

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .¹² Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-CboeEDGX-2021-043 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-CboeEDGX-2021-043. This file number should be included on the subject line if email is used. To help the

¹² *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-CboeEDGX-2021-043, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-22436 Filed 10-13-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93279; File No. SR-DTC-2021-011]

Self-Regulatory Organizations; Depository Trust Company; Order Approving the Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

October 8, 2021.

I. Introduction

On June 25, 2021, Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2021-011 (the "Proposed Rule Change") pursuant to Section 19(b)(1) of

¹⁴ 17 CFR 200.30-3(a)(12).

the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend DTC's rules relating to confidentiality requirements, Market Disruption Events, and procedures for disconnecting a participant from DTC's network, among other changes.³ The Proposed Rule Change was published for comment in the **Federal Register** on July 13, 2021.⁴ The Commission received comments that it has considered with respect to the Proposed Rule Change.⁵ For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

Pursuant to the Proposed Rule Change, DTC is proposing three main changes to its Rules, Bylaws, and Organization Certificate ("Rules");⁶ (1) Standardizing the confidentiality requirement applicable to DTC with respect to its participants' information and adding confidentiality requirement applicable to participants with respect to DTC's information, (2) updating its Market Disruption and Force Majeure Rule ("Force Majeure Rule") to authorize two additional officers to determine that a Market Disruption Event has occurred, and (3) adding a new rule setting forth the procedures under which DTC would be able to disconnect a participant from its network in certain circumstances ("Systems Disconnect Rule"). The Commission provides relevant background and describes each of these proposed changes in greater detail below.

A. Background

DTC serves as the central securities depository for substantially all corporate and municipal debt and equity securities available for trading in the United States.⁷ DTC provides depository services and asset servicing for a wide

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing, *infra* note 4, at 86 FR 36833.

⁴ See Securities Exchange Act Release No. 92342 (June 25, 2021), 86 FR 36833 (July 13, 2021) (File No. SR-DTC-2021-011) ("Notice of Filing").

⁵ See *id.* The comment letters are available on the Commission's website at <https://www.sec.gov/comments/sr-dtc-2021-011/srdtc2021011.htm>. Several comments generally supported the Proposed Rule Change, and the Commission considers the additional comments in its analysis at Section III *infra*.

⁶ Capitalized terms not defined herein are defined in the Rules, available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁷ See Financial Stability Oversight Counsel 2012 Annual Report, Appendix A ("FSOC 2012 Report"), available at <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

range of security types such as money market instruments, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, and collateralized mortgage obligations.⁸ DTC's custodial services include the safekeeping, record keeping, book entry transfer, and pledge of securities among its Participants and Pledges.⁹ DTC also provides services to securities issuers, such as maintaining current ownership records and distributing payments to shareholders.¹⁰ In light of DTC's critical role in the marketplace, DTC was designated a Systemically Important Financial Market Utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹¹ Due to DTC's unique position in the marketplace, a failure or a disruption to DTC could, among other things, increase the risk of significant liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.¹²

DTC participants connect to DTC's systems, either directly through the Securely Managed and Reliable Technology ("SMART") network or through a third party service provider or service bureau.¹³ DTC's parent company, The Depository Trust & Clearing Corporation ("DTCC") manages the SMART network, which connects a nationwide complex of networks, processing centers, and control facilities.¹⁴

B. Proposed Changes

1. Confidentiality Requirements

Confidentiality Requirements Applicable to DTC: DTC collects confidential information from its participants to assess whether each participant meets DTC's membership requirements either to gain or continue access to DTC's depository, custodial and settlement services (hereinafter

collectively, settlement services).¹⁵ In turn, DTC is required to maintain the confidentiality of any information furnished by its participants. Currently, DTC's Rules obligate DTC to hold participants' information in the same degree of confidence as may be required by law or the rules and regulations (hereinafter collectively, "regulations") of the appropriate regulatory body having jurisdiction over the participant.¹⁶

DTC states that its current Rules create ambiguity because DTC's obligations depend on each participant's regulatory requirements, which could lead to unequal treatment of participants and conflicts of law with DTC's regulatory requirements or with respect to a participant who is subject to multiple jurisdictions' regulations.¹⁷ DTC also states that applying different standards creates operational burdens because DTC must track the regulations applicable to each of its participants and must maintain the confidentiality of each participant's information to the same degree as required by the applicable regulations.¹⁸

In order to clarify its confidentiality requirements and to enhance its operational efficiency, DTC proposes to revise its Rules to establish a standard, which will require DTC to hold participant confidential information to the same degree as DTC's regulatory requirements that relate to the confidentiality of records, and to remove the references to each participant's particular regulatory obligations. DTC represents that the proposed change would provide participants with similar protections because DTC believes its regulatory requirements are comparable to the regulations applicable to its participants and, therefore, would not result in changes to DTC's current practices or the protection offered to its participants' confidential information.¹⁹

Confidentiality Requirements Applicable to Participants: DTC's Rules do not include obligations for its participants to protect confidential information furnished by DTC or its affiliates.²⁰ However, DTC states that, in

connection with the development of cyber and information security programs pursuant to applicable participant regulatory requirements, DTC and DTCC have received an increasing number of requests from participants for confidential information, such as information regarding DTCC's network operations, data security practices, and legal settlements.²¹ Additionally, DTC states that participants may request DTC or DTCC to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken following a cyber incident relating to a participant, DTC, or DTCC.²²

To facilitate information sharing by DTC while protecting the confidentiality of proprietary and confidential information DTC shares with its participants, DTC proposes to add participant confidentiality requirements to its Rules. The new provisions will require participants to maintain the confidentiality of information furnished by DTC through proper safeguards to prevent disclosure of such confidential information, except as necessary to perform its obligations under DTC's Rules or as otherwise required by applicable law. DTC proposes that participants be required to maintain the confidentiality of this information to the same extent and using the same means the participant uses to protect its own confidential information, but no less than a reasonable standard of care. DTC's proposal will also entitle DTC or DTCC to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules if a participant breaches its confidentiality requirements. Additionally, DTC's proposal will entitle DTC to impose other disciplinary proceedings or restrictions on access to services for a participant's failure to comply with its confidentiality requirements, consistent with the existing tools available to DTC regarding a participant's failure to comply with its Rules.

2. Market Disruption Event

DTC's Rules contain provisions that identify the events or circumstances that DTC would consider to be a Market Disruption Event, including, for

proprietary information of DTC or its affiliates to its participants except for information necessary for participants to connect to DTCC Systems, which is typically protected under intellectual property laws. See *id.*

²¹ See *id.* See also, *supra* discussion in Section II.A (Background) relating to DTCC Systems.

²² See *id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 12 U.S.C. 5465(e)(1). See FSOC 2012 Report, *supra* note 5.

¹² See FSOC 2012 Report, *supra* note 5.

¹³ See Securities Exchange Act Release No. 87698 (December 9, 2019), 84 FR 68269 (December 13, 2019) (File No. SR-DTC-2019-008) (describing the DTCC SMART network).

¹⁴ DTCC provides a set of core business processes for DTC and DTCC's other subsidiaries, including the technology systems and networks, that provide connectivity between DTC and its participants and that provide DTC with the ability to provide its services as required under the Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides services to DTC and DTCC's other subsidiaries.

¹⁵ See Rule 2, *supra* note 4 (establishing DTC's right to require applicants to furnish information to become Participants or Pledges of DTC and to require participants to furnish information relating to assurances of financial responsibility and operational capability).

¹⁶ See Section 1 of Rule 2, *supra* note 4.

¹⁷ See Notice of Filing, *supra* note 4, at 36833-34.

¹⁸ See *id.*

¹⁹ See *id.* at 36834.

²⁰ DTC states that, historically, it has generally not provided, nor been requested to provide, information that contains confidential or

example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.²³ Upon the declaration of a Market Disruption Event, DTC's Rules provide DTC with tools to address such an event, such as suspending any or all services and taking, or requiring participants to take, any actions DTC considers appropriate to facilitate the continuation of DTC's services.²⁴

Currently, DTC's Board of Directors may declare a Market Disruption Event and may take any actions authorized by DTC's Rules to address the event.²⁵ However, DTC's Rules also authorize certain officers to make an interim declaration of a Market Disruption Event, to allow DTC to prevent delays in addressing a Market Disruption Event if the Board of Directors is unable to convene.²⁶ In the event of such an interim declaration, the Board of Directors must ratify, modify, or rescind the officer's determination as soon as practicable.²⁷ Currently, the officers authorized to make such determination are the Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer, and General Counsel.²⁸

DTC proposes to add two additional officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of authorized officers that could make such an interim determination if the Board of Directors is unable to convene. DTC states these two officers, like the other officers currently provided in the Rules, maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market Disruption Event.²⁹ DTC states adding these two additional officers would facilitate DTC's ability to implement its emergency procedures in the event of a Market Disruption Event.³⁰

3. Systems Disconnect Rule

As mentioned above in Section II.A (Background), DTC's participants connect to DTC's systems, either through the DTCC-managed SMART network or through other electronic means, such as through a third party service provider or service bureau. DTC's Rules do not address DTC's ability to disconnect a participant whose network connection risks harming DTC's systems. DTC's proposal will establish procedures under which DTC would be able to disconnect a participant from its network due to the risk of an imminent threat to DTC, participants, or other market participants.³¹

DTC's proposal will address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A "Major Event" will be defined as the happening of one or more "Systems Disruptions" reasonably likely to have a significant impact on DTC's operations, including "DTCC Systems,"³² that affect the business, operations, safeguarding of securities or funds, or physical functions of DTC, its participants, or other market participants. "Systems Disruption" will, in turn, be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems.

DTC's proposal would also provide governance procedures applicable to DTC's determination whether, and how, to implement the provisions of the Systems Disconnect Rule. The same officers with delegated authority under the Force Majeure Rule may make a determination that a Major Event has occurred. As discussed in Section II.B.2 (Market Disruption Event) above, DTC states these officers maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market

Disruption Event, which would also enable them to determine the existence of a Major Event.

However, the proposed process for declaring a Major Event, by contrast, would start with a designated officer, whereas, for a Market Disruption Event, the officer would make an interim determination only if the Board of Directors were unable to timely convene. DTC states it designed the process in this way to improve its ability to respond quickly, efficiently, and effectively to a Major Event that arises abruptly.³³ Following this determination, any management committee including all of the officers authorized to determine a Major Event would convene, and DTC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, to ratify, modify, or rescind the Officer Major Event Action.³⁴

In addition, the proposed rule will require participants to notify DTC immediately upon becoming aware of a Major Event, and, likewise, will require DTC to notify its participants promptly of any action DTC takes or intends to take with respect to a Major Event.³⁵ Finally, the proposal will address certain miscellaneous related matters including: (i) A limitation of liability for any failure or delay in performance, in whole or in part of DTC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that DTC's power to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that DTC's powers pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that participants shall keep any confidential information provided to them by DTC in connection with a Major Event confidential, and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

²³ See Rule 38, *supra* note 6. See also Securities Exchange Act Release Nos. 83953 (August 27, 2018), 83 FR 44381 (August 30, 2018) (File No. SR-DTC-2017-803); 83972 (August 28, 2018), 83 FR 44964 (September 4, 2018) (File No. SR-DTC-2017-021).

²⁴ See Rule 38, *supra* note 6.

²⁵ See Section 2 of Rule 38, *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

²⁹ See Notice of Filing, *supra* note 4, at 36834.

³⁰ See *id.*

³¹ See Notice of Filing, *supra* note 4, at 36834-35.

³² "DTCC Systems" will be defined as the systems, equipment and technology networks of DTCC, DTC and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with DTC.

³³ See Notice of Filing, *supra* note 4, at 36835.

³⁴ See *id.*

³⁵ See *id.*

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act³⁶ 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 the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to DTC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)³⁷ of the Act and Rules 17Ad-22(e)(1),³⁸ (e)(2),³⁹ and (e)(17)(i)⁴⁰ thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F)⁴¹ of the Exchange Act requires, in part, that the rules of a clearing agency, such as DTC, be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act⁴² for the reasons discussed below.

As described above in Section II.B.1 (Confidentiality Requirements), DTC proposes to revise its Rules to establish a standard relating to DTC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with DTC's membership requirements. The Commission believes such a uniform standard will help DTC meet its obligations and will help each participant better understand DTC's obligations for maintaining the confidential information it shares with DTC, which, in turn, may facilitate the sharing of such information and improve DTC's ability to evaluate its participants' eligibility to access DTC's settlement services.

Also, as described above in Section II.B.1 (Confidentiality Requirements), DTC proposes to add participant confidentiality requirements to its Rules to ensure participants maintain the

confidentiality of information DTC shares, which participants may then use to determine whether to participate in DTC's settlement services by understanding DTC system requirements and DTC system safeguards. The Commission believes participant confidentiality requirements will help each participant better understand its rights and obligations for maintaining the confidential information DTC shares, which, in turn, may facilitate participant compliance. Therefore, the Commission believes the proposed changes to DTC and participant confidentiality requirements are consistent with promoting the prompt and accurate settlement of securities transactions by DTC.

As described above in Section II.B.2 (Market Disruption Event) and Section II.B.3 (Systems Disconnect Rule), risks, threats, and potential vulnerabilities due to a Market Disruption Event or a Major Event could impede DTC's ability to provide its settlement services. DTC proposes to add two officers authorized to make an interim determination that a Market Disruption Event has occurred if the Board of Directors is unable to timely convene. The Commission believes the proposed change will improve DTC's ability to respond quickly to a Market Disruption Event, which could help DTC mitigate the impact of such event on DTC, its participants, and the broader market.

Additionally, as described above in Section II.B.3 (Systems Disconnect Rule), DTC proposes to add the Systems Disconnect Rule, which will set forth the procedures under which DTC would be authorized, upon the occurrence of a Major Event (as defined in the proposed rules), to take certain actions, including disconnecting a participant from DTC's systems, suspending data transmissions between DTC and the participant, and requiring the participant to take other actions necessary to protect DTC and its participants. The Commission believes the proposed Systems Disconnect Rule will enable DTC to respond quickly to a potential cyber threat or other network disruption, which could help DTC prevent the spread of a participant's systems disruptions to DTC, its participants, and other market participants that could otherwise cause losses to DTC or its participants.

One commenter suggests certain revisions to the definition of Major Event so that certain terms in the Systems Disconnect Rule are consistent with the definition of Market Disruption Event in the Force Majeure Rule.⁴³ The

Commission disagrees. Consistency between the Systems Disconnect Rule and Force Majeure Rule is not necessary because DTC designed the Systems Disconnect Rule for a different purpose. Although both rules relate to events that, if left unaddressed, could affect DTC's ability to provide settlement services, the Force Majeure Rule is designed to cover events caused by external forces that impact DTC and its participants, whereas the Systems Disconnect Rule is designed only to cover disruptions to participant's computer systems or network that could flow through to DTC systems. Therefore, differences between the two rules do not raise consistency concerns, because of their different purposes.⁴⁴

Therefore, for the reasons described above, the Commission believes the proposed changes relating to a Market Disruption Event or a Major Event will help promote the prompt and accurate clearance and settlement of securities transactions and with assuring DTC safeguards securities and funds that are in its custody or control or for which it is responsible. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.⁴⁵

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

Rule 17Ad-22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.⁴⁶ The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1) of the Exchange Act⁴⁷ for the reasons discussed below.

As described above in Sections II.B.1 (Confidentiality Requirements) and II.B.2 (Market Disruption Event), DTC proposes to establish a consistent standard for its obligation to maintain the confidentiality of information it collects from its participants and to

⁴⁴ The commenter also suggests adding language to the end of the Major Event definition to indicate that, to avoid doubt, a Major Event would not include disruptions due to normal market forces. The Commission does not believe that such additional language is necessary because, as discussed above in Section II.B.3 (Systems Disconnect Rule), a Major Event is limited to one or more "Systems Disruption(s)" (as defined in the proposed rule), which is properly limited to disruptions to participant systems or its network connection.

⁴⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁶ 17 CFR 240.17Ad-22(e)(1).

⁴⁷ *Id.*

³⁶ 15 U.S.C. 78s(b)(2)(C).

³⁷ 15 U.S.C. 78q-1(b)(3)(F).

³⁸ 17 CFR 240.17Ad-22(e)(1).

³⁹ 17 CFR 240.17Ad-22(e)(2).

⁴⁰ 17 CFR 240.17Ad-22(e)(17)(i).

⁴¹ 15 U.S.C. 78q-1(b)(3)(F).

⁴² *Id.*

⁴³ See letter from Anonymous, dated July 28, 2021, *supra* note 5.

establish participant confidentiality requirements. The Commission believes a consistent standard for DTC's confidentiality requirements will provide for clear and transparent standard rules for participants, rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing those participants. Additionally, the Commission believes that imposing specific legal standards applicable to both DTC and its participants to follow will provide for a well-founded legal basis for the sharing and maintaining of confidential information between DTC and its participants.⁴⁸

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1) of the Exchange Act.⁴⁹

C. Consistency With Rule 17Ad-22(e)(2)

Rule 17Ad-22(e)(2) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.⁵⁰ The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(2) of the Exchange Act⁵¹ for the reasons discussed below.

The Commission believes DTC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event if the Board of Directors is unable to convene in a timely manner provides for governance arrangements that are clear and transparent and that provide clear and direct lines of responsibility. Likewise, the Commission believes DTC's proposal to identify the officers authorized to make an interim determination of a Major Event, which will then be ratified, modified, or rescinded by the management

⁴⁸ One commenter suggests adding an exception for negligence or fraud to the limitation of liability clause in the proposed Systems Disconnect Rule, which the commenter states is customary contractual language. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5. The Commission notes DTC has already included similar language in its Rules, which would be applicable to this aspect of the proposal. *See* Rule 6, *supra* note 6 (providing for DTC liability to its participants for "gross negligence, willful misconduct, or violations of Federal securities laws for which there is a private right of action", which is not limited by the proposed Rule 38A pursuant to section 5).

⁴⁹ 17 CFR 240.17Ad-22(e)(1).

⁵⁰ 17 CFR 240.17Ad-22(e)(2).

⁵¹ *Id.*

committee and the Board of Directors will provide for clear and transparent governance procedures and will specify clear and direct lines of responsibility. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad-22(e)(2) of the Exchange Act.⁵²

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

Rule 17Ad-22(e)(17)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.⁵³ The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(17)(i) of the Exchange Act⁵⁴ for the reasons discussed below.

The Commission believes DTC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event could help DTC mitigate the impact of a Market Disruption Event by ensuring DTC can respond quickly to such event if the Board of Directors were unable to convene in a timely manner. Likewise, the Commission believes the proposed Systems Disconnect Rule, as described in Section II.B.3 above, provides a rules-based process that will enable DTC to identify potential cyber threats or other network disruptions, which could help DTC prevent the spread of a participant's systems disruptions to DTC, its participants, and other market participants that could otherwise cause losses to DTC or its participants.

One commenter suggests revising the definition of Major Event to be consistent with the definition of Market Disruption Event in the Force Majeure Rule.⁵⁵ The commenter further argues the impact to DTC covered by the definition of Major Event should be limited to "DTCC Systems" (as defined in the proposed rule) to ensure the scope of the proposed rule is limited to

⁵² *Id.*

⁵³ 17 CFR 240.17Ad-22(e)(17)(i).

⁵⁴ *Id.*

⁵⁵ Specifically, the commenter suggests deleting reference to "reasonably" and by replacing "significant" with "material" when describing the likelihood and level of impact to DTC. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

technical systems.⁵⁶ The Commission disagrees. As noted above, the purposes of both the Force Majeure Rule and the Systems Disconnect Rule are different. The Force Majeure Rule is designed to cover events external to DTC and its participants that materially impact, or are likely to materially impact, DTC's ability to provide its settlement services. The Systems Disconnect Rule, by contrast, is designed to cover a participant's systems or network disruption, which through its connection to DTC, is reasonably likely to have a significant impact on DTC's systems. The differences between the rules' purposes support the need for differing standards.⁵⁷ Furthermore, the Commission notes the reference to "including DTCC Systems" in the proposed definition of Major Event takes into account how DTC's operations, *i.e.*, its settlement services, work, in that they utilize DTCC Systems. Consequently, the commenter's proposed revisions are not necessary.⁵⁸

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad-22(e)(17)(i) of the Exchange Act.⁵⁹

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶⁰ and the rules and regulations promulgated thereunder.

⁵⁶ *See id.*

⁵⁷ The Commission also disagrees with the commenter's suggestion to remove the references to "reasonably" with respect to the likelihood of an event impacting DTC's operations. The Commission believes that DTC's assessment of the likelihood of such an impact should be reasonable before taking actions like disconnecting a participant from its systems. In addition, the Commission notes that DTC's references to "reasonably likely" and "significant impact" in the proposed definition of Major Event are consistent with the Commission's definition of a "Major SCI Event" under Regulation SCI. 17 CFR 242.1000. Likewise, the Commission notes that references in the proposed rule text to "reasonable basis" and "appropriate" is consistent with the obligations related to a Major SCI Event under Regulation SCI. 17 CFR 242.1002.

⁵⁸ Another commenter expressed concern that the proposed Systems Disconnect Rule could be used to benefit the trading activity of certain participants at the detriment of disconnected participants. *See* letter from Jarrod Knudson, dated June 27, 2021, *supra* note 5. The Commission disagrees because the proposed rule, by its terms, would only apply when certain Systems Disruptions occur at a participant that could impact DTC's operations.

⁵⁹ 17 CFR 240.17Ad-22(e)(17)(i).

⁶⁰ 15 U.S.C. 78q-1.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁶¹ that Proposed Rule Change SR-DTC-2021-011, be, and hereby is, *approved*.⁶²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93271; File No. SR-CboeEDGA-2021-021]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Rule Regarding the Allowance of Off-Exchange Transactions by a Member Acting as Agent Otherwise Than on EDGA in Accordance With Rule 19c-1 Under the Securities Exchange Act of 1934

October 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 29, 2021, Cboe EDGA Exchange, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Act³ 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 EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to adopt a rule regarding the allowance of off-exchange transactions by a Member acting as agent otherwise than on EDGA in accordance with Rule 19c-1 under

the Securities Exchange Act of 1934 (the “Act”).⁵ 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/equities/regulation/rule_filings/edga/), 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 adopt a rule regarding off-exchange transactions by a Member acting as agent. Rule 19c-1 and Rule 19c-3 under the Act⁶ describe rule provisions that each national securities exchange must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange already incorporates the required provision in Rule 19c-3 under the Act into Rule 13.6, and its stated policies and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include the provisions in Rule 19c-1 under the Act. Therefore, the proposed rule change adopts this provision in new Rule 13.6(a)⁷ in accordance with Rule 19c-1 under the Act. Specifically, proposed Rule 13.6(a) (in accordance with Rule 19c-1 under the Act) provides that no rule, stated policy, or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition, or otherwise limit, directly or indirectly, the ability of any Member acting as agent to effect any transaction otherwise than on this Exchange with another person (except when such Member also

is acting as agent for such other person in such transaction) in any equity security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes proposed Rule 13.16(a) is consistent with the Act, because it adopts an Exchange Rule specifically required by Rule 19c-1 regarding off-exchange transactions for members’ agency transactions. The Exchange’s current Rule 13.6 and stated policies and procedures currently comply with provisions governing off-exchange trading in Rule 19c-3 under the Act. The proposed rule change is designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as it will add transparency to the Exchange Rules by making it explicit in its Rules the provisions of Rule 19c-1 under the Act, as is required by all national exchanges.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive trading tool, rather it makes explicit the provisions governing off-exchange trading by a Member acting as agent in Rule 19c-1 of the Act within the Exchange Rules, which were

⁶¹ 15 U.S.C. 78s(b)(2).

⁶² In approving the Proposed Rule Change, the Commission considered the proposals’ impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶³ 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 See 17 CFR 240.19c-1.

⁶ See 17 CFR 240.19c-1 and 240.19c-3.

⁷ The proposed rule change also updates the provision in current Rule 13.6 (which incorporate Rule 19c-3 under the Act) to be Rule 13.6(b).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).