



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86589; File No. SR-DTC-2018-010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing Amendment Nos. 1 and 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend the Settlement Guide Procedures to Provide Status Information for Institutional Transactions to a Matching Utility

August 7, 2019

On November 29, 2018, The Depository Trust Company (“DTC”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to allow DTC to share status information with matching utilities (SR-DTC-2018-010).

The proposed rule change was published for comment in the Federal Register on December 12, 2018.³ In response, the Commission received one comment letter on the proposed rule change.⁴ On December 26, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 84751 (December 7, 2018), 83 FR 63948 (December 12, 2018) (SR-DTC-2018-010) (“Notice”).

⁴ Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP, dated January 2, 2019, to Eduardo A. Aleman, Assistant Secretary, Commission, available at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-4842066-177179.pdf> (“SS&C Letter I”).

proposed rule change to March 12, 2019.⁵ On March 11, 2019, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change (“OIP”).⁷ The Commission received additional comments on the proposal in response to the OIP.⁸ On June 5, 2019, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.⁹

On June 28, 2019, DTC filed Amendment No. 1 to the proposed rule change to provide status information to a matching utility even if that matching utility did not submit a transaction to DTC.¹⁰ On August 5, 2019, DTC filed Amendment No. 2 to the

⁵ Securities Exchange Act Release No. 84954 (December 26, 2018), 84 FR 873 (January 31, 2019) (SR-DTC-2018-010).

⁶ 15 U.S.C. 78s(b)(2)(B)(ii).

⁷ Securities Exchange Act Release No. 85288 (March 11, 2019), 84 FR 9565 (March 15, 2019) (SR-DTC-2018-010).

⁸ Letter from John F. Abel, Executive Director, Settlement and Asset Services, Depository Trust and Clearing Corporation, dated July 1, 2019, to Vanessa Countryman, Acting Secretary, Commission, available at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5749578-186788.pdf> (“DTC Letter II”); Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP, dated April 15, 2019, to Vanessa Countryman, Acting Secretary, Commission, available at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5364127-184089.pdf> (“SS&C Letter II”); and Letter from Murray Pozmanter, Managing Director, Head of Clearing Agency Services and Global Operations, Depository Trust and Clearing Corporation, dated March 26, 2019, to Brent J. Fields, Secretary, Commission, available at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5224494-183708.pdf> (“DTC Letter I”).

⁹ Securities Exchange Act Release No. 88037 (June 5, 2019), 84 FR 27172 (June 11, 2019) (SR-DTC-2018-010).

¹⁰ DTC submitted a courtesy copy of Amendment No. 1 to the proposed rule change through the Commission’s electronic public comment letter mechanism.

proposed rule change to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.¹¹ The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 from interested persons and to approve the proposed rule change, as modified by Amendment Nos. 1 and 2 (hereinafter, “Proposed Rule Change”), on an accelerated basis.

I. Description of the Proposed Rule Change

Background

DTC proposes to amend the procedures, set forth in the DTC Settlement Service Guide (“Settlement Guide”),¹² to allow DTC to provide status information (“Status Information”) for institutional transactions in eligible securities (“Institutional Transactions”)¹³ to an entity providing a matching service (“Matching Utility”),¹⁴ as described below.

Accordingly, Amendment No. 1 to the proposed rule change has been publicly available on the Commission’s website at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010.htm> since July 2, 2019.

¹¹ DTC submitted a courtesy copy of Amendment No. 2 to the proposed rule change through the Commission’s electronic public comment letter mechanism. Accordingly, Amendment No. 2 to the proposed rule change has been publicly available on the Commission’s website at <https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5914689-188969.pdf> since August 6, 2019.

¹² 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 (“Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the Settlement Service Guide, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf> (“Settlement Guide”).

¹³ DTC defines an Institutional Transaction as a securities transaction between a broker-dealer and its institutional customer (e.g., sell-side firms, buy-side institutions, and custodians). Notice, supra note 3, 83 FR at 63948.

In accordance with the Settlement Guide, for a Matching Utility to establish and maintain a connection with DTC the Matching Utility must be able to balance with DTC in an automated way¹⁵ and communicate transactions to and from DTC with information required though mandated fields in order to provide DTC with data necessary for it to be able to process a transaction.¹⁶ The submission of an Affirmed Transaction by the Matching Utility to DTC, on behalf of a Participant, constitutes the duly authorized instruction of the Participant to DTC to process the Affirmed Transaction in accordance with the Rules and Procedures.¹⁷

A transaction submitted to DTC for processing may be subject to a processing exception (“Exception”), causing it to pend in the DTC system or not be processed

¹⁴ A “matching service” is defined in the Settlement Guide as an electronic service to match trade information, centrally, between a broker-dealer and its institutional customer.

¹⁵ For each Matching Utility interfacing with DTC, DTC requires the Matching Utility to deliver a daily message on each business day shortly after noon from the Matching Utility with their accepted item counts of institutional delivery and ID Net transaction totals for transactions settling the previous day. Settlement Guide, supra note 12 at 35. DTC’s system will compare the totals from the Matching Utility to its accepted item counts. Id. If the totals match, an “acknowledged balance” balance file will be sent to the Matching Utility. Id. If the totals do not match, DTC will respond with the list of control numbers received from the Matching Utility for transactions that settled on the previous day, along with their respective transaction types for the originating Matching Utility to compare. Id.

¹⁶ Settlement Guide, supra note 12 at 35. The mandated fields for this purpose are the transaction control number (“Control Number”), DTC receiver and deliverer account numbers, CUSIP, message type, share quantity, market type, buy-sell indicator, broker ID, ID agent internal account number, broker internal account number, agent bank ID, settlement amount, origination entity, recipient of message, institution, and settlement date. Institutional Transactions that are not Affirmed Transactions, but which include a Control Number, may be submitted directly by Participants. Id.

¹⁷ Settlement Guide, supra note 12 at 35.

because the transaction does not satisfy certain requirements and/or controls set forth in the Rules and Settlement Guide. A Matching Utility that has submitted an Institutional Transaction to DTC, or is otherwise involved with the matching of a transaction, does not receive Status Information regarding the transaction and is therefore unable to provide services to facilitate resolution of processing Exceptions occurring at DTC. Therefore, in order to resolve an Exception, the Participants to an Institutional Transaction currently must (i) access Status Information directly through the DTC Settlement User Interface and (ii), as necessary, supply the information to their customers that are counterparties to the transaction on their books, in order to facilitate the coordination of the resolution of the Exception among the counterparties. DTC states that currently, these communications among the counterparties to a transaction often occur in a decentralized manner via e-mail, which is time consuming and subject to error.¹⁸

Proposed Rule Change

DTC received a request from its Matching Utility affiliate, ITP Matching (US) LLC (“ITP”), to receive Status Information so that ITP may transmit the Status Information to counterparties in a centralized format. DTC believes that distribution of Status Information to relevant counterparties in a centralized format would facilitate Participants’ ability to monitor Exceptions and coordinate with their institutional customers in order to resolve Exceptions.

Pursuant to the proposed rule change, in order to facilitate more seamless transmission of the Status Information to Participants and facilitate their ability to manage Exceptions for (i) Affirmed Transactions and (ii) other Institutional Transactions

¹⁸ Notice, supra note 3, 83 FR at 63950.

that may have been confirmed at a Matching Utility and received a Control Number and are submitted directly to DTC by a Participant in an instruction containing the Control Number (collectively, “Eligible Transactions”), DTC proposes to amend the Settlement Guide to provide that DTC may provide Status Information on Eligible Transactions to the applicable Matching Utility that submitted the transaction to DTC or with respect to which its Control Number is included in transaction details provided by a Participant,¹⁹ if so requested by the Matching Utility.

In this regard, DTC would send to a Matching Utility Status Information for Eligible Transactions that DTC has received from the Matching Utility or have been entered by the Participant that have a Control Number associated with that Matching Utility. The Status Information provided to the Matching Utility would include the status of the transaction (e.g., the Delivery of Securities has been made within DTC, the transaction is pending Delivery within DTC, or the transaction was reclaimed (i.e., sent back to the Deliverer)) and a reason for any pending status (e.g., the Deliverer has insufficient inventory in the applicable Securities, the Deliverer has insufficient Collateral, the Receiver to the transaction has insufficient Net Debit Cap, etc.). The Status Information would also include information (“Identifying Information”) to facilitate the Matching Utility’s ability to identify the applicable Eligible Transaction and reconcile the Status Information to the Eligible Transaction in its records. Identifying

¹⁹ DTC states that it is DTC’s understanding that a transaction that has been confirmed within a Matching Utility’s system, but has not been affirmed, may be assigned a Control Number by the Matching Utility. Any transaction not affirmed by a Matching Utility would not be submitted by it to DTC as an Affirmed Transaction. In that case, the Participant may submit the transaction directly through DTC as a Deliver Order and include the applicable Control Number as assigned by the Matching Utility on its submission to DTC.

Information would include, but not be limited to, (i) the applicable Control Number, (ii) identification numbers of the Participants to the transaction, (iii) quantity of Securities of the transaction, (iv) dollar amount of the transaction, and (v) an indicator of whether the transaction was submitted to DTC by the Matching Utility or directly by a Participant.

Proposed Changes to the Settlement Guide

Pursuant to the proposed rule change, DTC proposes to revise the Settlement Guide to allow DTC to provide Status Information of Eligible Transactions to a Matching Utility that requests such information, but only for those transactions that are associated with a Control Number relating to the Matching Utility. The proposed text to the Settlement Guide would also (i) describe the types of Status Information and related Identifying Information that would be shared with a Matching Utility in this regard, and (ii) provide that DTC may charge a fee (“Status Information Fee”) to a Matching Utility that receives Status Information as set forth in the DTC Fee Guide.²⁰ The Proposed Rule Change would also add a defined term for “Control Number” to the Settlement Guide in existing text where the term is referred to but not defined.

The Proposed Rule Change would require that prior to providing Status Information to a Matching Utility, DTC would obtain the written agreement, in such form as determined by DTC from time to time (“Status Information Agreement”), from the Matching Utility that includes the following:

- (i) a request from the Matching Utility to receive Status Information from DTC;

²⁰ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>. Any such fee would be the subject of a subsequent proposed rule change that DTC would file with the Commission.

- (ii) an agreement by the Matching Utility that the Matching Utility will not distribute Status Information to any third party other than (a) the Participants indicated on the Status Information and (b) the institutional customers that are counterparties to the transaction for which the Participants indicated on the Status Information are acting with respect to the transaction;
- (iii) the agreement of the Matching Utility that the Matching Utility will indemnify, hold harmless and agree, on demand, to reimburse DTC, its stockholders, officers, directors and employees from and against and for any and all claims, liabilities, obligations, damages, actions, penalties, losses, costs, expenses and disbursements, including, without limitation, attorneys' fees and disbursements ("Claims"), which they may sustain by reason of DTC's providing Status Information to the Matching Utility, except for any Claims which result from the gross negligence or willful misconduct of the person asserting a right to indemnification;
- (iv) the agreement of the Matching Utility to pay the Status Information Fee;
- (v) the agreement of the Matching Utility to notify DTC immediately if the Matching Utility becomes aware of Status Information provided to it by DTC being distributed to a third party other than as authorized pursuant to (ii) above; and
- (vi) the acknowledgement of the Matching Utility that DTC may terminate the Status Information Agreement in the event that (a) DTC becomes aware that the Matching Utility has used or distributed the Status Information in

a manner that violates the terms of the Status Information Agreement, (b) the Matching Utility does not pay the Status Information Fee in accordance with the terms of the Fee Schedule, or (c) DTC submits a rule filing to the SEC, which is approved by the SEC or otherwise becomes effective pursuant to the Act, to discontinue DTC's distribution of Status Information to Matching Utilities.

Description of Amendment No. 1

In Amendment No. 1, DTC proposes to provide status information to a Matching Utility even if that Matching Utility did not submit a transaction to DTC.²¹ Specifically, DTC will develop the mechanism necessary for DTC to directly provide Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility, regardless of whether or not that Matching Utility submitted the transaction to DTC, subject to (i) the agreement by the Matching Utility to pay DTC for the reasonable cost to cover for the development of the mechanism by DTC and (ii) the Matching Utility subscribing to receive Status Information, as described above. To the extent that the transaction is an interoperable transaction submitted to DTC by another Matching Utility, then in order to receive Status Information for the interoperable transaction, the Matching Utility would be required to submit an indicator to DTC for the purpose of notifying DTC that a customer of the Matching Utility is a party to the transaction.

Description of Amendment No. 2

²¹ Amendment No. 1, supra note 10.

In Amendment No. 2, DTC proposes to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.²² Specifically, as filed, the proposed rule change would be effective upon approval by the Commission. Pursuant to Amendment No. 2, the Proposed Rule Change would not become effective until DTC has submitted a subsequent proposed rule change pursuant to Rule 19b-4 under the Act,²³ and the subsequent proposed rule change has become effective. DTC states that subsequent proposed rule change would implement changes to the DTC Fee Guide²⁴ that establish (i) the Status Information Fee and (ii) a charge that would cover the cost of DTC's provision of Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility, regardless of whether or not that Matching Utility submitted the transaction to DTC, as described in Amendment No. 1.

II.

²² Amendment No. 2, supra note 11.

²³ 17 CFR 240.19b-4.

²⁴ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>.

Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views and arguments concerning whether Amendment Nos. 1 and 2 are 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 e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2018-010 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-DTC-2018-010. This file number should be included on the subject line if e-mail 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-2018-010 and should be submitted on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²⁵ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, and all comments received, the Commission finds that the Proposed Rule Change is consistent with the Act and the rules and regulations thereunder applicable to DTC.²⁶ In particular, as discussed below, the Commission finds that the Proposed Rule Change, is consistent with Sections 17A(b)(3)(F) and (I) of the Act.²⁷

²⁵ 15 U.S.C. 78s(b)(2)(C).

²⁶ In approving this Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the Proposed Rule Change, including competitive effects, below.

²⁷ 15 U.S.C. 78q-1(b)(3)(F) and (I).

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

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.²⁸ For the reasons set forth below, the Commission believes that the changes described in the Proposed Rule Change are designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²⁹

As described above, DTC proposes to share Status Information with Matching Utilities. Matching Utilities already electronically facilitate communication among the parties to an Institutional Transaction. Providing Status Information to Matching Utilities would leverage their existing communication platform to eliminate the need for Participants to access the Status Information directly from DTC and then communicate Exception information to other parties in a decentralized way, including by sending e-mails which are less efficient and more error-prone. The Commission believes that this approach should increase efficiency in communicating Status Information that in turn could help facilitate enhanced communication among the parties to an Eligible Transaction to address an Exception so that the Eligible Transaction may meet DTC controls and be processed for end-of-day settlement. As such, the Commission believes that the Proposed Rule Change is designed to promote the prompt and accurate clearance

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ Id.

and settlement of securities transactions and is consistent with Section 17A(b)(3)(F) of the Act.³⁰

B. Consistency with Section 17A(b)(3)(I) of the Act

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.³¹ DTC proposes to share Status Information with Matching Utilities so that Matching Utilities can help facilitate the resolution of Exceptions by using their central platform. Currently the parties to Institutional Transactions must communicate in an inefficient, time-consuming manner to resolve an Exception. Because the increased efficiency in communicating Status Information could help facilitate enhanced communication among the parties to an Eligible Transaction and address an Exception (i.e., so that the Eligible Transaction may meet DTC controls and be processed for end-of-day settlement), the Commission believes that the Proposed Rule Change could benefit all of the parties to an Eligible Transaction. As a result, the Commission believes that the Proposed Rule Change would not impose any burden on competition regarding fees not necessary or appropriate in furtherance of the purposes of the Act.

As originally proposed, the Proposed Rule Change would provide Status Information to the Matching Utility that submitted the transaction to DTC or with respect to which its Control Number is included in transaction details provided by a Participant. Further, a Matching Utility would be required to sign an agreement that the Matching Utility will not distribute Status Information to any third party other than (a) the

³⁰ Id.

³¹ 15 U.S.C. 78q-1(b)(3)(I).

Participants indicated on the Status Information and (b) the institutional customers that are counterparties to the transaction for which the Participants indicated on the Status Information are acting with respect to the transaction. One commenter opposes the original proposal limiting access to the Status Information only to Matching Utilities that either submitted the transaction to DTC or whose Control Number is included in the transaction detailed provided to DTC by a Participant, because this original proposal does not provide for transmitting Status Information to a linked Matching Utility, over the interface or otherwise.³² The commenter states that by restricting distribution of Status Information to the Matching Utility that submits a transaction to DTC or whose Control Number is included in transaction details provided by a Participant on whose behalf it confirmed the trade, the original proposal would impede the free flow of information between Matching Utilities, thereby further thwarting the development of a competitive interoperating environment for central trade matching services.³³

In response, DTC states that it does not intend for the Proposed Rule Change to preclude sharing of Status Information among interoperating Matching Utilities in a circumstance where both Matching Utilities are acting for a party to the transaction.³⁴ To address the commenter's concern, DTC amended the proposal to directly provide Status Information to a Matching Utility for each transaction submitted to DTC to which a

³² SS&C Letter II at 2–3.

³³ SS&C Letter II at 2–3; SS&C Letter I at 4–5.

³⁴ DTC Letter II at 4.

customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility.³⁵

The Commission believes that the proposed rule change, as amended, would not impose any burden on competition on the future development of an interoperability arrangement among Matching Utilities not necessary or appropriate in furtherance of the purposes of the Act. The Proposed Rule Change would allow any Matching Utilities involved in a transaction to access Status Information directly from DTC, regardless of whether a Matching Utility's control number was submitted with the transaction. The Commission understands that under the Proposed Rule Change, the method by which a Matching Utility accesses Status Information would differ based on whether the Matching Utility's control number is associated with the transaction (i.e., if a Matching Utility's control number is not included in the transaction as submitted, the Matching Utility would be required to submit an indicator to DTC to notify DTC that a customer of the Matching Utility is a party to the transaction). The Commission believes that providing distinct methods for Matching Utilities to access the same Status Information directly from DTC should help ensure that all interested Matching Utilities can access such information regardless of which Matching Utility submits the transaction to DTC. Therefore, the Commission believes that these different methods of access would not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Fees Associated with the Provision of Status Information

As discussed above, the Proposed Rule Change would authorize DTC to charge (i) a Status Information Fee to a Matching Utility that receives Status Information as set

³⁵ Id.

forth in the DTC Fee Guide through a future proposed rule change and (ii) the reasonable cost to cover for the development of the mechanism by DTC to provide Status Information to a Matching Utility even if that Matching Utility did not submit a transaction to DTC.

One commenter opposes the proposal to charge a fee for Status Information on both procedural and substantive grounds.³⁶ As a procedural matter, the commenter states that any fee for Status Information should be considered by the Commission in the Proposed Rule Change. The commenter notes that once DTC's authority to impose a fee on a Matching Utility for Status Information is established, any subsequent filing to implement that authority by setting the amount of the fee will become effective immediately upon filing with the Commission.³⁷ The commenter states that "[t]he Commission's authority to temporarily suspend the fee, once implemented, is no substitute for a careful consideration at this juncture of the important issues [it] has raised."³⁸ Substantively, the commenter states any fee charged to ITP would be merely a paper transfer of revenue from one corporate affiliate to another, while a fee charged to the commenter, another Matching Utility, would be a true cost with real consequences.³⁹

For the following reasons, the Commission believes that the Proposed Rule Change would not impose any burden on competition regarding fees that is not necessary or appropriate in furtherance of the purposes of the Act. As a procedural matter, not

³⁶ See SS&C Letter II at 3–4; SS&C Letter I at 4–5.

³⁷ See SS&C Letter II at 3; see also 15 U.S.C. §78s(b)(3).

³⁸ See SS&C Letter II at 3–4.

³⁹ See SS&C Letter II at 4.

including the fee for Status Information in the Proposed Rule Change is consistent with the Act. Sections 19(b)(3)(A) and (C) of the Act⁴⁰ specifically provide for the process to which the commenter objects, i.e., a proposed rule change that establishes a fee imposed by a self-regulatory organization on any person, whether or not the person is a member of the organization, shall take effect upon filing with the Commission and be subject to potential suspension if the Commission determines that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Section 19 of the Act. Therefore, the Commission believes that DTC choosing to include any associated fee in a subsequent proposed rule change is consistent with the Act.

Substantively, it is consistent with the Act to charge fees to both affiliates and third-party competitors of the affiliate. The commenter argues that the mere existence of a fee is problematic because DTC would be charging that fee to its affiliate which renders the fee a “paper transfer” of revenue.⁴¹ However, the Commission believes that, under the Act, any fee charged by DTC for this service should be equitably allocated among potential users, including users that are affiliates of DTC.⁴² Therefore, it would not be reasonable for DTC to not charge a fee for this service solely because its affiliate may be a user of the service.

⁴⁰ 15 U.S.C. §78s(b)(3)(A) and (C).

⁴¹ See SS&C Letter I at 5; SS&C Letter II at 4.

⁴² Although Section 17A(b)(3)(D) applies to clearing agency fees on participants, the Commission believes that it is also instructive here with respect to fees on users of a service provided by a clearing agency. 15 U.S.C. 78q-1(b)(D).

Finally, the Commission notes that the Proposed Rule Change would also provide that a Matching Utility agree to pay DTC for the reasonable cost of DTC's development of the mechanism necessary for DTC to directly provide Status Information to a Matching Utility for each transaction to which a customer of the Matching Utility is a party and matched via the Matching Utility. As noted above, the Commission notes that this approach, which applies to all Matching Utilities, is consistent with Section 17A(b)(3)(D),⁴³ which requires the equitable allocation of fees among a clearing agency's participants. The Commission also notes that it would review the future fee filing for consistency with this provision and all other relevant Exchange Act provisions, as well as the standard set forth by DTC in this filing.

Therefore, for all of the above reasons, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(I) of the Act.⁴⁴

IV. Accelerated Approval of Amendment Nos. 1 and 2

As noted above, in Amendment No. 1, as compared to the original proposal, DTC proposes to provide status information to a Matching Utility even if that matching utility did not submit a transaction to DTC.⁴⁵ As noted above, in Amendment No. 2, as compared to the original proposal, DTC proposes to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.⁴⁶

⁴³ 15 U.S.C. 78q-1(b)(D).

⁴⁴ 15 U.S.C. 78q-1(b)(3)(I).

⁴⁵ Amendment No. 1, supra note 10.

⁴⁶ Amendment No. 1, supra note 11.

As discussed above, the Commission believes that the amendments do not raise any regulatory issues and are consistent with the Act because Amendment No. 1 provides different methods for Matching Utilities to access Status Information directly from DTC to help ensure that Matching Utilities can access Status Information regardless of which Matching Utility submits the transaction to DTC. Likewise, Amendment No. 2 would provide more time before the proposal would go into effect.

Therefore, the Commission finds that Amendment Nos. 1 and 2 to the proposal raise no novel regulatory issues, that they are reasonably designed to protect investors and the public interest, and that they are consistent with the requirements of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁷ to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act, in particular, with the requirements of Section 17A of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁸ that

⁴⁷ 15 U.S.C. §78s(b)(2).

⁴⁸ Id.

proposed rule change SR-DTC-2018-010, as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁹

Jill M. Peterson,
Assistant Secretary.

⁴⁹ 17 CFR 200.30-3(a)(12).

