

context of comparable EMIR requirements.⁵⁴

As discussed in Part II.C.2, LCH SA petitioned the SEC to request exemptions under the Exchange Act from the application of Rule 17a-22 and Rules 17Ad-22(c)(2) and (c)(2)(iii), and the SEC approved this request based on factors similar to those discussed above.⁵⁵ The SEC has also provided exemptions to LCH SA with respect to application of Section 19(b) of the Exchange Act and Rule 19b-4 thereunder,⁵⁶ and to LCH SA and ICEEU with respect to the application of Sections 5 and 6 of the Exchange Act.⁵⁷

IV. Conclusion

The SEC has structured its regulatory framework for clearing agencies that are EU CCPs to achieve an appropriate balance between (i) applying the levels of oversight and supervision for clearing agencies that ensure consistency with the Exchange Act and, at the same time, (ii) avoiding the application of certain SEC requirements that are unnecessary, duplicative, or inconsistent relative to EMIR requirements that have already been applied to the EU CCP in the EU. Accordingly, this policy statement and guidance is designed to provide transparency into the SEC's processes and to describe the processes available to EU CCPs that seek to register as clearing agencies or request exemptions from certain SEC requirements. This policy statement and guidance also highlight efficient ways that EU CCPs can comply with SEC rules and describe how an EU CCP can facilitate the efficient preparation of its application and the SEC's review of such application, potentially resulting in shorter application preparation and review periods. It also identifies the factors that the SEC will consider with respect to future requests for exemptions, as applicable to a particular request. The SEC looks forward to continuing its dialogue with the EC regarding its consideration of whether to find the SEC's regulatory framework for CCPs equivalent to EMIR.

By the Commission.

Dated: November 23, 2020.

Vanessa A. Countryman,
Secretary.

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⁵⁴ See *id.* (discussing as a relevant factor the particular system of supervision and oversight in a non-U.S. jurisdiction for purposes of evaluating any non-U.S. framework).

⁵⁵ See *supra* note 40 and accompanying text.

⁵⁶ See *supra* note 41 and accompanying text.

⁵⁷ See *supra* note 42 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90481; File No. SR-DTC-2020-012]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Establish the ClaimConnect™ Service and Update the Settlement Service Guide

November 23, 2020.

I. Introduction

On October 8, 2020, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² proposed rule change SR-DTC-2020-012. The proposed rule change was published for comment in the **Federal Register** on October 21, 2020.³ The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change⁴ will (i) adopt a new DTC service guide to establish the ClaimConnect service at DTC ("ClaimConnect Service Guide"), and (ii) update the existing DTC Settlement Service Guide⁵ ("Settlement Guide") to (A) make conforming changes to the Settlement Guide to reflect the ClaimConnect service, and (B) update certain address and contact information in the Copyright section of the Settlement Guide.

A. Background

DTC is the central securities depository ("CSD") for substantially all corporate and municipal debt and equity securities available for trading in the United States. As a covered clearing agency that provides CSD services,⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 90203 (October 15, 2020), 85 FR 67018 (October 21, 2020) (SR-DTC-2020-012) ("Notice").

⁴ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC ("Rules") available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf, or in the hereby proposed ClaimConnect Service Guide, included as Exhibit 5 to this proposed rule change filing.

⁵ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

⁶ A covered clearing agency is defined as a registered clearing agency that provides the services of a central counterparty ("CCP") or CSD. See 17

DTC provides a central location in which securities may be immobilized, and interests in those securities are reflected in accounts maintained for its Participants, which are financial institutions such as brokers or banks.

DTC's CSD services include cash claims or cash claim transactions, which are cash entitlements (*i.e.*, a request for cash) from one Participant to another Participant. Currently, cash claims arise as a result of trading exceptions from a Corporate Action event,⁷ where a cash entitlement needs to be delivered from one holder to another. Today, such claims are settled away from DTC, except for some stock loan and repurchase ("repo") substitution payments, which can be settled via DTC's Adjustment Payment Orders ("APOs"). DTC stated that it developed the ClaimConnect service so Participants can settle cash claims in one centralized location, using the DTC system.⁸

B. Proposed ClaimConnect Service

The proposed ClaimConnect service will be an optional service available to all DTC Participants.⁹ The service will enable DTC Participants to bilaterally match and settle cash claim transactions at DTC.¹⁰

ClaimConnect will be a validation and matching engine that continually

CFR 240.17Ad-22(a)(5). CSD services means services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act. See 17 CFR 240.17Ad-22(a)(3). Specifically, the definition of a clearing agency includes, in part, "any person, such as a securities depository that (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates." 15 U.S.C. 78c(a)(23)(A).

⁷ Trading exceptions include, but are not limited to, trades outside of the markets' agreed upon settlement cycle, lack of due bill fail tracking, stock loan or repo transaction discrepancy, or tax treaty differences. See Notice, *supra* note 3, 85 FR at 67019.

⁸ See Notice, *supra* note 3, 85 FR at 67019. Based on discussions with its Participants, DTC estimates that ClaimConnect may process approximately 212,000 claims its first year, increasing to approximately 425,000 claims by its fifth year. See *id.*

⁹ DTC stated that a fee associated with Participants' use of the ClaimConnect service will be the subject of a separate, subsequent rule filing with the Commission. See Notice, *supra* note 3, 85 FR at 67019.

¹⁰ To join ClaimConnect, a Participant needs to request to be a "Claim Participant," and DTC will then indicate that the Participant is now a member of the service (*i.e.*, a User). See Notice, *supra* note 3, 85 FR at 67019.

monitors claims throughout their lifecycle in order to settle and close claims through DTC's settlement process. This continuous processing will allow for both the manual matching of claims (*i.e.*, Affirmation) by ClaimConnect users ("Users") and the systematic matching of two like claims by ClaimConnect based on the alignment of certain data elements (*i.e.*, Auto-matching).

ClaimConnect will offer various claim processing functions, including end-of-day settlement of cash claims through systematic Securities Payment Orders ("SPOs") generated and submitted by ClaimConnect at set times intraday ("settlement time") on a settlement date. If overpaid or underpaid a cash entitlement due to a trading exception, a User will be able to create a claim against a claim counterparty through ClaimConnect. To create a claim, the ClaimConnect system will require the inclusion of certain data elements, while other data elements will be optional.¹¹

Validation, the process of confirming claim data elements, will happen in two ways, as described below: (i) When a claim is Affirmed, as described below, or (ii) when ClaimConnect Auto-matches two claims. Users can also modify or Cancel claims. However, not all data elements can be modified after submission.

First, if a counterparty receives a claim and agrees with its details (*i.e.*, the data elements), then the counterparty could Affirm the claim. Affirming a claim will be a confirmation of the claim's data elements and would move the claim into a Matched state. Affirmation will usually occur only when one side of a claim is submitted because it affords the counterparty enough time to Affirm the claim. Once Affirmed, the claim will be settled on the date the parties agree to. Second, if both parties to a claim submit their respective sides to the claim (*i.e.*, a debit claim and a credit claim), the two sides of the claim are Auto-matched.

The SPO will credit the payee Participant and debit the payor Participant the claim amount and will then be incorporated into DTC's end-of-day settlement process. ClaimConnect SPOs will be subject to DTC's Risk Controls (*i.e.*, Collateral Monitor and Net Debit Cap) and will "recycle" (*i.e.*, pend) if the SPO cannot satisfy those controls.

To assist Users with the management of their claims, ClaimConnect will offer an Approval feature. The Approval feature will require certain actions on a claim to be approved by a separate User employee, if the claim amount meets or exceeds a predetermined dollar threshold set by the User, before that action can be completed. This feature is designed to enable Users to better monitor and manage certain cash debits that are leaving their account to satisfy claims. Users can activate the Approval feature by updating their ClaimConnect client profile. When doing so, the User must then set the dollar threshold that will trigger the Approval process.

C. Updates to the DTC Settlement Guide

DTC has an existing DTC Settlement Guide, which describes its existing services related to settlement. DTC will update the existing Settlement Guide to (A) make conforming changes to the Settlement Guide to reflect the establishment of the ClaimConnect service (specifically, to clarify that the RAD process would not apply to cash claims as they would go through ClaimConnect), and (B) update certain address and contact information in the Copyright section of the Settlement Guide.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹² directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹³ for the reasons described below.

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as DTC, be designed to promote the prompt and accurate clearance and settlement of securities transactions, and foster cooperation and coordination with persons engaged in the clearance and

settlement of securities transactions.¹⁴ The Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.¹⁵

First, DTC proposes to introduce a new ClaimConnect service. As noted above, the ClaimConnect service will be an optional service, and DTC stated that it developed the service based on discussions with Participants. ClaimConnect would enable Participants to bilaterally match and settle cash claim transactions at DTC. While settlement of cash claims occurs today, it does so away from DTC, in a dispersed fashion. ClaimConnect would establish a centralized and coordinated location for Participants to settle such claims. By offering a centralized and coordinated location for Participants to settle cash claims, with various functionality available, the Commission believes that the ClaimConnect service is designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Second, DTC will update the existing Settlement Guide to (A) make conforming changes to the Settlement Guide to reflect the ClaimConnect service, and (B) update certain address and contact information in the Copyright section of the Settlement Guide. By making conforming changes and updating the Settlement Guide with more current information about where Participants and others may direct inquiries about the DTC service guides, the Settlement Guide will provide the most up-to-date information and should help Participants to submit questions or comments about the service guides. Accordingly, the Commission believes that the updates to the Settlement Guide are designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act¹⁶ and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁷ that proposed rule change SR-DTC-2020-012, be, and hereby is, *approved*.¹⁸

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78q-1.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ In approving the proposed rule change, the Commission considered the proposals' impact on

¹¹ Once submitted, claims can exist in several different "states" depending upon the actions taken by the parties to the claim. The applicable rules will describe the different states that a claim could take. See Notice, *supra* note 3, 85 FR at 67019.

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90482; File No. SR-CBOE-2020-110]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Amending Rule 5.52(d) in Connection With a Market-Maker's Electronic Volume Transacted on the Exchange

November 23, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 13, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. Current Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during any calendar quarter, a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2) (which governs the continuous electronic quoting requirements for Market-Makers in their appointed classes). That is, once a Market-Maker surpasses the 20% electronic volume threshold in an appointed class, the Market-Maker is required to provide continuous electronic quotes in that appointed classes going forward. Neither Rule 5.52(d)(1) nor (d)(2) permit a Market-Maker to reduce its electronic volume after surpassing the 20% threshold in order to reset the electronic volume trigger or otherwise undo the resulting obligation to stream electronic quotes once the 20% threshold is triggered in an appointed class.

Market-Makers accustomed to executing volume on the trading floor have sophisticated and complicated risk modeling associated with their floor trading activity, including quoting, monitoring, and responding to the trading crowd. However, the Exchange understands that while such Market-Makers do have separate systems or third-party platforms for quoting, monitoring and responding to electronic markets, because these Market-Makers are almost exclusively floor-based, their technology or other platforms enabling them to quote electronically do not achieve the level of sophistication or complexity as the systems used by Market-Makers accustomed to quoting electronically. Indeed, to satisfy the continuous electronic quoting requirements, a Market-Maker must provide continuous bids and offers for 90% of the time the Market-Maker is required to provide electronic quotes in

an appointed option class on a given trading day and must provide continuous quotes in 60% of the series of the Market-Maker's appointed classes. The Exchange determines compliance by a Market-Maker with this quoting obligation on a monthly basis. In addition to this, a Market-Makers must, among other things, compete with other Market-Makers in its appointed classes, update quotations in response to changed market conditions in its appointed classes, maintain active markets in its appointed classes, and, overall, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Market-Makers that are predominantly floor-based generally do not have the technology or electronic trading sophistication to fully satisfy the continuous electronic quoting obligations, as well as other heightened standards required of a Market-Maker in its appointed classes electronically, once the 20% electronic volume threshold is triggered.

The Exchange has observed that in the past year, particularly given the significant increase in market volatility and unpredictability of market conditions in the months leading up to and during the COVID-19 pandemic,³ Market-Makers that almost exclusively execute their volume in open outcry and had not prior triggered an electronic quoting obligation pursuant to Rule 5.52(d)(2), incidentally breached the 20% electronic volume threshold in certain appointed classes during a single quarter and were thereby obliged to provide continuous electronic quotes in those classes going forward. As stated above, once a Market-Maker surpasses the electronic volume threshold in an appointed class, and the electronic quoting obligation is triggered, Rules 5.52(d)(1) and (d)(2) do not permit a Market-Maker to reset the trigger — a Market-Maker is required to stream electronic quotes in that appointed class beginning the next calendar quarter and from there on out. As such, once the

³ The Exchange notes that after volatility and unusual market conditions beginning at the end of 2019 and continuously increasing through 2020 as a result of the impact of COVID19 and related factors, some market participants may have experienced significant trading losses, resulting in their limiting their trading behavior and risk exposure. The Exchange understands that firms, not otherwise highly active in the electronic markets, may have executed electronically in order to close positions, reduce exposure, and otherwise mitigate losses and reduce risk in light of market conditions experienced at various points throughout the year. These firms may have also reduced open outcry activity as part of the same risk-reducing strategy, resulting in a coincidental change in the mix of electronic versus open outcry volume for such generally floor-based Market-Makers.

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.