of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of Trust Issued Receipts based on Bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–53 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–NYSEArca–2021–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official 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 the Exchange. 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–NYSEArca–2021–53 and should be submitted on or before *September 1, 2021.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[97]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17078 Filed 8–10–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92572; File No. SR–DTC–2021–014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

August 5, 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 July 22, 2021, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change of DTC would amend the Rules, the Settlement Guide, and the Fee Guide[3] in order to provide Participants that are also members of the National Securities Clearing Corporation (''NSCC'') with settlement services in connection with a proposed optional securities financing transaction clearing service of NSCC (''NSCC SFT Service'').

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

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

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

1. Purpose

The proposed rule change would amend the Rules, the Settlement Guide, and the Fee Guide in order to provide Participants that are also members of NSCC with settlement services in connection the NSCC SFT Service. The proposed NSCC SFT Service would provide central clearing for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (each, an ''SFT'').[4] SFTs between

[97] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Each capitalized term not otherwise defined herein has its respective meaning as set forth in DTC's rules, including, but not limited to, the Rules, By-Laws and Organization Certificate of DTC (''Rules''), the DTC Settlement Service Guide (''Settlement Guide''), and the Guide to the 2020 DTC Fee Schedule (''Fee Guide''), available at *http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[4] On July 22, 2021, NSCC filed a proposed rule change and an advance notice to establish the NSCC SFT Service (''NSCC Proposed Rules''). *See* SR–NSCC–2021–010 and SR–NSCC–2021–803, which were filed with Commission and the Board of Governors of the Federal Reserve System, respectively, but have not been published in the **Federal Register**. Copies of the proposed rule

Continued

counterparties that are members of NSCC (each, an ''NSCC SFT Counterparty'') [5] would be settled through their respective Participant Accounts at DTC.[6]

Pursuant to the proposed rule change, DTC would (i) expand the types of instructions that NSCC, as the representative (''Special Representative'') of each Participant that is also a member of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant, (ii) establish a new type of payment order for the crediting and debiting of payment amounts relating to SFT activity at NSCC (''SFT Price Differential'' or ''SFT PD'') [7] to and from the Accounts of the Participants that are NSCC SFT Counterparties, (iii) apply a modified look-ahead process to the new Account that NSCC would maintain at DTC in connection with the NSCC SFT Service (the ''NSCC SFT Account'' or ''Special Representative SFT Account''),[8] and (iv) establish a fee for the payor and payee of an SFT Price Differential payment order. Finally, DTC is proposing to make clarifying and conforming changes, as discussed below.

(i) Overview of Proposed Rule Change

DTC understands that, pursuant to the Proposed NSCC Rules and consistent with the manner in which NSCC accepts cash market transactions, SFTs would be submitted to NSCC by an Approved SFT Submitter [9] already matched as between the pre-novation NSCC SFT Counterparties (*i.e.,* on a locked in basis).[10] Once the SFT instruction is processed by NSCC, NSCC would submit Delivery Versus Payment (''DVP'') instructions or SFT PD payment orders to DTC in accordance with the NSCC Proposed Rules. Pursuant to the NSCC Proposed Rules and the proposed rule change, NSCC would typically only submit pairs of instructions to DTC, as follows: (i) One instruction on its own behalf, with respect to the NSCC SFT Account, and (ii) one instruction on behalf of a Participant, as its Special Representative, with respect to the DTC Account of the Participant.[11] Accordingly, these DVP and SFT PD transactions between Participants that are NSCC SFT Counterparties to an SFT would pass through the NSCC SFT Account.

A. NSCC Instructions to DTC

(1) NSCC as the Special Representative of Participants That Are Members of NSCC

Pursuant to Rule 6, NSCC is the Special Representative of each Participant that is also a Member of NSCC. Currently, as the Special Representative of the Participant, NSCC may instruct DTC, on behalf of the Participant, to make a transfer of securities from the Account of the Participant to an Account that NSCC maintains at DTC in connection with its Continuous Net Settlement (''CNS'') System [12] (the ''Special Representative CNS Account'').[13] The purpose of these transfers is to settle the CNS obligations of a member of NSCC to NSCC through the member's Participant Account at DTC.

The NSCC SFT Service would operate separately from the NSCC CNS system, and NSCC would use its new NSCC SFT Account, and not the NSCC CNS Account, in connection with the NSCC SFT Service. In order to efficiently provide Participants with settlement services for SFTs cleared through the NSCC SFT Service and settled at DTC, DTC is proposing to leverage the status of NSCC as the Special Representative of Participants that are members of NSCC. Pursuant to the proposed rule change, Rule 6 would provide NSCC, as the Special Representative of a Participant, with the additional authority to submit instructions to DTC with respect to DVP and SFT PD transactions from the Account of the Participant to the NSCC SFT Account.[14]

(2) DVP Instructions

As noted above, pursuant to the proposed rule change, NSCC would submit pairs of instructions to DTC as follows: (i) One instruction on its own behalf, with respect to the NSCC SFT Account, and (ii) one instruction on behalf of a Participant as its Special Representative, with respect to the DTC Account of the Participant. Accordingly, in order to effectuate a DVP transaction between Participants that are NSCC SFT Counterparties to an SFT, NSCC would send DTC a pair of DVP instructions: (i) One instruction, as the Special Representative of the Participant that is an NSCC SFT Counterparty, to deliver the subject securities versus payment from the Account of the delivering Participant to the NSCC SFT Account, and (ii) one instruction, on NSCC's own behalf, to deliver the subject securities versus payment from the NSCC SFT Account to the Account of the receiving Participant that is the other NSCC SFT Counterparty. As explained in more detail below, if the pair of instructions satisfy DTC risk management controls [15] and the modified look-ahead, DTC would process the deliveries. If risk management controls and the modified look-ahead are not satisfied, the

change and the advance notice are *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[5] DTC understands that the NSCC SFT Service would offer the clearance of SFT transactions between a buy-side entity (a ''Sponsored Member'') and the member of NSCC that sponsored that entity for the NSCC SFT Service (''Sponsoring Member''). This proposed rule change by DTC does not relate to Sponsoring Members, Sponsored Members, or their SFT transactions at NSCC. All SFT transactions between a Sponsored Member and its Sponsoring Member would settle on the books of the Sponsoring Member. These SFT transactions and the related activity would occur outside of DTC and would not settle at DTC. The term ''NSCC SFT Counterparty,'' as used in this filing, does not refer to Sponsored Members or Sponsoring Members.

[6] DTC understands that, pursuant to the NSCC Proposed Rules, NSCC would establish a new membership category for agent clearing members (each, an ''Agent CM''), where members of NSCC would be permitted to submit SFTs to NSCC for novation on behalf of their customers. All SFTs settling at DTC would be processed by DTC without regard to whether a Participant is acting as Agent CM under the NSCC Proposed Rules or is acting on its own behalf. DTC would not establish any SFT or Agent CM Participant membership type, or any special SFT or Agent CM Participant accounts, at DTC.

[7] DTC understands that the Proposed NSCC Rules would define such credit/debit amount as a ''Price Differential,'' which would include, but would not be limited to, mark-to-market payments and payments relating to offsetting SFT obligations.

[8] The NSCC SFT Account, which would appear in the Rules as the ''Special Representative SFT Account,'' would be Account No. 881.

[9] DTC understands that the Proposed NSCC Rules would define the term ''Approved SFT Submitter'' as a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved.

[10] DTC understands that the NSCC Proposed Rules would provide that the obligations reflected in the transaction data on an SFT would be deemed to have been confirmed and acknowledged by each NSCC SFT Counterparty designated by the Approved SFT Submitter as a party thereto and to have been adopted by such NSCC SFT Counterparty and, for the purposes of determining the rights and obligations between NSCC and such NSCC SFT Counterparty under the NSCC Proposed Rules, would be valid and binding upon such NSCC SFT Counterparty.

[11] The NSCC Proposed Rules would provide that the submission of each SFT to NSCC constitutes an authorization to NSCC by the NSCC SFT Counterparties for NSCC to give instruction regarding the SFT to DTC in respect of the relevant Participant Accounts of the NSCC SFT Counterparties at DTC.

[12] *See e.g.,* Rule 11 of the NSCC Rules & Procedures, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[13] The Special Representative CNS Account is Account No. 888.

[14] *See supra* notes 10 and 11.

[15] DTC uses its risk management controls, the Collateral Monitor and Net Debit Cap, to manage its credit risk. These two controls work together to protect the DTC settlement system in the event of Participant default. The Collateral Monitor requires net debit settlement obligations, as they accrue intraday, to be fully collateralized; the Net Debit Cap limits the amount of any Participant's net debit settlement obligation to an amount that can be satisfied with DTC liquidity resources (the Participants Fund and the committed line of credit from a consortium of lenders). *See* Settlement Guide, *supra* note 3, at 64–67.

instructions would recycle [16] and, if not completed, would drop at the end of the day.

There is only one situation where NSCC would only send a single DVP instruction to DTC.[17] Specifically, pursuant to the NSCC Proposed Rules, the initial transfer of the securities that are the subject of the SFT versus the payment amount would be initiated at DTC by the Participant that is the delivering NSCC SFT Counterparty. Therefore, pursuant to the proposed rule change, the Participant that is the delivering NSCC SFT Counterparty would submit the DVP instruction to DTC to deliver the subject securities versus the payment amount from the Account of the Participant to the NSCC SFT Account. Provided that the SFT had already been submitted to NSCC by an Approved SFT Submitter on that business day,[18] NSCC would submit a DVP instruction to DTC to deliver the subject securities versus the payment amount from the NSCC SFT Account to the Account of the Participant that is the receiving NSCC SFT Counterparty. If the Participant instruction and the NSCC instruction satisfy DTC risk management controls and the modified look-ahead, DTC would process the deliveries. If risk management controls and the modified look-ahead are not satisfied, the instructions would recycle and, if not completed, would drop at the end of the day.

(3) Price Differential Payment Orders

Pursuant to the proposed rule change, NSCC would also submit SFT PD payment orders to DTC on behalf of itself and on behalf of DTC Participants, as their Special Representative, in connection with SFT activity at NSCC.

DTC Rule 9(A) provides that a Participant may submit to DTC an instruction to (i) credit the Account of the Participant with an amount of funds and debit the Account of another Participant the same amount of funds, or (ii) debit the Account of the Participant with an amount of funds and credit the Account of another Participant the same amount of funds (each, a ''payment order'').[19] The Settlement Guide describes the DTC payment order service as providing Participants with a method for settling money payments for securities transactions that were processed separately.[20] Currently, Participants use payment orders to collect option contract premiums (a ''premium payment order'' or ''PPO'') and mark-to-market open contracts such as stock loans (a ''securities payment order'' or ''SPO''). Payment orders are subject to DTC risk management controls.

Pursuant to the proposed rule change, DTC would enhance the DTC payment order service by adding the SFT PD payment order. The SFT PD payment order would offer an efficient way for NSCC to instruct DTC, on behalf of a Participant or on its own behalf, to credit and debit funds between the NSCC SFT Account and the Accounts of the Participants that are NSCC SFT Counterparties. DTC understands that the amount of each SFT PD would be calculated and instructed by NSCC in accordance with the instructions of an Approved SFT Submitter.

In order to effectuate the payments between Participants that are NSCC SFT Counterparties in connection with SFT activity at NSCC, NSCC would submit a pair of SFT PD payment orders to DTC: (i) One instruction, on NSCC's own behalf, to debit the payment amount from the Account of the payor Participant and credit the payment amount to the NSCC SFT Account, and (ii) one instruction, as the Special Representative of the payee Participant, to debit the payment amount from the NSCC SFT Account and credit the payment amount to the Account of the payee Participant. If the pair of instructions satisfy DTC risk management controls and the modified look-ahead, DTC would process the transaction. If the pair of SFT PD payment orders do not satisfy DTC risk management controls and the modified look-ahead, the instructions would recycle and, if they are not completed, would drop at the end of the day.

B. Modified Look-Ahead Processing

The typical look-ahead process utilized by DTC reduces transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a Participant's Net Debit Cap. The look-ahead process calculates and processes submitted transactions in the same CUSIP that, when processed simultaneously, would not violate the risk management controls of the involved Participants. Specifically, the look-ahead process identifies a receive transaction pending due to a net debit cap insufficiency and determines whether an offsetting delivery transaction pending because of a quantity deficiency in the same security would permit both transactions to be completed in compliance with DTC risk management controls.[21]

As noted above, the NSCC SFT Account is intended to be a pass-through account for DVP and SFT PD transactions between Participants that are NSCC SFT Counterparties. DTC understands that because NSCC, as the central counterparty, would substitute itself as the counterparty for each SFT, it is essential to NSCC that there not be any net settlement obligation against the NSCC SFT Account intraday or at the end of any day. It is essential to NSCC that its obligations to DTC with respect to all completed DVP and SFT PD transactions to which the NSCC SFT Account was a party should be netted to zero with respect to both securities and funds. In an effort to help ensure that there would not be any net settlement obligation against the NSCC SFT Account, and to prevent transaction blockage due to risk management controls on the NSCC SFT Account, DTC is proposing to use a modified look-ahead process for the instructions it receives from NSCC in connection with the NSCC SFT Account.

Pursuant to the proposed rule change, upon receipt of a pair of DVP instructions or SFT PD payment orders from NSCC, DTC would only complete the transaction if the modified look-ahead is satisfied. The modified look-ahead would be satisfied when (i) the pair of instructions from NSCC are consistent in terms of the number of subject shares and/or dollar amount, CUSIP, and DTCC Reference ID,[22] and (ii) the net effect of processing the instructions would not violate the respective Net Debit Caps, Collateral Monitor or other risk management system controls of the Participants that are on each side of the DVP or SFT PD transaction.[23] If the modified look-ahead is not satisfied, then the pair of instructions would recycle until the

[16] For a description of Recycle Processing, *see* Settlement Guide, *supra* note 3, at 56.

[17] This paragraph does not apply to a ''Bilaterally Initiated SFT,'' which is described in the NSCC Proposed Rules as an SFT that was submitted to NSCC after the initial transfer of securities versus payment had already occurred. DTC is agnostic to whether an NSCC SFT instruction relates to a Bilaterally Initiated SFT or a typical SFT.

[18] If the SFT was not submitted to NSCC on that business day, the Participant DVP instruction would be rejected.

[19] *See* Rule 9(A), *supra* note 3.

[20] *See* Settlement Guide, *supra* note 3, at 3.

[21] *See* Settlement Guide, *supra* note 3, at 45. *See also supra* note 15.

[22] The DTCC Reference ID is the fourteen-digit UTC Loan ID that NSCC assigns to each SFT transaction.

[23] DTC uses the same modified look-ahead (except for the DTCC Reference ID) for DVP transactions to and from the OCC Market Loan Program Account, which is maintained by The Options Clearing Corporation (''OCC'') at DTC in connection with the OCC Market Loan Program. *See* Securities Exchange Act Release No. 59298 (January 26, 2009), 74 FR 5692 (January 30, 2009) (SR–DTC–2008–15).

look-ahead is satisfied or until the 3:10 p.m. cutoff time, when all recycling valued transactions at DTC are dropped.[24]

In addition, because the modified look-ahead relies on the completion of offsetting transactions, transactions to and from the NSCC SFT Account would not be subject to either reclaims or Receiver Authorized Delivery (''RAD'').[25] Since both reclaims and RAD effectively permit one side of the transaction to reject or reverse the transaction, allowing such activity would interfere with the ability of the modified look-ahead to rely on the completion of the offsetting transactions. DTC believes that Participants would not be affected by the exclusion of reclaims and RAD because the NSCC SFT instructions would be based on instructions that were matched and submitted to NSCC on a locked-in basis by an Approved SFT Submitter on behalf of the NSCC SFT Counterparties. Therefore, the Participants that are NSCC SFT Counterparties to an SFT would have already agreed to the transactions to and from the NSCC SFT Account relating to their Participant Account, and, as such, the reclaim and RAD functions would not be necessary.[26]

C. SFT Price Differential Fee

DTC is proposing to amend the Fee Guide to establish a fee for SFT PD payment orders. DTC is proposing a fee of $0.005 per item delivered or received, to be charged to the payor and to the payee of an SFT PD payment order.

DTC recognizes that the fee for SFT PD payment orders would be significantly less than the $0.10 fee for SPO payment orders, which are used by Participants in connection with their noncleared stock loan transactions. DTC is proposing to establish this lower fee for SFT PD payment orders because settling payment obligations for cleared SFTs would require a higher volume of payment orders than would otherwise be required for settling payment obligation for uncleared SFTs. More specifically, pursuant to the NSCC Proposed Rules, NSCC SFT Counterparties would pay and collect Price Differentials at the individual transaction level. In the bilateral world, mark-to-market payments and collections on securities lending transactions are typically done at the CUSIP level via SPOs, inclusive of all open securities lending transactions of a given participant. Accordingly, it is likely that there would be more SFT PD payment orders processed by DTC in connection with SFTs than the amount of SPOs DTC would have otherwise processed if those SFTs were bilateral, non-cleared securities lending transactions. Therefore, as an initial matter,[27] DTC is proposing to charge the lower fee $0.005 for SFT PD payment orders in an effort to maintain cost efficiency for both the cleared SFT activity and the uncleared securities financing transactions of market participants.''

(ii) Proposed Rule Change

A. Amendments to the Rules

(1) Rule 1

In order to clearly differentiate between the Special Representative CNS Account and the NSCC SFT Account in Rule 6, DTC is proposing to insert the following definitions into Section 1 of Rule 1:

i. *Special Representative:* The term ''Special Representative'' has the meaning provided in Rule 6.

ii. *Special Representative CNS Account:* The term ''Special Representative CNS Account'' means the Account of the Special Representative that it uses in connection with its continuous net settlement system.

iii. *Special Representative SFT Account:* The term ''Special Representative SFT Account'' means the Account of the Special Representative that it uses in connection with its securities financing transaction service.

In addition, DTC is proposing to remove ''Special Representative'' from the list of definitions in Section 2 of Rule 1, because it would be redundant once the definition is inserted into Section 1 of Rule 1 pursuant to the proposed rule change.

(2) Rule 6

Pursuant to the proposed rule change, DTC would replace references to the ''Account of the Special Representative'' with ''Special Representative CNS Account,'' to (i) clearly differentiate the Account that NSCC uses in connection with CNS from the proposed Special Representative SFT Account, and (ii) clearly delineate the transfer and delivery instructions that NSCC as the Special Representative submits to DTC in connection with the CNS system and the DVP instructions and SFT PD payment orders that NSCC as the Special Representative would submit to DTC in connection with the NSCC SFT Service.

Under current Rule 6, the scope of NSCC's authority as Special Representative to instruct DTC with respect to an Account of a Participant that is a member of NSCC is limited to transfers of securities from the Account of the Participant to the Account of the Special Representative (which would be renamed ''Special Representative CNS Account,'' as proposed above). Pursuant to the proposed rule change, DTC would amend Rule 6 to provide that NSCC, as the Special Representative, may submit to DTC, on behalf of the Participant, instructions for ''the Delivery Versus Payment of Securities from the Account of a Participant to the Special Representative SFT Account,'' and for ''an amount of money to be credited to the Account of a Participant and debited from the Special Representative SFT Account, in connection with a transaction in Securities, in accordance with Rule 9(A) and as specified in the Procedures.''

B. Amendments to the Settlement Guide

(1) In the ''Settlement Transactions'' subsection of the ''About Settlement'' section, DTC is proposing to add ''Price Differentials (as defined in the NSCC Rules)'' to the description of payment orders.

(2) In the ''Important Terms'' subsection of the ''About Settlement'' section, DTC is proposing to:

a. Amend the description of a ''payment order'' to be consistent with the amended description in the ''Settlement Transactions'' subsection. Specifically, DTC would replace the sentence ''A transaction in which a Participant charges another Participant for changes in value for outstanding stock loans or option contract premiums'' with ''The payment order service provides Participants with a mechanism for settling amounts of money related to securities transactions that are effected separately through

[24] DTC would also set the Net Debit Cap of the NSCC SFT Account to one dollar ($1), which would help ensure that no DVP or SFT PD to or from the NSCC SFT Account would be completed unless an offsetting DVP or SFT PD is also completed. The OCC Market Loan Program Account is similarly risk managed to help ensure that no receives are completed to the OCC Market Loan Program Account unless an offsetting delivery is also completed. *See* Securities Exchange Act Release No. 59298 (January 26, 2009), 74 FR 5692 (January 30, 2009) (SR–DTC–2008–15).

[25] A reclaim is the return of a deliver order, payment order, institutional delivery transaction or MMI transaction received by a Participant. RAD is a control mechanism that allows a Participant to review transactions prior to completion of processing. *See* Settlement Guide, *supra* note 3, at 6.

[26] *See supra* notes 10 and 11.

[27] DTC understands that since NSCC would be offering central clearing for overnight SFTs for the first time, NSCC is not able at this time to anticipate the size and composition of the SFT portfolios and activity. Therefore, DTC is not yet able to estimate the volume of SFT PD payment orders that it would process after the NSCC SFT Service is implemented. Once the NSCC SFT Service is implemented and historical data is available, DTC may, if circumstances warrant, review the amount of the SFT PD payment order fee.

DTC. Participants use payment orders to collect option contract premiums (premium payment order), mark-to-market open contracts such as stock loans (securities payment order), and Price Differentials (SFT PD payment order).''

b. Insert the term ''SFT Price Differential (''SFT PD'') payment order'' with the following description: ''A payment order through which the amount of a Price Differential (as defined in the NSCC Rules) is (i) debited from the account of a Participant and credited to the NSCC SFT Account, or (ii) is debited from the NSCC SFT Account and credited to the account of a Participant.''

c. Insert the term ''NSCC Securities Financing Transaction Service (SFT) Service'' with the following description: ''A securities financing transaction clearing service offered by NSCC.''

(3) After the ''NSCC ACATS Settlement Accounting Operation—Processing at DTC'' section of the Settlement Guide, DTC is proposing to insert a new section titled ''NSCC Securities Financing Transactions (SFT) Service.'' The new section would include the following subsections: ''About the Product,'' which would briefly describe the NSCC SFT Service; ''Initial Transfer of SFT Securities at DTC,'' which would describe the process for the DVP instructions for the initial transfer of securities versus payment for an SFT; ''NSCC Instructions to DTC,'' which would describe the pairs of DVP instructions and SFT PD payment orders that NSCC would submit to DTC in connection with SFT activity at NSCC; and ''NSCC SFT Account Look-Ahead Processing,'' which would describe the modified look-ahead process and inform Participants that transactions to and from the NSCC SFT Account would not be subject to RAD and that reclaims from the NSCC SFT Account would be blocked.

(4) In the subsection titled ''Settlement Processing Schedule'' of the ''End-of-Day Settlement Process'' section, DTC is proposing to:

a. In the 3:00 p.m. ''Cutoff Time ET'' row, under ''Cutoff for,'' insert a third item in the bulleted list that reads: ''SFT Transactions cannot be entered after 3:00 p.m.''

b. In the 3:10 p.m. ''Cutoff Time ET'' row, under ''Cutoff for,'' insert ''/SFT'' after ''CNS'' in the second bulleted paragraph to reflect that recycling NSCC SFT instructions would be dropped at that time.

(5) In the section ''Look-Ahead Processing,'' DTC proposes to correct the first sentence to reflect that DTC's current look-ahead process runs on two-minute intervals, not on fifteen-minute intervals.

(6) In the subsection ''Optional Memo Segregation Indicators'' of the ''Memo Segregation'' section, DTC is proposing to make a conforming change in order to reflect that securities positions from deliver orders relating to SFT activity at NSCC would be treated the same as stock loan positions. Specifically, DTC is proposing to insert the SFT reason codes 200 and 201 into (i) the row for Activate Indicator 4 as follows: ''Turnaround securities positions, regardless of Memo Segregation constraints, for positions received from DOs with reason codes 10, 30, 200, and 600, except those with reason codes 10, 20, 200, 201, 260, 270, 280, or 290,'' and (ii) the row for Activate Indicator 5 as follows: ''Turnaround securities positions, regardless of Memo Segregation constraints, for positions received from: All DOs, except those with reason codes 20–29, 40–48, 99, 201, 261–268, 270–278, 290, 291, 330–338, 340–348, 390, 610–619, 705–707 and CNS receives from the ''C'' and ''E'' accounts except if the turnaround is a reason code 10, 20, 200, 201, 260, 270, 280, or 290.''

(7) In order to provide clarification around the payment order service and to differentiate between PPOs and SPOs on the one hand and SFT PD payment orders on the other hand, DTC is proposing to amend the ''Payment Orders'' section by:

a. Amending the ''About the Product'' subsection to insert a general description of the payment order service that would state: ''A payment order authorizes DTC to credit the payee Participant's settlement account with the specified amount and to debit the payor Participant's settlement account for the same amount. All payment orders must satisfy the payor Participant's risk management controls before being processed.''

b. Amending the ''How the Product Works'' subsection by (i) inserting ''Premium Payment Order (PPO) and Securities Payment Order (SPO)'' as a new heading for the description of PPOs and SPOs, (ii) deleting the sentence ''Either type of payment order authorizes DTC to credit the payee Participant's settlement account with the specified amount and to debit the payor Participant's settlement account for the same amount,'' from the first paragraph, (iii) changing a reference to ''the Payment Order Service'' to ''PPOs and SPOs,'' (iv) inserting ''SFT Price Differential (SFT PD) Payment Order'' as a new heading, and (v) inserting the sentence ''For a description of SFT Price Differential payment orders, please see NSCC Securities Financing Transactions (SFT) Service'' under the SFT Price Differential Payment Order (SFT PD) heading.

(8) In order to reflect that a Participant would not be able to use the ''Pend Hold'' function for a DVP to the NSCC SFT Account, DTC is proposing to insert ''with the exception of DOs to and from the NSCC SFT Account'' into the description of Pend Hold function in the ''Pend Hold'' subsection.[28]

(9) In Annex A, DTC is proposing to insert the following new reason codes into the ''Memo Segregation Supplement/DO Reason Code Description Reference'' section: 200 (SFT Stock Loan) and 201 (SFT Stock Loan Return). These new settlement reason codes would be established at DTC to support on-leg and off-leg settlement of SFTs.

C. Amendments to the Fee Guide

Pursuant to the proposed rule change, DTC would amend the Fee Guide to insert an SFT Price Differential delivery or receipt fee of $0.005 per item delivered or received.

Implementation Date

DTC will implement the proposed changes when DTC and NSCC receive all necessary regulatory approvals for this proposed rule change and NSCC's proposed rule changes. DTC will announce the implementation date of the proposed rule change in an Important Notice posted on its website.

As proposed, a legend would be added to the Rules,[29] Settlement Guide, and Fee Guide stating there are changes that have been approved but have not yet been implemented. The proposed legend also would include that the implementation date would be announced in an Important Notice to be issued by DTC. In addition, the proposed legend would state that the legend would automatically be removed upon the implementation of the proposed changes.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the

[28] A Pend Hold allows a Participant that initiated a DO or pledge transaction to hold (*i.e.,* exclude from processing) the transaction if it is pending for insufficient position. Since a DVP to the NSCC SFT Account is instructed by NSCC as the Special Representative, a Pend Hold is not relevant.

[29] DTC is proposing to add the legend to Rules 1 and 6.

proposed rule change is consistent with Sections 17A(b)(3)(F) [30] and 17A(b)(3)(D) of the Act [31] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[32] DTC is proposing to expand the types of instructions that NSCC, as the Special Representative of a Participant that is also a member of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant. As noted above, the NSCC Proposed Rules would provide that the submission of each SFT to NSCC by the Approved SFT Submitter on behalf of the NSCC SFT Counterparties would constitute an authorization to NSCC by the NSCC SFT Counterparties for NSCC to give instructions regarding the SFT to DTC in respect of the relevant Participant Accounts of the NSCC SFT Counterparties at DTC. The proposed rule change would provide a basis for DTC to accept and rely on those NSCC instructions. Specifically, DTC would amend Rule 6 to provide for the additional authority of NSCC, as the Special Representative of a Participant, to submit DVP instructions and SFT PD payment orders to DTC, on behalf of Participant, from the Account of the Participant to the NSCC SFT Account. By providing NSCC with the authority to submit these instructions on behalf of a Participant, the proposed rule change supports the efficient settlement of cleared SFTs, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

Pursuant to the proposed rule change, DTC would establish the SFT PD payment order, which would be a payment order for NSCC to instruct DTC, on behalf of Participants that are NSCC SFT Counterparties, as well as on its own behalf, to credit and debit funds between the NSCC SFT Account and the Accounts of the Participants in connection with SFT activity at NSCC. By establishing this new type of payment order that would utilize the efficiency of the DTC payment order service to settle payments relating to cleared SFTs, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of payment obligations relating to securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

The proposed rule change would also apply a modified look-ahead process to the new NSCC SFT Account. As discussed above, DTC would use modified look-ahead processing in an effort to (i) ensure that there would not be any net settlement obligation against the NSCC SFT Account and (ii) prevent transaction blockage that could occur from unsatisfied risk management controls on the NSCC SFT Account. By applying a modified look-ahead to the new NSCC SFT Account, DTC believes that the proposed rule change is designed to promote efficient processing of DVP and SFT PD transactions relating to cleared SFTs. In this way, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

DTC also believes that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed conforming and technical changes would help ensure consistency in the Rules and the Settlement Guide and help ensure that the Rules and the Settlement Guide remain clear and accurate. Having clear and accurate Rules and Settlement Guide would help Participants to better understand their rights and obligations regarding DTC settlement services in connection with the NSCC SFT Service. DTC believes that when Participants better understand their rights and obligations regarding DTC settlement services, they can act in accordance with the Rules and Procedures. DTC believes that better enabling Participants to comply with the Rules and the Settlement Guide would promote the prompt and accurate clearance and settlement of securities transactions. As such, DTC believes the proposed rule change to make conforming and technical changes is consistent with Section 17A(b)(3)(F) of the Act.[33]

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.[34] Pursuant to the proposed rule change, DTC would establish a fee of $0.005 per item delivered or received, which would be charged to the payor and the payee of an SFT PD payment order. For the reasons set forth below, DTC believes that the proposed fee for SFT PD payment orders would provide for the equitable allocation of reasonable dues, fees, and other charges among Participants. First, DTC believes that the proposed fee of $0.005 is reasonable. DTC recognizes that the fee for SFT PD orders would be significantly less than the $0.10 fee for SPOs, which are used by Participants in connection with bilateral stock loan transactions. DTC is proposing to establish this lower fee for SFT PD payment orders because settling payment obligations for cleared SFTs would require a higher volume of payment orders than would otherwise be required for uncleared SFTs. More specifically, pursuant to the NSCC Proposed Rules, NSCC SFT Counterparties would pay and collect Price Differentials at the individual transaction level. In the bilateral world, mark-to-market payments and collections on securities lending transactions are typically done at the CUSIP level via SPOs, inclusive of all open securities lending transactions of a given participant. Accordingly, it is likely that there would be more SFT PD payment orders processed by DTC in connection with SFTs than the amount of SPOs DTC would have otherwise processed if those SFTs were bilateral, non-cleared securities lending transactions. Therefore, as an initial matter, DTC is proposing to charge the lower fee $0.005 for SFT PD payment orders in an effort to maintain cost efficiency for both the cleared SFT activity and the uncleared securities financing transactions of market participants. As noted above,[35] due to the lack of history for cleared SFT activity, DTC cannot estimate at this time the average number of SFT PD payment orders that would be processed and cannot, therefore, quantify a precise fee. However, DTC believes that the proposed fee of $0.005 is designed to take into account the imbalance between the amount of payment orders that would be required for cleared SFTs and the amount required for uncleared SFTs and is therefore reasonable. DTC also believes that the proposed fee would be equitably allocated because the fee would be charged to payors and payees per item delivered or received in accordance with their use of SFT PD payment orders and all such payors and payees would be treated equally with respect to the fee. Accordingly, DTC believes that the proposed rule change establishing a fee for the delivery and receipt of an SFT PD payment order is designed to provide for the equitable

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 15 U.S.C. 78q–1(b)(3)(D).

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] *Id.*

[34] 15 U.S.C. 78q–1(b)(3)(D).

[35] *See supra* note 27.

allocation of reasonable dues, fees, and other charges among participants, consistent with Section 17A(b)(3)(D) of the Act, cited above.

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

DTC does not believe that the proposed rule change to expand the types of instructions that NSCC, as Special Representative of a Participant that is a member of NSCC, can submit to DTC on behalf of the Participant with respect to an Account of the Participant would have an impact on competition.[36] The proposed rule change is designed to support the use of the NSCC SFT Service by NSCC SFT Counterparties by providing a mechanism for NSCC to submit DVP instructions and SFT PD payment orders to DTC, on behalf of a Participant that is an NSCC SFT Counterparty, for the settlement of the NSCC SFT Counterparty's obligations relating to a cleared SFT. The proposed rule change would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. Therefore, DTC believes that the proposed rule change to expand the types of instructions that NSCC, as the Special Representative of Participants that are also members of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant would not have an impact on competition.[37]

DTC does not believe that the proposed rule change to provide for SFT PD payment orders and to establish a fee for SFT PD payment orders would have an impact on competition.[38] As discussed above, an SFT PD payment order would provide Participants a way to utilize the efficiency of the DTC payment order service to settle payments relating to their cleared SFT activity. The establishment of the SFT PD payment order would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. In addition, the proposed fee for SFT PD payment orders would be charged to payors and payees per their use of SFT PD payment orders and all such payors and payees would be treated equally with respect to the fee. Therefore, DTC believes that the proposed rule change to provide for SFT PD payment orders and to establish a fee for SFT PD payment orders would not have an impact on competition.[39]

DTC does not believe that the proposed rule changes to use modified look-ahead processing for transactions to and from the NSCC SFT Account would have an impact on competition.[40] The proposed rule changes would apply to all DVP and SFT PD transactions to and from the NSCC SFT Account, and are designed to promote efficient processing of transactions relating to SFTs cleared by NSCC. The proposed rule change would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. Therefore, DTC believes that the proposed rule change to use modified look-ahead processing for transactions to and from the NSCC SFT Account would not have an impact on competition.[41]

DTC does not believe that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would have an impact on competition.[42] Having clear and accurate Rules and Settlement Guide would facilitate Participants' understanding of the Rules and Settlement Guide and provide Participants with increased predictability and certainty regarding their obligations regarding DTC settlement services in connection with the NSCC SFT Service. Therefore, DTC believes that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would not have an impact on competition.[43]

(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 will 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 *https://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.

DTC reserves the right not to respond to any comments received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2021–014 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–2021–014. 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 that are filed with the

[36] 15 U.S.C. 78q–1(b)(3)(I).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] 15 U.S.C. 78q–1(b)(3)(I).

[42] *Id.*

[43] *Id.*

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 10:00 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–2021–014 and should be submitted on or before September 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92574; File No. SR–C2–2021–011]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance and Clarify Its Price Adjust Process and Modify the Bulk Message Fat Finger Check

August 5, 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 July 28, 2021, Cboe C2 Exchange, Inc. (''Exchange'' or ''C2'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to enhance and clarify its Price Adjust process and modify the bulk message fat finger check. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to enhance its Price Adjust (as defined below) process for certain Market-Maker interest—specifically Book Only[5] orders and bulk messages[6] submitted through bulk ports[7]—and clarify other parts of that process, as well as modify the bulk message fat finger check.

Rule 5.32(b) describes the Price Adjust process, which applies to an order unless a user enters instructions for the order to not be subject to the Price Adjust process. The System ranks and displays a buy (sell) order that at the time of entry would lock or cross a Protected Quotation of the Exchange or another exchange at one minimum price increment below (above) the current national best offer (''NBO'') (national best bid (''NBB'')) (''Price Adjust'').

This Price Adjust process applies to Book Only orders and bulk messages submitted that are designated as Price Adjust (and not designated as Cancel Back). Separately, a Book Only order or bulk message bid or offer (or unexecuted portion) is rejected if submitted by a Market-Maker with an appointment in the class through a bulk port if it would execute against a resting offer or bid, respectively with a capacity of M. Therefore, if a Book Only bulk message bid of an appointed Market-Maker does not execute upon entry and would rest at the same price as an offer not represented by a capacity of M, that bid price would be adjusted and rest on the book at one minimum price variation below the offer. However, if the offer was represented by a capacity of M, the System would reject the bid since it may not execute against that resting offer.

The proposed rule change amends the Price Adjust process so that an appointed Market-Maker's Book Only bids and offers submitted through a bulk port may have the opportunity to rest on the book if they are submitted at the same price as the opposite side of the market when represented by Market-Maker interest. Specifically, the proposed rule change adds subparagraph (1)(B) to Rule 5.32(b),[8] which states if the bid (offer) of a Book Only order or bulk message[9] submitted through a bulk port at the time of entry would lock or cross (1) a protected offer (bid) of another options exchange[10] or a resting offer (bid) with a Capacity of

[44] 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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 5.6(c) defines a ''Book Only'' order as an order the System ranks and executes pursuant to Rule 5.32, subjects to the Price Adjust process pursuant to Rule 5.32, or cancels, as applicable (in accordance with User instructions), without routing away to another exchange. Users may designate bulk messages as Book Only as set forth in Rule 5.5(c).

[6] The term ''bulk message'' means a bid or offer included in a single electronic message a User submits with an M Capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. A User may submit a bulk message through a bulk port as set forth in Rule 5.5(c)(3). The System handles a bulk message in the same manner as it handles an order or quote, unless the Rules specify otherwise. *See* Rule 1.1.

[7] A ''bulk port'' is a dedicated logical port that provides Users with the ability to submit bulk messages, single orders, and auction responses, each subject to certain restrictions. *See* Rule 5.5(c)(3).

[8] To accommodate this change, the proposed rule change numbers the current introductory paragraph to Rule 5.32(b) as subparagraph (1) (some of which becomes subparagraph (A)) and makes nonsubstantive changes to reflect two subparagraphs to new subparagraph (1).

[9] The Exchange notes that pursuant to Rule 5.5(c)(3)(A), only appointed Market-Makers may submit such orders and bulk messages through a bulk port.

[10] This is how these orders and messages are currently handled pursuant to Rule 5.32(b).