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 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:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–MEMX–2023–19 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–MEMX–2023–19. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–19 and should be submitted on or before October 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19845 Filed 9–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98332; File No. SR–NYSEAMER–2023–43]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify the NYSE American Options Fee Schedule

September 8, 2023.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 29, 2023, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 modify the NYSE American Options Fee Schedule (''Fee Schedule'') to provide for certain temporary fee changes in connection with the Exchange's migration to the Pillar trading platform. The Exchange proposes to implement the fee changes effective August 29, 2023. The proposed rule change is available on the Exchange's website at *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

The purpose of this filing to amend the Fee Schedule to provide for certain temporary changes in connection with the Exchange's migration to a new trading platform known as Pillar. Currently, the Exchange conducts options trading on an electronic platform known as ''the Exchange System,'' which refers to the Exchange's electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of users are consolidated for execution and/or display.[4] On or about October 23, 2023, the Exchange anticipates beginning the migration of its options trading to the Pillar technology platform.[5]

[28] 17 CFR 200.30–3(a)(12), (59).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE American Rule 900.2NY Definitions.

[5] The Exchange has announced that, pending regulatory approval, it will begin migrating Exchange-listed options to Pillar on October 23, 2023, *available here: https://www.nyse.com/trader-update/history#110000530919. See also, e.g.,* Securities Exchange Act Release Nos. 97297 (April 13, 2023), 88 FR 24225 (April 19, 2023) (SR–NYSEAMER–2023–16) (Notice of Filing and Immediate Effectiveness of Proposed Change to Modify Rule 900.2NY and to Adopt New Rules 964NYP, 964.1NYP, and 964.2NYP); 97739 (June 15, 2023), 88 FR 40893 (June 22, 2023) (SR–NYSEAMER–2023–17) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt New Exchange Rule 980NYP and Amend Exchange Rule 935NY); 97869 (July 10, 2023), 88 FR 45730 (July 17, 2023) (SR–NYSEAMER–2023–34) (Notice of Filing and Immediate Effectiveness of Proposed New Rules 900.3NYP, 925.1NYP, 928NYP, 928.1NYP, and 952NYP and Amendments to Rules 900.3NY, 925NY, 925.1NY, 928NY, 952NY, 953.1NY, 967NY, 967.1NY, and 985NY); 97938 (July 18, 2023), 88 FR 47536 (July 24, 2023) (NYSEAMER–2023–35) (Notice of Filing and Immediate Effectiveness of Proposed Change for New Rule 971.1NYP).

Specifically, the Exchange proposes to (1) provide ATP Holders and ATP Firms (collectively, ''ATP Holders'') with certainty regarding their eligibility for certain tiers, incentives, and discounts during the migration to Pillar; (2) waive Monthly Excessive Bandwidth Utilization Fees (''EBUF'') during the migration to Pillar and for a six-month period thereafter; and (3) cap certain port fees during the migration to Pillar. The Exchange proposes to implement the rule changes on August 29, 2023.

Tiers, Incentives, and Discounts

The Exchange currently offers various volume- and performance-based incentives and discounts to encourage ATP Holders to use the Exchange as their primary venue for order routing and execution and for market making activity. Many of these incentive and discount programs include multiple tiers, which are intended to encourage greater participation in the programs and to incent ATP Holders to continually grow their business on the Exchange in order to qualify for the benefits offered in a higher tier.

In advance of the Exchange's migration to the Pillar platform, the Exchange has noted concern among ATP Holders regarding their ability to achieve various volume qualifications and thresholds during the migration. Specifically, because ATP Holders may choose to moderate their order flow and quotation sizes to reduce risk as they familiarize themselves with the new trading platform, they may not achieve the tier(s), incentive(s), and discount(s) they qualified for pre-migration. Accordingly, the Exchange believes that providing ATP Holders with certainty with respect to certain pricing they would receive during the transition to Pillar would provide ATP Holders with an opportunity to adjust to new functionality and new order handling mechanisms without taking on an additional financial burden.

To this end, the Exchange proposes to amend Section I of the Fee Schedule to provide that, for the month during which the Exchange commences its migration to the Pillar platform (the ''Migration Month''), ATP Holders will receive the tier(s), incentive(s), and discount(s) they achieved in the month prior to the Migration Month or the tier(s), incentive(s), and discount(s) achieved during the Migration Month, whichever are better. Specifically, the Exchange will compare an ATP Holder's performance in each of the programs set forth below during the Migration Month and during the month prior (currently anticipated to be September 2023) and will bill the ATP Holder for the Migration Month at the most favorable rates based on each qualification level achieved.[6]

The following tiers, incentives, and discount programs would be covered by the proposed change: [7]

- NYSE American Options Market Maker Sliding Scale—Electronic
- American Customer Engagement (''ACE'') Program
- QCC Billable Bonus rebate
- CUBE Auction Fees and Credits
- Professional Step-Up Incentive
- BOLD Mechanism Fees & Credits

The Exchange also proposes the same modification to Section III.E. of the Fee Schedule,[8] which would apply to the Manual Billable Rebate Qualification, the QCC Billable Bonus Rebate Qualification, and the Floor Broker Manual Billable Incentive Program for Floor Brokers.

The Exchange believes that, to the extent ATP Holders choose to modify their trading activity during the Migration Month, the proposed change would mitigate the impact of potential pricing disruption by providing ATP Holders with certainty regarding the tier(s), incentive(s), and discount(s) they would be eligible for in the Migration Month, which would in turn encourage ATP Holders to continue to send orders and quotes to the Exchange during the transition to Pillar.

In addition, by offering ATP Holders the better pricing of the month before the Migration Month or the Migration Month, the Exchange believes ATP Holders will be incented to take full advantage of new Pillar functionality and possibly even increase their volume and participation during the migration.

The Exchange is not proposing any changes to the underlying tiers, incentives, or discounts covered by the proposed change described above.

Monthly Excessive Bandwidth Utilization Fees

Section II of the Fee Schedule describes two alternative fees that are charged for exceeding the ratio of orders or messages sent to the Exchange compared to the number of executions or contracts traded and are intended to deter ATP Holders from submitting an excessive number of orders that are not executed.[9]

The Exchange proposes to amend Section II of the Fee Schedule to specify that the Monthly Excessive Bandwidth Utilization Fees (''EBUF'') assessed to ATP Holders will be waived for the duration of the migration and for six months after the completion of the migration.[10] Specifically, the Exchange proposes that the waiver of the EBUF take effect for the month during which the migration begins and remain in effect for six months following the month in which the migration is completed (the ''Waiver Period''). The Exchange believes that waiving EBUF during the Waiver Period will give both ATP Holders and the Exchange an opportunity to adjust to new functionality and new order handling mechanisms without imposing a financial burden on ATP Holders based on their order to execution ratios or messages to contracts traded ratios during the Pillar transition. In addition, during the Waiver Period, the Exchange intends to work closely with ATP Holders to monitor traffic rates and their order and message to execution ratios as they adapt to trading on the Pillar platform.

Cap on Port Fees

The Exchange proposes to adopt a cap on the monthly fees assessed for the use of certain ports connecting to the Exchange, which will go into effect on the day the Exchange commences its migration to the Pillar platform and remain in effect until the end of the month in which the migration is completed (the ''Migration Period'').

Specifically, the Exchange proposes to cap the monthly fees charged to an ATP Holder for the use of Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, the ''Port Fees'') during the Migration Period (the ''Migration Cap''). The Migration Cap will be based on the number of ports an ATP Holder is billed for in the month preceding the beginning of the Exchange's migration to the Pillar platform, except that if an ATP Holder reduces the number of ports used during the Migration Period (*i.e.,* incurs Port Fees below the Migration Cap), the ATP

[6] The Exchange notes that its affiliated exchange NYSE Arca Options implemented a similar fee change in connection with its migration to the Pillar technology platform in 2022. *See* Securities Exchange Act Release No. 94125 (February 1, 2022), 87 FR 6910 (February 7, 2022) (SR–NYSEArca–2022–05) (providing for continuity of OTP Holders' eligibility for certain tiers, incentives, and discounts in connection with NYSE Arca Options Pillar migration).

[7] *See* Fee Schedule, Sections I.C.; I.E. through I.H.; and I.M.

[8] *See* Fee Schedule, Section III.E. ((Floor Broker Incentive and Rebate Programs).

[9] *See* Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees.

[10] The Exchange notes that its affiliated exchange NYSE Arca Options adopted a similar cap in connection with its migration to the Pillar technology platform in 2022. *See* Securities Exchange Act Release No. 94095 (January 28, 2022), 87 FR 6216 (February 3, 2022) (SR–NYSEArca-2022–04) (providing for a temporary waiver of the Ratio Threshold Fee in connection with the NYSE Arca Options Pillar migration).

Holder would only be billed for the actual number of ports used.

Without this proposed rule change, the Fee Schedule provides that ATP Holders would be charged for the use of both legacy Exchange System platform ports and new Pillar platform ports, which could significantly increase costs to ATP Holders during the Migration Period. Thus, the proposed Migration Cap is intended to encourage ATP Holders to maintain the same levels of interaction with Exchange during the Migration Period, as well as promptly migrate to the more efficient Pillar technology platform, without incurring additional Port Fees as a result of the transition.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in July 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity & ETF options trades.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.

The Exchange believes that the proposed change is reasonable because it is intended to encourage ATP Holders to maintain active participation on the Exchange during the Pillar migration by offering ATP Holders pricing at each of the tier(s), incentive(s), and discount(s) they qualify for during either the Migration Month or in the month prior to the Migration Month, whichever is more favorable to the ATP Holder, and to maintain sufficient active connections to the Exchange during its migration to Pillar by providing for the Migration Cap. Similarly, the Exchange believes that the proposed EBUF waiver is reasonable because it is intended to encourage ATP Holders to maintain active participation on the Exchange during and after its migration to Pillar. The Exchange further believes that the proposed change would lessen the impact of the migration on ATP Holders by enabling them to adapt their trading activity as needed to transition to Pillar functionality during the migration and ensure they have sufficient data connections and would thus encourage ATP Holders to promptly transition to the more efficient Pillar platform.

To the extent the proposed rule change encourages ATP Holders to migrate to the new platform while maintaining their level of trading activity, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate the impact of the migration without affecting its competitiveness.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits because the more favorable tier, incentive, and discount eligibility, Migration Cap, and EBUF waiver would be available to all ATP Holders. In addition, the proposed change relating to tiers, incentives, and discounts is based on each ATP Holder's activity levels before and during the Migration Month, just as the Migration Cap is based on each ATP Holder's use of ports before and during the Pillar migration. Accordingly, all ATP Holders would have the opportunity to adapt their trading activity and moderate their order flow and use of ports as needed to transition to Pillar functionality. Thus, the Exchange believes the proposed rule change would facilitate a smooth transition to the Pillar technology platform for all market participants on the Exchange by encouraging ATP Holders to continue to participate actively on the Exchange during the transition period, thereby promoting continued market-wide quality.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory because it would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

All ATP Holders would be eligible for the more favorable tier(s), incentive(s), and discount(s) they achieve in either the Migration Month or the preceding month, the Migration Cap, and the EBUF waiver. Moreover, the proposed change is based on each ATP Holder's achievement of tiers, incentives, and discounts prior to and during the Migration Month use of ports. The proposed change would thus allow ATP Holders to adjust their interactions with Exchange systems during the migration as needed and take advantage of the new functionality offered by Pillar by mitigating the impact of potential pricing disruptions. To the extent the proposal encourages ATP Holders to maintain or increase their current level of activity on the Exchange, such activity would result in trading opportunities for all market participants

[11] The Exchange notes that its affiliated exchange NYSE Arca Options adopted a similar fee cap in connection with its migration to the Pillar technology platform in 2022. *See* Securities Exchange Act Release No. 94017 (January 20, 2022), 87 FR 4095 (January 26, 2022) (SR–NYSEArca-2022–03) (providing for a temporary cap on monthly fees for use of ports in connection with the NYSE Arca Options Pillar migration).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[16] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options decreased from 7.26% for the month of July 2022 to 7.09% for the month of July 2023.

and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

Intramarket Competition. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all ATP Holders. All ATP Holders would be eligible to receive the rates under each of the tier(s), incentive(s), and discount(s) they achieved in the Migration Month or in the month prior to the Migration Month, whichever are better, and all ATP Holders would be eligible for the Migration Cap and EBUF waiver.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[18] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[19]

The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. The Exchange believes that its fees are constrained by the robust competition for order flow among exchanges and thus believes that the proposed change is reasonably designed to encourage ATP Holders to transition to the Pillar platform while mitigating the risk of a significant change to the fees they would be subject to during the migration. Accordingly, the Exchange believes that the proposed change would continue to make the Exchange a competitive venue for order execution by enabling ATP Holders to maintain their current levels of interaction with the Exchange (or make adjustments as needed) during the migration, thus encouraging prompt migration to the newer, more efficient Pillar technology platform and sustained activity on the Exchange during the Pillar transition.

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) [20] of the Act and subparagraph (f)(2) of Rule 19b–4 [21] 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) [22] 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:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2023–43 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–NYSEAMER–2023–43. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available

[17] *See* Reg NMS Adopting Release, *supra* note 14, at 37499.

[18] *See* note 15, *supra.*

[19] *See* note 16, *supra.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–43 and should be submitted on or before October 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19842 Filed 9–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98330; File No. SR–DTC–2023–008]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Recovery and Wind-Down Plan

September 8, 2023.

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 September 1, 2023, 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 Act[3] 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 consists of amendments to the Recovery and Wind-down Plan to reflect business and product developments that have taken place since the time it was last amended, and make certain changes to improve the clarity of the Plan and make other updates and technical revisions, as described in greater detail below.[5]

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

Executive Summary

The R&W Plan was adopted in August 2018[6] and is maintained by DTC for compliance with Rule 17Ad–22(e)(3)(ii) under the Act.[7] Rule 17Ad–22(e)(3)(ii) requires registered clearing agencies to, in short, establish, implement and maintain plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The Plan is intended to be used by the Board and DTC management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services to the marketplace as a going concern.

The R&W Plan is comprised of two primary sections: (i) the ''Recovery Plan,'' which sets out the tools and strategies to enable DTC to recover, in the event it experiences losses that exceed its prefunded resources, and (ii) the ''Wind-down Plan,'' which describes the tools and strategies to be used to conduct an orderly wind-down of DTC's business in a manner designed to permit the continuation of DTC's critical services in the event that its recovery efforts are not successful.

The purpose of the rule proposal is to amend the R&W Plan to reflect business and product developments that have taken place since the time it was last amended,[8] and make certain changes to improve the clarity of the Plan and make other updates and technical revisions. Some of the business and product-related amendments included in the proposed rule change are as follows (and described in more detail below):

- Changes to reflect the discontinuation of the Canadian dollar (''CAD'') settlement feature of the Canadian-Link Service.[9]
- Removal of DTC's inbound link with the Peruvian central securities depository, based on its voluntary termination.
- The addition of The Bank of New York Mellon as a DTC Pledgee Bank.

DTC believes that by helping to ensure that the R&W Plan reflects current business and product developments, providing additional clarity, and making necessary grammatical corrections, that the proposed rule change will help DTC continue to maintain the Plan in a manner that supports the continuity of DTC's critical services and enables Participants and Pledgees to maintain access to DTC's services through the transfer of its membership in the event DTC defaults or the Wind-down Plan is ever triggered by the Board.

Background

The R&W Plan is managed by the Office of Recovery & Resolution Planning (referred to in the Plan as the ''R&R Team'') of DTC's parent company, the Depository Trust & Clearing Corporation (''DTCC''),[10] on behalf of

[23] 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).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf,* or in the Recovery & Wind-down Plan of DTC (the ''Recovery & Wind-down Plan,'' ''R&W Plan'' or ''Plan'').

[6] *See* Securities Exchange Act Release Nos. 83972 (Aug. 28, 2018), 83 FR 44964 (Sep. 4, 2018) (SR–DTC–2017–021); and 83953 (Aug. 27, 2018), 83 FR 44381 (Aug. 30, 2018) (SR–DTC–2017–803).

[7] 17 CFR 240.17Ad–22(e)(3)(ii). DTC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) under the Act and must comply with paragraph (e) of Rule 17Ad–22.

[8] *See* Securities Exchange Act Release No. 91429 No. (Mar. 29, 2021), 86 FR 17421 (Apr. 2, 2021) (SR–DTC–2021–004).

[9] The Canadian-Link Service provides Participants with a single depository interface for CAD transactions. The link facilitates Participants' ability to maintain U.S. and Canadian Security positions in their DTC accounts for Securities listed in both Canada and the United States (*i.e.,* dually listed). In recent years, activity at DTC in CAD has accounted for less than 0.20 percent of DTC's average daily valued settlement volume. While Participants continue to use the Canadian-Link Service for custody purposes to position securities inventory at CDS Clearing and Depository Services Inc., (''CDS'') through DTC's CDS account and receive related distribution payments, no Participants have effectuated a DVP of Securities through the Canadian-Link Service since 2018. For DTC to continue to maintain access to CDS's CAD settlement services, it would have been necessary for DTC to perform systems development in order to be able to continue to use this aspect of the Canadian-Link service. In DTC's judgement, it would be impractical for DTC to incur the costs to undertake such changes, including incurring development costs, due to the lack of demand by its Participants to use the valued aspect of the Canadian Link Service. *See* Securities Exchange Act Release No. 34–91429 (Mar. 29, 2021), 86 FR 17421 (Apr. 2, 2021) (SR–DTC–2021–004).

[10] DTCC operates on a shared service model with respect to DTC and its other affiliated clearing

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