

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96427; File No. SR-DTC-2022-012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Distributions Guide

December 1, 2022.

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 November 22, 2022, 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. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(4) thereunder.⁴ 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 would amend the Distributions Guide to accommodate Participants’ tax reporting and withholding obligations by enhancing DTC’s Procedure for the Tax Event Announcements feature (“Tax Event Announcements”) of DTC’s Distributions Service as set forth in the Distributions Guide to (i) add two new “Sub-Event Types” and one “Event Type” under Tax Event Announcements, (ii) eliminate a “CUSIP Limit” for an existing Sub-Event Type known as “1042-S Classifications” and (iii) make clarifying changes to the Tax Event Announcements section of the Distributions Guide, as described in greater detail below.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (“DTC Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, or the DTC Corporate Actions Distributions Service Guide (“Distributions Guide”), available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Service-Guide-Distributions.pdf>.

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 Distributions Guide⁶ to accommodate Participants’ tax reporting and withholding obligations by enhancing DTC’s Procedure for the Tax Event Announcements feature (“Tax Event Announcements”) of DTC’s Distributions Service⁷ as set forth in the Distributions Guide to (i) add two new “Sub-Event Types” and one “Event Type” under Tax Event Announcements, (ii) eliminate a “CUSIP Limit” for an existing Sub-Event Type known as “1042-S Classifications” and (iii) make clarifying changes to the Tax Event Announcements section of the Distributions Guide, as described below.

(a) Announcements

The Distributions Service includes the announcement (“Announcements”), collection, allocation, and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC. This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements (“Distribution Event”)⁸ from multiple issuers and agents.

⁶ The Distributions Guide is a Procedure of DTC. Pursuant to the DTC Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 5. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules. See Rule 27, *supra* note 5.

⁷ Tax Event Announcements provide Participants with information-only announcements regarding taxable events that may give rise to information and/or withholding obligations that occur even in the absence of an actual distribution of dividend and interest payments (“Tax Events”). See Distributions Guide, *supra* note 5, at 14.

⁸ Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depository

DTC also provides a Participant holding a Security in its DTC account with Tax Event Announcements (“Tax Event Announcements Feature”) for distributions subject to Sections 305(c) (“305(c) Deemed Distributions”) and 871(m) (“871 Dividend Equivalent Amount”) of the Internal Revenue Code of 1986, as amended⁹ (“Code”),¹⁰ as well as classification information for Form 1042-S reporting purposes (“1042-S Classifications”).¹¹

The proposed rule change would enhance Tax Event Announcements by adding two new Tax Event Announcements as “Sub-Event Types”:¹² (i) “1446(f) Excess of Cumulative Net Income”¹³ and (ii) “92-Day Exemption Qualified Notice,” as more fully described below.

Although all existing Tax Event Announcements are classified as a “Tax Event” Event Type, the “General Information” Event Type would be added to the Tax Event Announcements Feature in the Distributions Guide and used for the 92-Day Exemption Qualified Notice Sub-Event Type. However, the Event Type for the 1446(f) Excess of Cumulative Net Income Sub-Event Type would be a Tax Event.

Internal Revenue Code Section 1446(f)

Section 1446(f) of the Internal Revenue Code was enacted on December 22, 2017, as part of the Tax Cuts and Jobs Act of 2017 (“Jobs Act”).¹⁴ The U.S. Treasury Department (“Treasury Department”) finalized corresponding regulations on October 7, 2020,¹⁵ including the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)-4(a)¹⁶

receipts, return of capital, dividend with option, stock splits, stock dividends, automatic dividend reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. See Distributions Guide, *supra* note 5, at 12.

⁹ 26 U.S.C. 305(c) and 26 U.S.C. 871(m).

¹⁰ See Distributions Guide, *supra* note 5, at 14-15. See also Securities Exchange Act Release No. 81871 (October 13, 2017), 82 FR 48734 (October 19, 2017) (SR-DTC-2017-018) and Securities Exchange Act Release No. 87729 (December 12, 2019), 84 FR 69424 (December 18, 2019) (SR-DTC-2019-011).

¹¹ See Distributions Guide, *supra* note 5, at 14-15. See also Securities Exchange Act Release No. 95231 (July 8, 2022), 87 FR 42243 (July 14, 2022) (SR-DTC-2022-008).

¹² Tax Event Announcements are classified by “Event Type” and Sub-Event Type. See Distributions Guide, *supra* note 5, at 14.

¹³ The cumulative net income is the net income earned by the partnership since the formation of the partnership that has not been previously distributed by the partnership 1.1446(f)-4(c)(2)(iii)

¹⁴ Public Law 115-97 (2017), Section 864(c)(8).

¹⁵ Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, 85 FR 76910 (November 30, 2020).

¹⁶ 26 CFR 1.1446(f)-4(a).

upon the transfer of an interest in a publicly traded partnership by a foreign partner, or pursuant to 1.1446(f)-4(c)(2)(iii) with respect to an amount realized on a distribution from a publicly traded partnership to a foreign partner (a “Section 1446(f) Withholding”).

It is DTC’s understanding that a Section 1446(f) Withholding is designed to ensure foreign partners file U.S. federal income tax returns to report their effectively connected income.

The Final Regulations require a Section 1446(f) Withholding on partnerships that are publicly traded on exchanges (“PTPs”) in respect of transfers that occur on or after January 1, 2022. The Treasury Department and the IRS published Notice 2021-51 to defer the applicability date to transfers and distributions that occur on or after January 1, 2023.¹⁷

Proposed 1446(f) Excess of Cumulative Net Income Sub-Event Type

The proposed 1446(f) Excess of Cumulative Net Income Event Sub-Type is intended to facilitate Participants’ and their customers’ compliance with tax withholding obligations in connection with the implementation of section 1446(f) of the Code that was enacted as part of the Jobs Act,¹⁸ and the Treasury Regulations or other official interpretations thereunder, as in effect from time to time (collectively, “Section 1446(f)”).

Section 1446(f) requires tax withholding in accordance with Treasury Regulation Section 1.1446(f)-4(c)(2)(iii) with respect to an amount realized on a distribution from a PTP (a “Section 1446(f) Withholding”). The amount realized on a distribution from a PTP is the amount of the distribution reduced by the portion of the distribution that is attributable to the cumulative net income. The cumulative net income is the net income earned by the PTP since its formation that has not been previously distributed by the partnership. If a portion of a distribution made by a PTP is attributable to an amount in excess of cumulative net income, a broker is required to withhold only on this portion for purposes of Section 1446(f).

The Final Regulations include a requirement for a PTP to identify such excess portion of the distribution as an amount in excess of cumulative net income on a qualified notice and to deliver the notice to any registered

holder that is a nominee.¹⁹ It was noted in the release for the Final Regulations that PTP interests are generally immobilized at a central depository and registered in the name of the depository’s nominee and that furnishing the qualified notice to the PTP’s registered holders that are nominees would facilitate the dissemination of information provided on the qualified notice to relevant market participants.²⁰

To facilitate the distribution of the qualified notices that DTC, as holder of record through its nominee, Cede & Co., would receive from PTPs in this regard, DTC proposes to add the new 1446(f) Excess of Cumulative Net Income Sub-Event Type to the Distributions Guide, as more fully described below. Subject to requirements described below, DTC would (i) receive the qualified notices that PTPs provide to DTC for this purpose and (ii) distribute the information to Participants that hold the applicable securities through the Tax Event Announcements Feature.

Proposed 92-Day Exemption Qualified Notice Sub-Event Type

The proposed 92-Day Exemption Qualified Notice Sub-Event Type is intended to facilitate Participants’ ability to receive general information relating to an exception from the Section 1446(f) Withholding requirement. The Final Regulations provide exceptions to the withholding requirement. One exception provides that under certain circumstances as specified in the Final Regulations, brokers may rely on a qualified notice from the PTP providing for an exception from Section 1446(f) Withholding requirement for a transfer of an interest in a PTP, if the PTP posts the qualified notice within 92 days ending on the date of the transfer.²¹

To facilitate the distribution of the qualified notices that DTC, may receive from PTPs in this regard, DTC proposes to add the new 92-Day Exemption Qualified Notice Sub-Event Type to the Distributions Guide, as more fully described below. Subject to requirements described below, DTC would (i) receive the qualified notices that PTPs provide to DTC for this purpose and (ii) distribute the information to Participants that hold the applicable securities through the Tax Event Announcements Feature.

Proposed Rule Change New Event Sub-Types

Pursuant to the proposed rule change, the Distributions Guide would be revised to reflect the addition of the 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice Event Sub-Types under The Tax Event Announcement Feature subsection.

As stated above, while existing Event Sub-Types are classified under the Event Type “Tax Event,” the proposed rule change would add a Tax Event to the Tax Event Announcement Feature referred to as “General Information” that would include the 92-Day Exemption Qualified Notice Event Sub-Type. The 1446(f) Excess of Cumulative Net Income Event Sub-Type would be categorized under the “Tax Event” Event Type.

The proposed text to be added to the Distributions Guide relating to the 1446(f) Excess of Cumulative Net Income Event Sub-Type would include that these announcements are “linked” to distribution announcements from a PTP and provide the amount of the distribution that is in excess of cumulative net income. The text would also note that the announcement for this Event Sub-Type would include a “Cash Rate” field that is used to provide the amount of a distribution that is in excess of cumulative net income, or if the Qualified Notice states that none of the distribution is in excess of cumulative net income, then the Cash Rate field would reflect zero.

The proposed text to be added to the Distributions Guide relating to the 92-Day Exemption Qualified Notice Event Sub-Type would indicate that the announcement for this Event Sub-Type would include a “Declared Publication Date” field used to provide the posting date of a qualified notice issued by a PTP.

Similarly, text in the Distributions Guide that describes Tax Event Announcements generally as “information only announcements regarding taxable events that may give rise to information and/or withholding obligations which occur even in the absence of an actual distribution of dividend and interest payments” would be expanded to state that these announcements also include “information only announcements regarding the taxability of a corresponding distribution” and/or “other relevant tax data that DTC receives from an issuer.”

¹⁷ IRS Notice 2021-15 (August 24, 2021), available at <https://www.irs.gov/pub/irs-drop/n-21-51.pdf>.

¹⁸ Public Law 115-97 (2017), section 864(c)(8).

¹⁹ See *supra* note 15, at 76928.

²⁰ *Id.*

²¹ See *supra* note 15, at 76925.

Other Changes

1042-S Classifications

In July 2022, DTC amended the Distributions Guide to add a new Tax Event “Sub Event Type” (*i.e.*, the “1042-S Classification”) to facilitate the distribution of certain tax classification information in a centralized format to Participants holding certain Securities at DTC.²² For 1042-S Classifications, DTC accepts templates from issuers that delineate various tax components that make up a distribution. Subject to requirements in the Distributions Guide, DTC (i) receives 1042-S Classification information that issuers voluntarily provide to DTC for this purpose and (ii) distributes the information to Participants that hold the applicable securities. Information that Issuers are required to provide to DTC pursuant to Rule 1.1446-4(b)(4) may also be included in the 1042-S Classification Sub Event Type.

The Distributions Guide states that each issuer and its affiliates, in the aggregate, may provide templates for up to, but no more than, 12 CUSIP numbers per month (“CUSIP Limit”).²³ The rule change that implemented the 1042-S Classification Event Sub-Type and the CUSIP Limit²⁴ stated that depending on demand for the transmittal of 1042-S Classifications through the facilities of DTC, and general availability of processing resources at DTC, DTC may submit a future proposed rule change to amend the Distributions Guide to increase the CUSIP Limit.

Since the implementation of the 1042-S Classification Event Sub-Type, DTC has observed increased demand from issuers to submit templates for greater than the CUSIP Limit and DTC has determined, based on its administration of this process, that it maintains the processing resources necessary to accommodate such demand. In this regard, pursuant to the proposed rule change issuers and their affiliates would no longer be subject to the CUSIP Limit and the text that imposes the CUSIP Limit would be removed from the Distributions Guide.

Clarifying Changes

The subsection titled “The Tax Event Announcement Feature” under the “Tax Event Announcements” section of the Distributions Guide would be reformatted for readability and ease of reference. This subsection contains details on the Event Sub-Types and related fields that are reported through

the Tax Event Announcements feature. Currently, the Tax Events and fields described in this subsection are the 305(c) Deemed Distributions, 871(m) Dividend Equivalent Amount and 1042-S Classifications. The revised text would include the newly proposed Event Sub-Types and related information, including fields and respective Event Type classifications to this subsection, as described above.

Pursuant to the proposed rule change, this subsection would be reformatted to consolidate all information relating to the respective Event Sub-Types into a table that includes the corresponding Event Type and Fields next to each of the five Event Sub-Types mentioned above. An introductory paragraph would be added to the beginning of the section to summarize the types of Tax Event Announcements that DTC processes. Certain existing “Important Notes” would continue to be included in the text. These Important Notes relate to 1042-S Classifications, including the use of templates and submission of qualified notices, and a disclaimer relating to Participants’ responsibility to ensure the accuracy and completeness of Tax Event Announcement information. As mentioned above, a note relating to the CUSIP Limit would be deleted.

Applicability of Tax Event Fee

As with DTC’s distribution of other Tax Event information to Participants, the distribution of information for the 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice Event Sub-Types would be subject to the existing “Tax Event Announcement Fee” of \$12 per Announcement, as set forth in the Fee Guide.²⁵

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”), and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)²⁶ of the Act.

Section 17A(b)(3)(F) of the Act requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁷ As described above, the proposed rule change would update the Distributions Guide to (i) include the distribution of Announcements for two new Event Sub-

Types, (ii) eliminate the CUSIP Limit for the 1042-S [sic] Classification Event Sub-Type, and (iii) make certain related clarifying changes, as described above. By enhancing the Tax Event Announcement Feature in this regard, the proposed rule change would enhance the Tax Events to help facilitate Participants’ compliance with U.S. federal tax withholding obligations for Eligible Securities subject to Tax Events categorized within Event Sub-Types that are on Deposit at DTC and making use of DTC’s book-entry transfer and settlement services. This would further facilitate Participants’ ability to continue to maintain Eligible Securities on Deposit at DTC and make use of DTC’s book-entry transfer and settlement services with respect to those Securities, in accordance with DTC Rules requirements relating to the use of DTC services by Participants.²⁸ Therefore, by facilitating Participant’s ability to continue to use DTC’s book-entry transfer and settlement services at DTC with respect to Eligible Securities that are subject to such Event Sub-Types, the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

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

DTC believes that the proposed rule change to amend the Distributions Guide to (i) include the distribution of Announcements for two new Event Sub-Types, (ii) eliminate the CUSIP Limit for the 1042-S Classification Event Sub-Type, and (iii) make certain related clarifying changes, as described above, could impose a burden on competition by subjecting Participants to additional costs. More specifically, Participants that hold Eligible Securities that may be subject to categorization under the proposed 1446(f) Excess of Cumulative Net Income or 92-Day Exemption Qualified Notice Event Sub-Types, as well as the 1042-S Classification (to the extent an issuer or its affiliates submit 1042-S Classification information that exceeds the current CUSIP Limit), to additional fees, which may negatively affect such Participant’s operating costs.

DTC believes any burden on competition imposed by the proposed rule changes would not be significant, and to the extent the proposed rule

²⁵ See DTC Fee Guide, available at <https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/2022-DTC-Fee-Schedule-FINAL>, at 15.

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ *Id.*

²⁸ In connection with their use of DTC’s services, Participants must comply with all applicable laws, including, but not limited to, all applicable laws relating to taxation. See DTC Rule 2, Section 8, *supra* note 5.

²² *Supra* note 11.

²³ Distributions Guide, *supra* note 5, at 15.

²⁴ *Supra* note 11.

change may impose a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Act.²⁹

DTC has discussed the proposal with Participants that hold Eligible Securities that may be subject to categorization under the 1446(f) Excess of Cumulative Net Income, 92-Day Exemption Qualified Notice Event and 1042-S Classification Sub-Types, and issuers of those Securities, and DTC understands that Participants and their customers would otherwise need to obtain the necessary information directly from the respective individual issuers or from third-party vendors. DTC understands that having to obtain this information on an individual CUSIP-by-CUSIP basis from issuers or getting this information after the distribution from a vendor, creates inefficiencies and timing issues for Participants and their customers relating to the piecemeal nature of the retrieval of such information, that would be mitigated if such information were made available in a more centralized format through DTC.

DTC believes that any burden on competition imposed by the proposal would be necessary because the proposed rule change would provide Participants with a centralized means to receive announcement information needed to facilitate their compliance with tax withholding and reporting obligations relating to payments on Eligible Securities for which issuers provide information to DTC relating to Eligible Securities categorized under the various Event Sub-Types, as described above.

DTC believes that any burden on competition imposed by the proposal would be appropriate because the fees are intended to provide revenue that is close to the costs to DTC of building and providing the services described above. DTC believes the Tax Event Announcements feature has a positive effect on competition among Participants because the service allows Participants to receive applicable tax information in a more efficient manner, thereby reducing the resources they would need to allocate to obtain the applicable tax-related information on a CUSIP-by-CUSIP basis through issuers and third-party vendors. The service also provides issuers with a more efficient method of providing Tax Event information to parties that need to see such information in order to facilitate timely tax withholding and reporting. DTC believes this enhances competition among Participants by allowing parties to receive such information more

quickly and in a more streamlined manner.

Based on experiences with existing services provided through the Tax Event Announcements feature and discussions with Participants, DTC believes that despite the Tax Event Fee that would be charged to Participants holding affected Securities for the distribution of 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice-related information, the distribution of such information through the facilities of DTC would provide benefits to Participants in terms of processing and timing efficiencies that should mitigate the impact of any such fees charged. As such, DTC believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁰

DTC does not believe that the aspect of the proposed rule change to make certain clarifying changes to the Distributions Guide, as described above, would have an impact on competition.³¹ Having a clearer Distributions Guide facilitates Participants' understanding of the Distributions Guide and provide Participants with increased predictability and certainty regarding their obligations about DTC Tax Event Announcement feature. Therefore, DTC believes that the proposed rule change to make clarifying changes to the Rules and the Settlement Guide would not have an impact on competition.³²

DTC believes that the aspect of the proposed rule change to eliminate the CUSIP Limit for an issuer and its affiliates to be able to submit up to 12 templates per month, as described above, could promote competition for issuers and their affiliates, because issuers and their affiliates would no longer be subject to the CUSIP Limit for submission of templates per month, and all Participants holding the applicable issues would be able to receive the aggregate amount of notices for any issuer and its affiliates as all other Participants holding the same issues.

(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 would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

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 Securities and Exchange Commission ("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 to not respond to any comments received.

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)³³ of the Act and paragraph (f)³⁴ of Rule 19b-4 thereunder. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-2022-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f).

²⁹ 15 U.S.C. 78q-1(b)(3)(I).

All submissions should refer to File Number SR-DTC-2022-012. 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 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-2022-012 and should be submitted on or before December 28, 2022.

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

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96430; File No. SR-MEMX-2022-32]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Market Data Fees

December 1, 2022.

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 November 18, 2022, MEMX LLC (“MEMX” 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ and non-Members (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

The text of the proposed rule change is provided in Exhibit 5.

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

Background

The purpose of the proposed rule change is to amend the Fee Schedule to adopt fees the Exchange will charge to Members and non-Members for each of its three proprietary market data feeds, namely MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale (collectively, the “Exchange Data Feeds”). The Exchange is proposing to implement the proposed fees immediately.

The Exchange previously filed the proposal on March 24, 2022 (SR-MEMX-2022-03) (the “Initial

Proposal”). The Exchange withdrew the Initial Proposal and replaced the proposal with SR-MEMX-2022-14 (the “Second Proposal”). The Exchange withdrew the Second Proposal and replaced the proposal with SR-MEMX-2022-19 (the “Third Proposal”). The Exchange withdrew the Third Proposal and replaced the proposal with SR-MEMX-2022-28 (the “Fourth Proposal”). The Exchange recently withdrew the Fourth Proposal and is replacing it with the current proposal (SR-MEMX-2022-32).

The Exchange notes that it has previously included a cost analysis in connection with the proposed fees for the Exchange Data Feeds, however, the prior cost analysis coupled costs related to operating its trading system, or transaction services, with costs of producing market data. As described more fully below, this filing provides an updated cost analysis that focuses solely on costs related to the provision of the Exchange Data Feeds (the “Cost Analysis”). Although the baseline Cost Analysis used to justify the fees has been updated, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of producing the Exchange Data Feeds with a reasonable mark-up over those costs. Before setting forth the additional details regarding the proposal as well as the updated Cost Analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers three separate data feeds to subscribers—MEMOIR Depth, MEMOIR Top and MEMOIR Last Sale. The Exchange notes that there is no requirement that any Firm subscribe to a particular Exchange Data Feed or any Exchange Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Exchange Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Exchange Data Feeds and their use thereof, which are in turn based upon factors deemed relevant by each Firm. The proposed pricing for each of the Exchange Data Feeds is set forth below.

MEMOIR Depth

The MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.*, top and depth-of-book order data), order executions (*i.e.*,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

³⁵ 17 CFR 200.30-3(a)(12).