

and regulations.⁷⁸ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.⁷⁹

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns and issues identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.⁸⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 26, 2022. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by February 9, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–IEX–2021–14 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–IEX–2021–14. 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 IEX–2021–14 and should be submitted on or before January 26, 2022. Rebuttal comments should be submitted by February 9, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁸¹ that File No. SR–IEX–2021–14 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸²

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2021–28577 Filed 1–4–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93885; File No. SR–DTC–2021–018]

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

December 30, 2021.

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 December 29, 2021, 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 Rules 19b–4(f)(2) and (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 ⁵ consists of amendments to the Reorganizations Guide and the Fee Guide to (i) postpone the retirement of DTC’s legacy computer to computer facility (“CCF”) files for corporate actions entitlements and allocations (“CCF Entitlements and Allocations Files”) ⁶ to January 1, 2023,

⁸² 17 CFR 200.30–3(a)(57) and (58).

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)(2) and (f)(4).

⁵ Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), the Guide to the DTC Fee Schedule (“Fee Guide”), and the Reorganizations Service Guide (“Reorganizations Guide”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁶ Each of the CCF Entitlements and Allocations Files falls into one of two categories (each, a “File Category”): (i) Pre-allocation (“Pre-Allocation CCF Files”), which includes files containing a Participant’s allocation projections and entitlements, or (ii) allocation/post-allocation (“Allocation/Post-Allocation CCF Files”), which

⁷⁸ See *id.*

⁷⁹ See *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission’s reliance on an SRO’s own determinations without sufficient evidence of the basis for such determinations).

⁸⁰ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁸¹ 15 U.S.C. 78s(b)(3)(C).

and (ii) amend the Fee Guide to apply the CCF File Fee to Participants that consume CCF Entitlements and Allocations Files⁷ between January 1, 2022 and December 31, 2022, as more fully described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Reorganizations Guide and the Fee Guide to (i) postpone the retirement of CCF Entitlements and Allocations Files to January 1, 2023, and (ii) amend the Fee Guide to apply the CCF File Fee to Participants that consume CCF Entitlements and Allocations Files between January 1, 2022 and December 31, 2022, as more fully described below.

(i) Retirement of CCF Entitlements and Allocations Files and CCF File Fee

A. Background

On November 19, 2020, DTC filed a rule change (the "CCF Retirement Filing")⁸ that amended the Reorganizations Guide and the Fee Guide to (i) set a retirement date for CCF Entitlements and Allocations Files of January 1, 2022, and (ii) apply a \$50,000,000 CCF File Fee, per File

includes files containing information on a Participant's allocations and pending allocations. See Important Notice 13851-20 (August 27, 2020), available at <https://www.dtcc.com/legal/important-notices>.

⁷ There are three types of CCF files representing the corporate actions lifecycle: Corporate actions announcements ("CCF Announcements Files"); the CCF Entitlements and Allocations Files; and corporate actions instructions from Participants through CCF files ("CCF Corporate Actions Instructions Files"). All CCF Announcement Files were retired as of December 31, 2018. See Securities Exchange Act Release No. 79746 (January 5, 2017), 82 FR 3372 (January 11, 2017) (SR-DTC-2016-014). CCF Corporate Actions Instructions Files have not yet been retired and are not subject to this proposed rule change.

⁸ See Securities Exchange Act Release No. 90490 (November 23, 2020), 85 FR 76645 (November 30, 2020) (SR-DTC-2020-016).

Category (Pre-Allocation or Allocation/Post-Allocation) of CCF Entitlements and Allocations Files, to Participants that continued to consume CCF Entitlements and Allocations Files between January 1, 2021 and December 31, 2021 ("Original Fee Period").

As discussed in the CCF Retirement Filing, DTC has been informing Participants that corporate actions CCF files⁹ will be retired and will be replaced by ISO 20022 messaging since 2011.¹⁰ ISO 20022 messaging offers enhanced efficiency and transparency in the corporate action lifecycle because, in contrast to the proprietary function and activity codes of CCF Files, ISO 20022 is a business-model-based standard for the development of messages for the international financial services industry.

DTC has been working with Participants to specifically support their orderly transition from CCF Entitlements and Allocations Files to ISO 20022 messaging since 2013. DTC began providing Participants with parallel entitlements and allocations ISO 20022 messaging in 2013 (Distributions), 2015 (Redemptions) and 2017 (Reorganizations). In addition, since 2016, DTC had been communicating with Participants about the deadline for retirement of the CCF Entitlements and Allocation Files and postponed the projected retirement date multiple times.¹¹ Finally, in 2020, DTC filed the CCF Retirement Filing and continued to work with Participants to support their orderly migration away from the CCF Entitlements and Allocations Files to ISO 20022 messaging before the January 1, 2022.

B. Proposed Rule Change

Most Participants have successfully migrated from CCF Entitlements and

⁹ There are three event groups for CCF files for corporate actions. Participants subscribe to the CCF files for each event group separately. The event groups are (i) distributions ("Distributions"), such as cash and stock dividends, principal and interest, and capital gain distributions; (ii) redemptions ("Redemptions"), such as full and partial calls, final paydowns, and maturities; and (iii) reorganizations ("Reorganizations"), which include both mandatory and voluntary reorganizations such as exchange offers, conversions, Dutch auctions, mergers, puts, reverse stock splits, tender offers, and warrant exercises.

¹⁰ See Securities Exchange Act Release No. 63886 (February 10, 2011), 76 FR 9070 (February 16, 2011) (SR-DTC-2011-02) (indicating that DTC will continue to support its legacy proprietary CCF files until 2015.)

¹¹ See Important Notice 2538-16 (January 21, 2016), *supra* note 6; Important Notice 4381-16 (November 4, 2016), *supra* note 6; Important Notice 5099-17 (February 2017), *supra* note 6; Important Notice 7488-18 (February 28, 2018), *supra* note 6; Important Notice 9861-18 (October 9, 2018), *supra* note 6.

Allocations Files to ISO 20022 messaging. However, DTC understands that a few Participants are still testing the ISO 20022 messages and that not all will be ready to transition away from the CCF Entitlements and Allocations Files before January 1, 2022.

Therefore, pursuant to this proposed rule change, DTC would postpone the retirement date of the CCF Entitlements and Allocation Files to January 1, 2023, and would charge Participants the \$50,000 CCF File Fee for each File Category of CCF Entitlements and Allocations Files that they consume between January 1, 2022 and December 31, 2022 (the "New Fee Period"). The CCF File Fee would be charged to the Account of the Participant, upon the Participant's first receipt of CCF Entitlements and Allocations Files in a particular File Category during the New Fee Period. The CCF File Fee would cover all CCF Entitlements and Allocations Files within that File Category during the New Fee Period.

Pursuant to the proposed rule change, DTC would amend the description of the CCF File Fee in the Fee Guide to conform with the proposed rule change. DTC would also amend the Reorganizations Guide to reflect the January 1, 2023 retirement date for CCF Entitlements and Allocations Files. Specifically, in the "Preparing to Use the Services" subsection of the "How Reorganizations Work" section of the Reorganizations Guide, DTC is proposing to replace "*CCF files associated with entitlements and allocations will be retired as of January 1, 2022" with "*CCF files associated with entitlements and allocations will be retired as of January 1, 2023."

Implementation Date

DTC will implement the proposed changes on January 1, 2022. DTC will announce the implementation date of the proposed rule change in an Important Notice posted on its website.

As proposed, a legend would be added to the Reorganizations Guide and the Fee Guide stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include that the implementation date will be January 1, 2022. In addition, the proposed legend would state that the legend would automatically be removed upon the implementation of the proposed changes.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, *inter alia*, that the Rules be designed to promote the prompt and

accurate clearance and settlement of securities transactions.¹²

As described above, the proposed rule change would (i) postpone the retirement of CCF Entitlements and Allocations Files to January 1, 2023, and (ii) apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the New Fee Period. By postponing the retirement of CCF Entitlements and Allocations Files to January 1, 2023, the proposed rule change would allow Participants to minimize potential business interruptions by undertaking an orderly and organized migration from CCF files to the more efficient ISO 20022 standard. Similarly, by charging a CCF File Fee to those Participants that continue to receive CCF Entitlements and Allocations Files after December 31, 2021, the proposed rule change would encourage Participants to accelerate system development and the adoption of the ISO 20022 standard. In this manner, the proposed rule change would encourage and facilitate the transition to the ISO 20022 standard, which provides efficiencies and enhanced transparency in processing corporate actions and the settlement activities related thereto. Accordingly, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act, cited above.

Section 17A(b)(3)(D) of the Act requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Participants.¹³ DTC believes that the proposed rule change to apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the New Fee Period would provide for the equitable allocation of reasonable fees.

DTC believes that the proposed application of the CCF File Fee would be equitably allocated because the CCF File Fee (i) would only be charged to those Participants that have delayed their migration from CCF Entitlements and Allocations Files beyond December 31, 2021¹⁴ and (ii) would be applied in

accordance with the Participant's use of a particular File Category.

Further, DTC believes that the application of the \$50,000 CCF File Fee would be reasonable. As discussed above, Participants that did not complete their migration to ISO 20022 by January 1, 2021 were charged the \$50,000 CCF File Fee for each File Category of CCF Entitlements and Allocations Files that they consumed during the Original Fee Period. Most Participants completed their migration during the Original Fee Period, which DTC believes is due, in part, to the application of the CCF Fee. Based on this prior experience with the CCF File Fee, DTC believes that the CCF File Fee in the amount of \$50,000 provides the necessary encouragement for Participants to accelerate their system development for their adoption of the ISO 20022 standard for entitlements and allocations information.¹⁵ Further, during the application of the CCF File Fee to CCF Entitlements and Allocations Files during the Original Fee Period, DTC had not received any negative feedback from Participants suggesting that the \$50,000 fee was overly burdensome.¹⁶

Therefore, DTC believes that the proposed rule change regarding the CCF File Fee provides for the equitable allocation of reasonable dues, fees, and other charges among its Participants, consistent with Section 17A(b)(3)(D) of the Act, cited above.

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

DTC believes that the proposed rule change with respect to postponing the

be any charges for the continued consumption of CCF Entitlements and Allocations Files. After the CCF Retirement Filing most Participants did complete development and fully adopted the ISO 20022 standard for entitlements and allocations information, illustrating the effectiveness of the CCF File Fee.

¹⁵ The CCF File Fee is not designed to cover costs incurred by DTC as a result of continuing to service CCF files.

¹⁶ DTC also had charged a similar \$50,000 CCF File Fee to Participants that continued to receive the CCF Announcements Files between 2016–2018, in order to encourage Participants to migrate from CCF Announcements Files to ISO 20022 messaging. DTC believes that the CCF File Fee provided a strong incentive for Participants to accelerate their migration from the CCF format to the ISO 2002 standard, thereby allowing DTC to retire all of the CCF Announcements Files by December 31, 2018. See Securities Exchange Act No. 76811 (December 31, 2015), 81 FR 826 (January 7, 2016) (SR–DTC–2015–013) (postponing retirement of CCF Announcements Files and implementation of a \$50,000 CCF File Fee to encourage prompt transition to the ISO 20022 standard); and see also Securities Exchange Act Release No. 79746 (January 5, 2017), 82 FR 3372 (January 11, 2017) (SR–DTC–2016–014) (establishing the retirement date for CCF Announcement Files).

retirement of CCF Entitlements and Allocations Files to January 1, 2023 would not have any impact on competition. The proposed rule change would provide any Participant that has not completed its migration from CCF Entitlements and Allocation Files with additional time to complete its testing and development of its systems, and finalize the transition to ISO 20022 messaging. Therefore, DTC believes that the proposed rule change with respect to postponing the retirement of CCF Entitlements and Allocations Files to January 1, 2023 would not have a burden on competition.¹⁷

DTC believes that the proposed rule change with respect to amending the Fee Guide to apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the New Fee Period could have an impact on competition because it could create a burden on competition.¹⁸ Although the proposed application of the CCF File Fee is designed to incentivize Participants to accelerate their adoption of the ISO 20022 standard, DTC recognizes and appreciates that charging the fee could negatively affect such Participants' operating costs. However, DTC believes that any burden on competition would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.¹⁹

DTC believes any burden on competition would not be significant because (i) the fee would only be charged once per File Category, upon the Participant's first receipt of CCF Entitlements and Allocations Files for a File Category during the New Fee Period, and (ii) the application of the CCF File Fee for a File Category would cover the consumption of all CCF Entitlements and Allocations Files within that File Category during the New Fee Period. In addition, based on DTC's prior use of the CCF File Fee for CCF Announcements Files²⁰ and CCF Entitlements and Application Files, DTC has no indication that the amount of the fee creates a significant burden on any Participant.

DTC believes that any burden on competition that may be created by the proposed change to amend the Fee Guide to apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the New Fee Period would be

¹² 15 U.S.C. 78q–1(b)(3)(F).

¹³ 15 U.S.C. 78q–1(b)(3)(D).

¹⁴ As discussed above, DTC has been communicating with Participants about the migration from CCF files to the ISO 20022 standard for corporate actions events since 2011. Since 2013, DTC has been communicating with Participants about targeted retirement dates for CCF Entitlements and Allocations Files and has, at the request of Participants, postponed the projected dates numerous times. Before October 2018, DTC had always told Participants that there would not

¹⁷ 15 U.S.C. 78q–1(b)(3)(I).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *supra* note 16.

necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²¹ DTC believes that this proposed change would be necessary because some Participants have yet to adopt the ISO 20022 standard, despite at least seven years of communication and prompting on the issue.²² As noted above, the ISO 20022 standard provides efficiencies and enhanced transparency in processing corporate actions and the settlement activities related thereto.

Thus, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²³

DTC believes that the proposed rule change to apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the New Fee Period would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁴ DTC's prior experience with the \$50,000 CCF File Fee and the successful retirement of CCF Announcements Files illustrates that a \$50,000 CCF File Fee provides the necessary encouragement for Participants to accelerate their system development for the full adoption of the ISO 20022 standard. Further, during the application of the CCF File Fee to CCF Announcements Files, DTC had not received any negative feedback from Participants that suggested that the \$50,000 fee was overly burdensome; nor did DTC receive any objections during the application of the CCF File Fee to CCF Entitlements and Allocations Files during the Original Fee Period that suggested that the \$50,000 fee was overly burdensome. Accordingly, DTC believes that application of the \$50,000 CCF File Fee would be appropriate here in order to incentivize Participants to accelerate their migration to the ISO 20022 standard. In addition, as discussed above, DTC believes that the proposed application of the CCF File Fee would be equitably allocated because the CCF File Fee (i) would only be charged to those Participants that have delayed their migration from CCF Entitlements and Allocations beyond December 31, 2021 and (ii) would be applied in accordance with the Participant's use of a particular File Category.

Therefore, for these reasons, DTC believes that a perceived competitive burden of the proposed rule change to

apply the CCF File Fee to Participants that continue to consume CCF Entitlements and Allocations Files during the Fee Period would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁵

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments*, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) ²⁶ of the Act and paragraph (f) ²⁷ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2021-018 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-DTC-2021-018. 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 (<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 10:00 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 (<https://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-2021-018 and should be submitted on or before January 26, 2022.

²¹ *Id.*

²² See *supra* notes 10 and 11.

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 15 U.S.C. 78q-1(b)(3)(I).

²⁵ 15 U.S.C. 78q-1(b)(3)(I).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

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

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021-28569 Filed 1-4-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93888; SR-CboeBZX-2021-086]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Opening Auction Process Provided Under Rule 11.23(b)(2)(B)

December 30, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 2021, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes a rule change to amend the Opening Auction process provided under Rule 11.23(b)(2)(B) to better align the Opening Auction Process with current market conditions, and, where certain market conditions are not optimal, to delay the Opening Auction from occurring until those market conditions have improved.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, 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 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 proposes to amend Rule 11.23(b)(2)(B) to make the Opening Auction process more dynamic by, under certain circumstances delaying the Opening Auction in order to incorporate additional information into the determination of the Opening Auction price. Specifically, as proposed the Rule would provide that when there is no Valid NBBO³ in a BZX-listed security and there is an Indicative Price⁴ that is not within the Collar Price Range,⁵ the Opening Auction will be delayed until there is a Valid NBBO or the delay period has lapsed, as further described below. The Exchange believes that the proposal will make the Opening Auction price in less liquid securities more representative of current market conditions making the Opening Auction process a more meaningful price formation event in such BZX-listed securities.

Background

Rule 11.23(b)(2)(B) sets forth the process by which the BZX Official Opening Price⁶ is determined for BZX-listed securities during the Opening Auction Process. Specifically, as provided in Rule 11.23(b)(2)(B), the Opening Auction price will be the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book⁷ and Auction Book⁸ in the Opening Auction. In the event of a volume based tie at multiple price

levels, the Opening Auction price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Opening Auction price will be the price closest to the Volume Based Tie Breaker.⁹

The Volume Based Tie Breaker for an Opening Auction will be the midpoint of the NBBO where there is a Valid NBBO. Where there is no Valid NBBO, the FLSET will be used as the Volume Based Tie Breaker. Because the FLSET is typically based on the most recent execution in a security during Regular Trading Hours, its value may be significantly away from the Indicative Price at the time of the Opening Auction process, especially in more thinly traded securities. As a result, the Exchange has observed instances where auction eligible orders priced in-line with the Indicative Price were not executed in the Opening Auction because they were outside the Collar Price Range established using the FLSET. Based on analysis by the Exchange and feedback from market participants, certain of these instances resulted in orders not receiving executions in the Opening Auction that would have otherwise occurred at prices that would have been acceptable to both parties to the execution. To illustrate this point, the Exchange presents the following example: Consider a security with a prevailing NBBO at 9:30:00 a.m. of \$27.10 × \$29.54 and an Indicative Price of \$27.90. Because the midpoint of the NBBO (*i.e.*, \$28.32) is more than the Maximum Percentage away from both the NBB and NBO, the NBBO is not a Valid NBBO. Accordingly, the FLSET would be used as the Volume Based Tie Breaker, which would by definition be the BZX Official Closing Price from the previous business day. For purposes of this example, that price is \$26.52. Using the FLSET as the Collar Midpoint, the Collar Price Range would be \$25.19 × \$27.85. Because the Indicative Price is outside of the Collar Price Range, the auction would occur at the upper most price that is included in the Collar Price Range (*i.e.*, \$27.85) even though more shares could have executed at \$27.90. Because the Opening Auction was forced into the Collar Price Range and occurred at \$27.85, a contingent of auction eligible orders that would have executed at \$27.90 that were priced

³ As provided in Rule 11.23(a)(23), an NBBO is a Valid NBBO where: (i) There is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO. See Exchange Rule 11.23(a)(23).

⁴ The term “Indicative Price” shall mean the price at which the most shares from the Auction Book and the Continuous Book would match. In the event of a volume based tie at multiple price levels, the Indicative Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Indicative Price will be the price closest to the Volume Based Tie Breaker. See Exchange Rule 11.23(a)(10).

⁵ See Exchange Rule 11.23(a)(6).

⁶ See Exchange Rule 11.23(a)(5).

⁷ See Exchange Rule 11.23(a)(7).

⁸ See Exchange Rule 11.23(a)(1).

⁹ The Volume Based Tie Breaker is the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO. Where the NBBO is not a Valid NBBO, the price of the FLSET is used as the Volume Based Tie Breaker, which for the Opening Auction process is the previous BZX Official Closing Price. See Exchange Rule 11.23(a)(23).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.