

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91063; File No. SR-DTC-2020-019]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Update the Distributions Service Guide

February 4, 2021.

I. Introduction

On December 21, 2020, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule change SR-DTC-2020-019. The proposed rule change was published for comment in the *Federal Register* on December 29, 2020.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

DTC proposes to amend its Corporate Actions Distributions Service Guide (“Distributions Guide”)⁴ to (1) more clearly explain the interim accounting process, generally, (2) provide an explanation for the interim accounting process for a security being delisted, (3) change how DTC manages interim accounting when an ex-date⁵ is changed due to an unscheduled closure of a stock exchange, (4) remove the statements that DTC’s U.S. Tax Withholding (“UTW”) service is available to subaccounts of U.S. Participants and that users of the UTW service must enter into a Withholding Agent Agreement, and (v) make certain conforming and technical changes, including updating the copyright date, each described in greater detail below.

A. Changes to the General Description of Interim Accounting

Interim accounting is an important part of the entitlements and allocations process for distributions for DTC. The interim period (also referred to in the Distributions Guide as the due bill period) is the period during which a settling trade has due bills attached to it. A due bill is an indication of a seller’s obligation to deliver a pending distribution (e.g., cash dividend, stock dividend, interest payment, etc.) to the buyer in a securities transaction. For distributions that are the subject of a due bill, the interim period extends from the Interim Accounting Start Date (i.e., record date +1)⁶ up to the Due Bill Redemption Date (which is typically ex-date +1 for equities and payable date -1 for debt).⁷

Normally, the registered holder of a security on the close of business on the record date is entitled to the distribution. There are times, however, when that is not the case. Such times generally fall into two categories. First, for equity issues, there are times when the listed exchange will declare an ex-date that is not one business day prior to the record date (e.g., an ex-date that equals payable date +1). At such times, a buyer is entitled to the distribution when the registered holder of an equity issue sells the security prior to the ex-date. Second, for most bonds, the buyer of the security is entitled to the interest payment (i.e., the distribution) on trades that settle up to and including the day before the payable date, even though the buyer is not the record date holder.

With DTC’s interim accounting process, during a due bill period, DTC tracks all settled activity, where the receiver (typically a buyer) is entitled to a distribution, and adjusts Participants’ record-date positions, crediting the receiver and debiting the deliverer (typically a seller) the distribution amount.⁸ DTC states that this process helps ensure accurate payment on the payable date and eliminate time-consuming and costly paper processing.⁹

DTC proposes to amend the Distributions Guide to provide greater clarity and transparency regarding the foregoing description of the interim accounting process.

B. Interim Accounting on a Security Being Delisted

In certain scenarios, listed exchanges might not announce an ex-date that is on or after the date the corresponding security is being delisted. In such instances, if the listed exchange does not declare an ex-date, but instead provides direction that trades in a particular security up to a specified date include the distribution, then DTC captures interim accounting based on the exchange’s direction.¹⁰ The current Distributions Guide does not clearly describe the foregoing process. DTC proposes to update the Distributions Guide to clearly describe the process. DTC also proposes to update the copyright date of the Distributions Guide.

C. Interim Accounting for an Ex-Date Change Due to Unscheduled Closing of a Stock Exchange

Occasionally, there is an unscheduled closing of one or more stock exchanges (due to, e.g., a national day of mourning, an event causing significant market disruption or regional impact, etc.). During an unscheduled closing, a listed exchange typically moves ex-dates that were scheduled for that date to the next open business day, which is usually the record date. Such a move is necessary because ex-dates must occur on a business day that the listed exchange is open.¹¹

Currently, when an exchange moves ex-dates due to unscheduled closing of the exchange, DTC continues to apply the interim accounting process described above.¹² According to DTC, when there is an unscheduled closure, the intent of the exchange is for the final day of trading with a due bill to fall on the business day prior to the unscheduled closure, so that there would be no executed trades in the security on the day of closure.¹³ However, because this scenario causes ex-dates and record dates to coincide,

¹⁰ DTC states that on the rare occasions, a corporate action event (e.g., a merger) would occur during an interim period that would require DTC to make special processing arrangements. *See id.*

¹¹ *See, e.g.,* FINRA Rule 11140—Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants” available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/11140>.

¹² Notice, 85 FR at 85767.

¹³ DTC has participated in various conversations with exchanges, industry representatives, and Participants to better understand and help address this issue. *See id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 3490747 (December 21, 2020), 85 FR 85765 (December 29, 2020) (File No. SR-DTC-2020-019) (“Notice”).

⁴ DTC’s Distributions Guide is available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf>. Capitalized terms not defined herein are defined in the Rules, By-Laws, and Organization Certification of DTC (“Rules”), available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁵ The “ex-date” or “ex-dividend date” is the day the stock starts trading without the value of an already-declared dividend.

⁶ The record date is the cut-off date used to determine which shareholders are entitled to a corporate dividend. Typically, the ex-date is the day before the record date.

⁷ The payable date refers to the date that any declared stock dividends are due to be paid out. Investors who purchased their stock before the ex-date are eligible to receive dividends on the payable date.

⁸ The physical movement of securities (such as, deposits, withdrawals-by-transfer, and certificates-on-demand) are not transactions that are included in the interim accounting process; thus, they do not result in adjustments between Participants. *See* Notice, 85 FR at 85766.

⁹ *Id.*

and because the interim accounting process is based on a two-day settlement cycle, an unintended consequence is the application of due bills to activity one day after record date.¹⁴ Since DTC continues to apply its standard interim accounting process, Participants are required to perform adjustments to reverse the interim accounting on activity to which the interim accounting should not have applied, creating unnecessary work for the Participants.¹⁵ In order to avoid the need for such adjustments, DTC proposes to no longer apply the interim accounting process when an exchange moves an ex-date due to an unexpected closure of the exchange.

D. UTW Service

DTC states that its UTW service is designed to help ensure that the appropriate non-resident alien withholding tax is applied to U.S.-sourced income paid to DTC's direct non-U.S. Participants.¹⁶ DTC further states that the applicable withholding tax is determined based on the type of income being paid along with the tax forms provided by the Participant.¹⁷

The Distributions Guide currently provides that the UTW service is available to non-U.S. Participants, including subaccounts of U.S. Participants, and that users of the UTW service must enter into a Withholding Agent Agreement.¹⁸ DTC believes that U.S. tax regulations¹⁹ require DTC to withhold U.S. tax on payments it makes to its non-U.S. Participants.²⁰ However, according to DTC, U.S. tax regulations do not contemplate a process under which DTC would withhold tax obligations of its U.S. Participants.²¹ DTC also acknowledges its obligations apply regardless of whether there is or is not an agreement between DTC and its Participants to do so.²² DTC proposes to revise the Distributions Guide to reflect its understanding of the foregoing U.S. tax regulations.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²³ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that

such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁴ and Rule 17Ad-22(e)(21) promulgated under the Act,²⁵ for the reasons described below.

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act²⁶ requires, in part, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. As described above, the proposed rule change would update the Distributions Guide to more clearly explain the interim accounting process and, more specifically, provide an explanation of the interim accounting process for a security being delisted, as well as update the copyright date. Additionally, as described above, the proposed rule change would amend the Distributions Guide for consistency with DTC's understanding of relevant U.S. tax regulations. The Commission believes that these changes would provide DTC's Participants and the public with greater clarity and transparency regarding DTC's interim accounting process, which, in turn, is generally to the benefit of investors and the public. Accordingly, the Commission believes that the proposed rule change is designed, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.²⁷

Section 17A(b)(3)(F) of the Act²⁸ also requires, in part, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed rule change would change how DTC manages interim accounting when an exchange moves an ex-date due to an unscheduled closure of the exchange, so that DTC will no longer capture interim activity that results from such a scenario. As a result, Participants would no longer need to perform adjustments

to reverse the interim accounting on activity to which the interim accounting should not have otherwise applied. By eliminating this need, the proposed rule change should help streamline DTC's interim accounting process for tracking due bills associated with Participants' securities transactions. Because interim accounting is part of DTC's broader mechanism for the clearance and settlement of securities transactions, the Commission believes that by streamlining DTC's interim accounting process, the proposed rule change is designed to remove impediments and perfect the mechanism of the system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁹

B. Consistency With Rule 17Ad-22(e)(21)

Rule 17Ad-22(e)(21) under the Act³⁰ requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, be efficient and effective in meeting the requirements of its Participants and the markets it serves. As described above, the proposed rule change would amend the Distributions Guide to (1) provide greater general clarity and transparency regarding DTC's interim accounting process, (2) explain the interim accounting process for a security being delisted, (3) no longer apply interim accounting when an exchange changes an ex-date due to an unscheduled closure of the exchange, and (4) remove the statements that the UTW service is available to subaccounts of U.S. Participants and that users of the UTW service must enter into a Withholding Agent Agreement.

The foregoing proposed changes would improve the Distributions Guide by clarifying DTC's interim accounting processes, as well as the application and requirements of the UTW service. As a result, the proposed changes would help better inform DTC's Participants regarding those matters. Moreover, as described above, the proposed change to no longer apply interim accounting when there is an unscheduled closure of an exchange would provide efficiencies to Participants by obviating the need for them to make unnecessary interim accounting adjustments.

Accordingly, for the reasons stated above, the Commission believes that the proposed rule change is designed to enhance DTC's efficiency and effectiveness in meeting the requirements of its Participants and the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Distributions Guide, U.S. Tax Withholding, pg 23, *supra* note 4.

¹⁹ See 26 CFR 1.1441-7(a).

²⁰ See Notice, 85 FR at 85767.

²¹ *Id.*

²² *Id.*

²³ 15 U.S.C. 78s(b)(2)(C).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(21).

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ 17 CFR 240.17Ad-22(e)(21).

markets it serves, consistent with Rule 17Ad-22(e)(21) under the Act.³¹

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act³² and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act³³ that proposed rule change SR-DTC-2020-019, be, and hereby is, *approved*.³⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91057; File No. SR-NASDAQ-2020-026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets

February 4, 2021.

On May 29, 2020, The Nasdaq Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a new requirement related to the qualification of management for companies whose business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies. The proposed rule change was published for comment in the **Federal Register** on June 12,

2020.³ On July 20, 2020, pursuant to Section 19(b)(2) of the 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 On August 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ On September 9, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ On November 17, 2020, the Exchange filed Amendment No. 2 to the proposed rule change.⁹ On December 2, 2020, the Commission extended the period for consideration of the proposed rule change to February 7, 2021.¹⁰ On February 1, 2021, the Exchange withdrew the proposed rule change (SR-NASDAQ-2020-026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Assistant Secretary.

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³ See Securities Exchange Act Release No. 89028 (June 8, 2020), 85 FR 35967. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 89342, 85 FR 44951 (July 24, 2020). The Commission designated September 10, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026-7677529-222672.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 89794, 85 FR 57260 (September 15, 2020).

⁹ Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026-8048419-225740.pdf>.

¹⁰ See Securities Exchange Act Release No. 90553, 85 FR 79062 (December 8, 2020).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91060; File No. SR-Phlx-2021-05]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rules

February 4, 2021.

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 January 26, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules at Options 1, Section 1, “Applicability, Definitions and References”; Options 2, Section 4, “Obligations of Market Makers”; Options 2, Section 6, “Market Maker Orders”; Options 3, Section 6, “Firm Quotations”; Options 3, Section 7, “Types of Orders and Order and Quote Protocols”; Options 3, Section 10, “Electronic Execution Priority and Processing in the System”; Options 3, Section 13, “Price Improvement XL (“PIXL”)”; Options 3, Section 15, “Simple Order Risk Protections”; Options 3, Section 23, “Data Feeds and Trade Information”; Options 5, Section 4, “Order Routing”; Options 8, Section 2, “Definitions”; and Options 8, Section 32, “Types of Floor-Based (Non-System) Orders”.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³¹ *Id.*

³² 15 U.S.C. 78q-1.

³³ 15 U.S.C. 78s(b)(2).

³⁴ In approving the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.