

Commission disagrees. As discussed above, on average broker-dealer members with lower Excess Net Capital amounts present higher risk exposures to NSCC relative to their capital levels.<sup>107</sup> Additionally, the Commission understands that NSCC considered several additional risks faced by its members, both qualitative and quantitative, in determining its proposed capital requirements, which the Commission believes demonstrate the reasonableness of the proposed minimum capital requirements, as discussed above in Section III.A.i.<sup>108</sup> Regarding U.S. and non-U.S. banks and trust companies, the proposal will set the minimum capital requirements based on standards and measures used by banking regulators. Regarding non-U.S. broker-dealers and for all other types of members, the proposal would eliminate conditional and discretionary minimum capital requirements in favor of establishing objective minimum capital requirements. Therefore, the Commission concludes the proposal is reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.

For the reasons described above, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18) under the Act.<sup>109</sup>

#### 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 Act<sup>110</sup> and the rules and regulations promulgated thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>111</sup> that proposed rule change SR-NSCC-2021-016, be, and hereby is, *approved*.<sup>112</sup>

inaccurate assertion that self-clearing includes proprietary trading firms only, while clears on behalf of others refers to agency firms only. Rather, both types of members could be engaged in both proprietary and customer trading.

<sup>107</sup> See *supra* note 54 and accompanying text.

<sup>108</sup> See *supra* note 72. See also Notice of Filing, *supra* note 3, at 74196; and NSCC Response Letter, *supra* note 19, at 2 (noting that while members may not routinely experience issues related to legal, operational, or cyber risks, these issues can arise, possibly without advance warning, and, as such, they are considered a critical part of the ongoing credit risks that members present to NSCC and that NSCC must manage).

<sup>109</sup> *Id.*

<sup>110</sup> 15 U.S.C. 78q-1.

<sup>111</sup> 15 U.S.C. 78s(b)(2).

<sup>112</sup> In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>113</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022-18861 Filed 8-31-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95613; No. SR-NYSE-2022-38]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.05 of the NYSE Listed Company Manual To Establish a Cap on Listing Fees Billed When a Structured Product is Issued as a Dividend

August 26, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 22, 2022, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Section 902.05 of the NYSE Listed Company Manual (the “Manual”) to establish a cap on listing fees billed when a structured product is issued as a dividend.<sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

Section 902.05 of the Manual sets forth initial listing fees and annual fees applicable to structured products listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21, and traded on the equity floor of the Exchange. The term “retail debt securities” refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange. Subject to certain limitations set forth in the rule, issuers must pay listing fees for structured products at a per share rate using the following tiered fee structure:

- For an issuance up to and including two million shares, the rate is \$0.01475 per share;
- For an issuance over two million shares and up to and including four million shares, the rate is \$0.0074 per share;
- For an issuance over four million shares and up to and including 300 million shares, the rate is \$0.0035 per share;
- For an issuance over 300 million shares, the rate is \$0.0019 per share.

The Exchange now proposes to adopt a cap on listing fees in relation to structured products issued as a dividend. As proposed, listing fees on structured products issued as a dividend would be capped at \$150,000 per issuance. The Exchange notes that the issuer in such cases is not receiving any cash or other consideration and would therefore not be generating any funds out of which it could pay the listing fees, as would be the case if it sold the securities. Therefore, the Exchange believes it is reasonable to apply a lower fee cap than is applied when structured products are sold in a capital raising transaction, as is more usually the case. The Exchange notes that the Manual already contains a similar \$150,000 cap on listing fees for shares of common stock issued in

<sup>113</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange originally filed to amend the Manual on August 16, 2022 (SR-NYSE-2022-33) and withdrew such filing on August 22, 2022.

connection with a stock split or stock dividend.<sup>5</sup>

The Exchange proposes to remove from Section 902.05 the reference to the fact that the fees set forth in that rule are applicable to securities listed under Section 703.21. Section 703.21 formerly set forth listing standards for the listing of equity-linked debt securities. However, the Exchange has reorganized its rules, so that its listing standards for equity-linked debt securities (now call equity linked notes or “ELNs”) are now set forth in Rule 5.2(j)(2) rather than Section 703.21 and Section 703.21 is reserved.<sup>6</sup> As such, the reference to Section 703.21 in Section 902.05 is no longer relevant and should be deleted. The Exchange notes that it does not currently have any listed ELNs and that it would have to adopt fees prior to listing any ELNs under Rule 5.2(j)(2). If the Exchange concludes that the appropriate fees for ELNs under Rule 5.2(j)(2) would be different from those provided for structured products under Section 902.05, the filing proposing such fees would set forth the Exchange’s reasons for believing that this difference was not inequitable or unfairly discriminatory.

The Exchange also proposes to remove from Section 902.05 references to the annual fees that were applicable prior to 2019, as that fee is no longer relevant.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to cap listing fees for structure products issued as a dividend at \$150,000 per issuance is equitable and not unfairly discriminatory. The Exchange notes that the issuer in such cases is not receiving any cash or other consideration and would therefore not be generating any funds out of which it could pay the listing fees, as would be the case if it sold the securities. Therefore, the Exchange believes it is reasonable to apply a lower fee cap than is applied when structured products are sold in a capital raising transaction, as is more usually the case. The Exchange notes that the Manual already contains a similar \$150,000 cap on listing fees for shares of common stock issued in connection with a stock split or stock dividend.

The removal from Section 902.05 of the reference to the fact that the fees set forth in that rule are applicable to securities listed under Section 703.21 is not inequitable or unfairly discriminatory, as it reflects the fact that ELNs are now listed under Rule 5.2(j)(2) rather than Section 703.21. As such, the reference to Section 703.21 in Section 902.05 is no longer relevant and should be deleted. The Exchange notes that it does not currently have any listed ELNs and that it would have to adopt fees prior to listing any ELNs under Rule 5.2(j)(2). If the Exchange concludes that the appropriate fees for ELNs under Rule 5.2(j)(2) would be different from those provided for structured products under Section 703.21 [sic], the filing proposing such fees would set forth the Exchange’s reasons for believing that this difference was not inequitable or unfairly discriminatory.

The removal of the references to annual fees applied before 2019 has no substantive effect, as that fee is no longer applied by its terms.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

### *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 not

necessary or appropriate in furtherance of the purposes of the Act. The proposed fee cap will be applicable to all similarly situated issuers on the same basis.

The Exchange does not believe that the proposed fee cap will have any meaningful effect on the competition among issuers listed on the Exchange. The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

### *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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change 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:

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>5</sup> See Securities Exchange Act Release No. 52463 (September 16, 2005); 70 FR 55933 (September 23, 2005) (SR-NYSE-2005-35) (notice of the proposal to adopt this approach with respect to stock splits). See also Securities Exchange Act Release No. 52696 (October 28, 2005); 70 FR 66881 (November 3, 2005) (SR-NYSE-2005-35) (approval of the adoption of this approach with respect to stock splits).

<sup>6</sup> See Securities Exchange Act Release No. 84351 (October 3, 2018); 83 FR 50980 (October 10, 2018) (SR-NYSE-2018-30) (among other things, deleting Section 703.21). See also Securities Exchange Act Release No. 80214 (March 10, 2017); 82 FR 14050 (March 16, 2017) (SR-NYSE-2016-44) (among other things, adopting Rule 5.2(j)(2) for the listing of ELNs; Rule 5.2(j)(2) is substantially the same as the listing standard for ELNs set forth in NYSE Arca Equities Rule 5.2(j)(2)).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2022-38 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-NYSE-2022-38. 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-NYSE-2022-38, and should be submitted on or before September 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-95615; File No. SR-DTC-2021-017]

**Self-Regulatory Organizations; The Depository Trust Company; Order Approving of Proposed Rule Change To Enhance Capital Requirements and Make Other Changes**

August 26, 2022.

**I. Introduction**

On December 13, 2021, The Depository Trust Company Corporation ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTCC-2021-017 (the "Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021.<sup>3</sup> On January 26, 2022, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>5</sup> On March 23, 2022, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>6</sup> On June 23, 2022, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.<sup>7</sup> The Commission has received comments regarding the substance of the Proposed Rule Change.<sup>8</sup> For the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 93854 (December 22, 2021), 86 FR 74122 (December 29, 2021) (File No. SR-DTC-2021-017) ("Notice of Filing").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> Securities Exchange Act Release No. 94067 (January 26, 2022), 87 FR 5548 (February 1, 2022) (SR-DTC-2021-017).

<sup>6</sup> Securities Exchange Act Release No. 94495 (March 23, 2022), 87 FR 18451 (March 30, 2022) (SR-DTC-2021-017).

<sup>7</sup> Securities Exchange Act Release No. 95143 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-DTC-2021-017).

<sup>8</sup> The Commission received one comment letter that does not bear on the Proposed Rule Change. The comment is available at <https://www.sec.gov/comments/sr-dtc-2021-017/srdtc2021017.htm>. Since the proposed changes contained in this Proposed Rule Change are similar to changes proposed simultaneously by DTC's affiliates, National Securities Clearing Corporation and Fixed Income Clearing Corporation, the Commission has considered all public comments received on the proposals regardless of whether the comments are submitted to the Proposed Rule Change or to the proposals filed by DTC's affiliates.

reasons discussed below, the Commission is approving the Proposed Rule Change.<sup>9</sup>

**II. Description of the Proposed Rule Change**

DTC proposes to amend its Rules to (A) increase the capital requirements applicable to its participants,<sup>10</sup> (B) revise its credit risk monitoring system, and (C) make certain other clarifying, technical, and supplementary changes to implement changes (A) and (B).

*A. Changes to DTC's Capital Requirements for Participants**i. U.S. Participants*

*U.S. Broker-Dealer Participants:* DTC proposes to increase its minimum excess net capital requirements for its U.S. broker-dealer participants. Currently, U.S. broker-dealer participants are required to maintain a minimum amount of not less than \$500,000 in excess net capital over the greater of (i) the minimum capital requirement imposed on it pursuant to Exchange Act Rule 15c3-1,<sup>11</sup> or (ii) such higher minimum capital requirement imposed by the registered broker-dealer's designated examining authority.<sup>12</sup> DTC proposes to increase the minimum excess net capital ("Excess Net Capital")<sup>13</sup> requirements U.S. broker-dealer participants to \$1 million.

*U.S. Bank and Trust Company Participants:* For members who are U.S. banks or U.S. trust companies who are also banks,<sup>14</sup> DTC proposes to (1) change the capital measure from equity capital to common equity tier 1 capital

<sup>9</sup> Capitalized terms not defined herein are defined in Rules, By-Laws and Organization Certificate ("Rules"), available at [https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc\\_rules.pdf](https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf).

<sup>10</sup> DTC states that these capital requirements have not been updated in over 20 years. See Notice of Filing, *supra* note 3, at 74122.

<sup>11</sup> 17 CFR 240.15c3-1.

<sup>12</sup> See Section 1(b) of the Policy Statements on the Admission of Participants and Pledges (the "Policy Statement") of the Rules, *supra* note 9. See also, Section 1(h)(ii) of Rule 3 of the Rules, *supra* note 9.

<sup>13</sup> DTC proposes to define "Excess Net Capital" as the net capital greater than the minimum required, as calculated in accordance with the broker-dealer's regulatory and/or statutory requirements.

<sup>14</sup> For U.S. trust companies who are not banks, DTC is not changing its existing capital requirement of \$2 million. DTC treats U.S. trust companies that are banks and non-banks differently because they present different risks based on the attendant risks of their business activities, with trust companies engaging in banking activities (e.g., receiving deposits and making loans) being subject to greater risks than trust companies that limit their activities to trust activities (e.g., acting as a trustee, other fiduciary or transfer agent/registrant). See Notice of Filing, *supra* note 3, at 74125.

<sup>13</sup> 17 CFR 200.30-3(a)(12).