>43</sup>

Rule 17Ad-22(e)(23)(ii) under the Act requires that DTC 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.<sup>44</sup> The proposed change would add to the Fee Guide a

<sup>40</sup> See Rule 4, Rules, *supra* note 5.

<sup>41</sup> *Id.*

<sup>42</sup> See *supra* note 32.

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>44</sup> 17 CFR 240.17Ad-22(e)(23)(ii).

<sup>35</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>36</sup> 17 CFR 17Ad-22(e)(23)(ii).

<sup>37</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

description of DTC's current rebate practice, which, when applicable, results in a reduction to the amount of fees a Participant owes to DTC. By updating the Fee Guide with a transparent description of DTC's rebate practice, the proposed change would provide Participants with sufficient information to evaluate the fees they may incur by participating in DTC. Therefore, DTC believes the proposed change would be consistent with the requirements of Rule 17Ad-22(e)(23)(ii).<sup>45</sup>

*(B) Clearing Agency's Statement on Burden on Competition Fee Revisions and Consolidations for Certain Settlement Services*

DTC believes that the proposed rule change to reduce the Day Deliver Order Fees and the Delivery to/from CNS fee may promote competition among its Participants because the effect of the consolidations, as proposed, would result in a reduction of the applicable fees, as described above.

The consolidation of fees, as described above, except for the consolidation of the Reclaim Fee into the Day Deliver order fee for applicable activity (reclaims that do not occur in the night cycle), may promote competition among Participants because the effect of the consolidations, as proposed, would result in a reduction of the applicable fees, as described above.

The proposed change to consolidate the Reclaim Fee into the Day Deliver Order Fee for applicable activity (reclaims that do not occur in the night cycle) may present a competitive burden among Participants because this change could increase the fees of those Participants that instruct a reclaim in that a Reclaim that would be charged at the amount of 26 cents under the current Fee Schedule would be charged at 40 cents per reclaim under the proposal. DTC does not believe the proposed change in and of itself would mean that the burden on competition among Participants is significant. This is because even though the amount of the fee increase may seem significant, DTC believes the increase in fees would similarly affect all Participants that utilize DTC's services and be reflective of each Participant's individual activity at DTC, and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, DTC believes any burden that is created by the proposed change would be necessary and appropriate in

furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.<sup>46</sup>

The burden would be necessary because a Reclaim is a functional equivalent of a Deliver Order except that it represents a Delivery to return Securities rather than representing the original Delivery of Securities, and therefore should be charged at the same rate as a Deliver Order. The burden would be appropriate because a reclaim is the functional equivalent of a Delivery and DTC believes a reclaim should now be priced the same as other Deliveries given the capability of a Receiver via the Receiver Authorized Delivery ("RAD") functionality to return Deliveries prior to processing and a reduced need for Receivers to rely on reclaims to return Deliveries to its Account, as described below. In this regard, RAD enables a Receiver of valued deliveries of securities to manage which deliveries to accept, or to reject, prior to further processing by DTC.<sup>47</sup> Specifically, whereas prior to a series of earlier rule changes, transactions below an established dollar value could bypass the RAD control, today all valued transactions are subject to RAD, whereby a Participant can prevent any such Deliveries to its account.<sup>48</sup> Therefore, a Receiver is able to approve all Deliveries to its account through RAD and there is less likelihood that a Participant would need to rely on reclaims to remedy an errant instruction by a counterparty to make a Delivery to its account.

*Maintenance Fee*

DTC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among its Participants. As described above, the Maintenance Fee is charged ratably based on Participants' use of DTC's services, as reflected in Participants' Actual Participant Fund Deposits. Thus, the fee is designed to be reflective of each Participant's individual activity at DTC. Nevertheless, if removal of the Waiver Position, and the resulting imposition of the Maintenance Fee at a time when a Participant would not have otherwise been assessed the fee, would create a competitive burden for a Participant, DTC believes such a burden would not

be significant, given that the amount assessed would be the same but for application of the Waiver Provision. Moreover, DTC believes that any such 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.<sup>49</sup>

The burden would be necessary because it is essential that DTC offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described above, not doing so could adversely affect DTC's financial health. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Participant's use of DTC's services, so that DTC can defray some of its costs and expenses in providing those services.

*Rebate Policy*

DTC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Participants. As described above, this proposed rule change, as modified by Amendment No. 1, would include a description of DTC's current rebate practice in the Fee Guide. As described in the proposed language, under its current practice, rebates are allocated to eligible Participants pro-rata based on such Participants' gross fees paid to DTC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Participants. The proposed change to provide Participants with transparency into this practice would not cause any increase or decrease in the rebates Participants may receive. Therefore, this proposed rule change, as modified by Amendment No. 1, would not have any impact, or impose any burden, on competition among Participants.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, as Modified by Amendment No. 1, Received From Members, Participants, or Others*

Written comments relating to this proposed rule change as modified by Amendment No. 1, have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

<sup>46</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>47</sup> See Settlement Guide, *supra* note 11 at 5 and 54.

<sup>48</sup> See Securities Exchange Act Release Nos. 72576 (July 9, 2014), 79 FR 41355 (July 15, 2014) (SR-DTC-2014-06); and 73804 (December 10, 2014), 79 FR 74796 (December 16, 2014) (SR-DTC-2014-010).

<sup>49</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>45</sup> *Id.*

### III. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 1, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>50</sup> of the Act and paragraph (f)<sup>51</sup> of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2020-014 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-DTC-2020-014. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, 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 10:00 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-2020-014 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-26787 Filed 12-4-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90544; File No. SR-FICC-2020-014]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Clearance Maintenance Fee, Reduce the End of Day Position Fee of the Government Securities Division, and Describe the Current Rebate Policy

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2020, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On November 30, 2020, FICC filed Amendment No. 1 to the proposed rule change, which revised a portion of the rule text and corresponding description in the notice relating to FICC's current policy regarding the issuance of rebates to its members. FICC filed the proposed rule change, as modified by Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup>

<sup>52</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

The proposed rule change, as modified by Amendment No. 1 is hereinafter referred to as the "Proposed Rule Change." The Proposed Rule Change is described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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 consists of modifications to FICC's Mortgage-Backed Securities Division ("MBSD") Clearing Rules ("MBSD Rules") and Government Securities Division ("GSD") Rulebook ("GSD Rules" and together with the MBSD Rules, the "Rules") in order to (i) modify the respective Clearing Fund Maintenance Fee ("Maintenance Fee") of GSD and MBSD, (ii) reduce the end of day position fee of GSD, and (iii) include a description of FICC's current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members, as described in greater detail below.<sup>5</sup>

### 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

FICC is proposing to amend the MBSD Rules and the GSD Rules in order to (i) modify the respective Maintenance Fee of GSD and MBSD, (ii) reduce the end of day position fee of GSD, and (iii) include a description of FICC's current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members, as described in greater detail below.

<sup>5</sup> Capitalized terms not defined herein are defined in the GSD Rules and the MBSD Rules, as applicable, available at <http://www.dtcc.com/legal/rules-and-procedures>.

<sup>50</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>51</sup> 17 CFR 240.19b-4(f).