

an Equity Member or an associated person of the Equity Member able to acquire control or influence over the result or timing of the order's execution.<sup>140</sup> According to the Exchange, the execution of a member's order is determined solely by what quotes and orders, bids, or offers are present in the System at the time the Equity Member submits the order, and the order priority based on the MIAX PEARL Equities Rules.<sup>141</sup> Accordingly, the Commission believes that an Equity Member and its associated persons do not participate in the execution of an order submitted to the System.

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>142</sup> The Exchange has represented that the design of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.<sup>143</sup> Based on the Exchange's representation that the design of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange, the Commission believes that

the System satisfies this condition of Rule 11a2-2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>144</sup> Equity Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.<sup>145</sup>

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>146</sup> that the proposed rule change (SR-PEARL-2020-03), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of MIAX PEARL Equities is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Equities Trading.* MIAX PEARL must join all relevant national market system plans related to equities trading, including: (1) The Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); (2) the National Market System Plan to Address Extraordinary Market Volatility; and (3) the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS.

<sup>144</sup> 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 141 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

<sup>145</sup> See MIAX PEARL 11(a) Letter, *supra* note 138, at 4.

<sup>146</sup> 15 U.S.C. 78s(b)(2).

B. *Regulatory Services Agreement and Rule 17d-2 Agreements.* MIAX PEARL must ensure that all necessary changes are made to its RSA with FINRA and must be a party to the multi-party Rule 17d-2 agreements applicable to equities trading and equities market surveillance.

C. *Intermarket Surveillance Group.* MIAX PEARL must join the Intermarket Surveillance Group.

D. *Minor Rule Violation Plan.* MIAX PEARL must submit a Minor Rule Violation Plan to address Equity Members.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>147</sup>

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-18204 Filed 8-19-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89554; File No. SR-BX-2020-018]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits, at Equity 7, Section 118(a)

August 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2020, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 proposes to amend the Exchange's transaction credits, at Equity 7, Section 118(a).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>147</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>140</sup> See MIAX PEARL 11(a) Letter, *supra* note 138, at 3-4.

<sup>141</sup> See *id.* at 4. The member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

<sup>142</sup> In considering the operation of automated execution systems operated by an exchange, the Commission has noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 139.

<sup>143</sup> See MIAX PEARL 11(a) Letter, *supra* note 138, at 4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Exchange operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.<sup>3</sup> Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

#### Description of the Changes

The Exchange proposes to revise its schedule of credits to add one new

credit. Specifically, the Exchange proposes to provide a \$0.0018 per share executed credit (for securities in Tapes A and B) and a \$0.0017 per share executed credit (for securities in Tape C) for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during July 2020; (ii) accesses liquidity equal to or exceeding 0.01% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares for the month. The Exchange believes that that the availability of the new credits will incentivize members to grow their existing level of liquidity removal activity on the Exchange, and in particular, to grow such levels relative to a baseline of such activity. In doing so, the Exchange intends to improve the overall quality and attractiveness of the Nasdaq BX market.

#### Impact of the Changes

Those participants that act as net removers of liquidity from the Exchange will benefit directly from the proposed addition of new credits that would apply to orders that remove liquidity from the Exchange. Other participants will also benefit from the new credit insofar as any ensuing increase in liquidity removal activity will improve the overall quality of the market.

The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the

establishment of the national market system for securities.

#### The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.’ . . .”<sup>6</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.”<sup>7</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon

<sup>3</sup> See Securities Exchange Act Release No. 34–89114 (June 22, 2020), 85 FR 38418 (June 26, 2020) (SR–BX–2020–011); Securities Exchange Act Release No. 34–88857 (May 12, 2020), 85 FR 29766 (May 18, 2020) (SR–BX–2020–008); Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87271 [sic] (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86120 (June 17, 2019), 84 FR 29270 (June 21, 2019) (SR–BX–2019–026 [sic]); Securities Exchange Act Release No. 34–85912 (May 22, 2019), 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>6</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

members achieving certain volume thresholds.<sup>8</sup>

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.<sup>9</sup> Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits to provide increased overall incentives to members to increase their liquidity removal activity on the Exchange. An increase in liquidity removal activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credit will be comparable to, if not favorable to, those that its competitors provide.<sup>10</sup>

The Exchange notes that those participants that are dissatisfied with the proposed credit are free to shift their order flow to competing venues that offer them higher credits.

#### The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credit fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity on the Exchange as well as to tie the receipt of the credits to the member engaging in a threshold volume of combined liquidity removal activity on the Exchange. Furthermore, it is equitable for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C due

to the Exchange's desire to specifically promote increased liquidity removal activity in securities in Tapes A and B. An increase in overall liquidity removal activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

#### The Proposed Credit is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed change. That is, to the extent that the proposed changes increase liquidity a removal activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market, to the benefit of all existing and prospective participants.

Furthermore, it is not unfairly discriminatory for the Exchange to propose a higher credit for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity removal activity specifically in securities in Tapes A and B.

Moreover, any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more

favorable pricing or less stringent qualifying criteria.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credit. Moreover, members are free to trade on other venues to the extent they believe that the credit provided is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

#### Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credits changes in this market may impose any

<sup>8</sup> See CBOE EDGA Fee Schedule, at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://markets.cboe.com/us/equities/membership/fee_schedule/edga/); NYSE National Fee Schedule, at [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_National\\_Schedule\\_of\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf).

<sup>9</sup> The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

<sup>10</sup> See n. 8, *supra*.

burden on competition is extremely limited.

The proposed restated schedule of credits is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which presently comprises approximately 40% of industry volume.

The Exchange intends for the proposed change to its schedule of credits to increase member incentives to engage in the removal of liquidity from the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or 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)(ii) of the Act.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BX–2020–018 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–BX–2020–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–018, and should be submitted on or before September 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2020–18202 Filed 8–19–20; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–89558; File No. SR–NSCC–2020–016]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce the Margin Liquidity Adjustment Charge and Include a Bid-Ask Risk Charge in the VaR Charge**

August 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on July 30, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–NSCC–2020–016. On August 13, 2020, NSCC filed Amendment No. 1 to the proposed rule change, to make clarifications and corrections to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1 (hereinafter, the “Proposed Rule Change”), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>12</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibits 3 and 5 of the filing, and these clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below.

<sup>4</sup> On July 30, 2020, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2020–804) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). On August 13, 2020, NSCC filed Amendment No. 1 to the advance notice to make similar clarifications and corrections to the advance notice. A copy of the advance notice, as modified by Amendment No. 1 (hereinafter, “Advance Notice”) is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).