

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91098; File No. SR-DTC-2021-001)

February 10, 2021

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add New Fees for DTC's Money Market Instrument Program

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 February 1, 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) 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 purpose of the proposed rule change is to amend the Guide to the DTC Fee Schedule⁵ ("Fee Guide") to add new fees within the Corporate Actions section⁶, and

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).

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

⁶ See id at 6-8.

specifically as that section relates to the DTC’s Money Market Instrument program (“MMI Program”),⁷ as described in greater detail below.⁸

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.

⁷ Pursuant to the Rules, the term “MMI Program” means the Program for transactions in MMI Securities, as provided in Rule 9(C) and as specified in the Procedures. See Rule 1, supra note 1. Pursuant to the Rules, the term “MMI Securities” means an Eligible Security described in the second paragraph of Section 1 of Rule 5, that would, upon a determination of eligibility by the Corporation, be assigned an Acronym by DTC. Id. Under the Rules, MMI Securities are processed differently than other Securities. See Rule 9(C), supra note 1; and DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), at 3, available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>. The Procedures applicable to settlement processing of MMI Securities are set forth in the DTC Settlement Service Guide (“Settlement Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

⁸ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at http://dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

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 Fee Guide to add new fees within the Corporate Actions section,⁹ and specifically as that section relates to the MMI Program, as described below.

Background

The MMI Program operates using an automated platform providing MMI Issuing and Paying Agents¹⁰ (each, an “IPA”) with the ability to issue, service, and settle Securities that are money market instruments (“MMI Securities”) that are processed in DTC’s MMI Program¹¹ that they introduce into the marketplace through DTC. The MMI

⁹ See supra note 5.

¹⁰ Pursuant to the Rules, the term (i) “MMI Issuing Agent” means a Participant, acting as an issuing agent for an issuer with respect to a particular issue for MMI Securities of that issuer, that has executed such agreements as the Corporation shall require in connection with the participation of such Participant in the MMI Program in that capacity, and (ii) “MMI Paying Agent” means a Participant, acting as a paying agent for an issuer with respect to a particular issue of MMI Securities of that issuer, that has executed such agreements as the Corporation shall require in connection with the participation of such Participant in the MMI Program in that capacity. See Rule 1, supra note 1.

¹¹ Eligibility for inclusion in the MMI Program covers Securities that are money market instruments, which are short-term debt Securities that generally mature 1 to 270 days from their original issuance date. MMI Securities include, but are not limited to, commercial paper, banker’s acceptances and short-term bank notes and are issued by financial institutions, large corporations, or state and local governments. Most MMI Securities trade in large denominations (typically, \$250,000 to \$50 million) and are purchased by institutional investors. Eligibility for inclusion in the MMI Program also covers medium term notes that mature over a longer term.

Program is designed to provide an IPA with the capability to process all corporate action activity associated with MMI Securities without requiring manual intervention by DTC. However, from time to time, IPAs make requests for adjustments relating to MMI Securities that require manual intervention by DTC, as described below. While MMI Securities processing is fully automated, the adjustments require manual intervention by DTC, introducing settlement and operational risk to DTC and its Participants, as described below. DTC does not currently charge its Participants for these adjustments.

DTC's Rules relating to settlement processing for the MMI Program are designed, among other things, to limit settlement risk for DTC and Participants. In this regard, DTC implemented rule changes ("MMI Rule Changes") to the MMI Program to eliminate risks associated with intra-day reversals of processed MMI obligations to prevent the possibility that a reversal could override risk controls and heighten settlement risk.¹²

When an issue is made eligible at DTC, DTC's system for processing of MMI transactions ("MMI System") allows the IPA to create an instruction to add a CUSIP number¹³ ("CUSIP") and security-level details (e.g., interest rate, maturity date, payment

¹² See Securities Exchange Act Release No. 79764 (January 9, 2017), 82 FR 4434 (January 13, 2017) (SR-DTC-2016-008).

¹³ A CUSIP number is the identification number created by the American Banking Association's Committee on Uniform Security Identification Procedures (CUSIP) to uniquely identify issuers and issues of securities and financial instruments. See Committee on Uniform Securities Identification Procedures, available at <https://www.aba.com/about-us/our-story/cusip-securities-identification>. See DTC Underwriting Service Guide ("Underwriting Guide"), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf> at 6.

frequency) to DTC's masterfile.¹⁴ In this regard, the MMI system provides an IPA with the ability to issue, inquire about, withdraw or cancel instructions for all MMI Securities for which it is the IPA.¹⁵

When a maturity date, call date or payable date ("Event Date") for an MMI Security that is on deposit at DTC arrives, the event is automatically processed by the MMI System. First, the MMI System would require the IPA to acknowledge its payment obligations associated with the event.¹⁶ Second, once the transaction is acknowledged by the IPA, the MMI System would process the related maturity, redemption or interest payment, which includes Deliveries of Securities between Participants and IPAs, as applicable, and inclusion of related funds payments in DTC's end-of-day settlement.¹⁷

If an IPA notifies DTC on or after an Event Date that the IPA needs to modify details that impact the processing of an event, such as changing the Event Date to a later date, modifying the event type (e.g., from a principal payment to an interest payment) or a changing the rate, this presents DTC and its Participants with increased settlement and operational risk that the Rules applicable to the MMI Program have been designed to mitigate. In the case of a change in Event Date once that date has arrived, because the MMI System would have begun processing the event, effecting the change would require DTC to manually back the event out of the MMI System and change the Event Date. In cases where the transaction has been processed, this would require a reversal of the

¹⁴ See Underwriting Guide, supra note 13 at 12.

¹⁵ See id at 13.

¹⁶ See Settlement Guide, supra note 7 at 46-47.

¹⁷ See id at 47.

transaction, involving movement of Securities and reversals of funds credits and debits to the IPA and Participants holding the affected MMI Security, that the MMI Rule Change was intended to eliminate.¹⁸ Any resulting reversals of funds credits to Participants whose Securities are being redeemed would create settlement risk for DTC and Participants if it is in an amount that places the Participant in a Net Debit Balance, by potentially causing affected Participants to be in a position to satisfy a Net Debit Balance it might not otherwise have incurred and that would need to be funded in order to complete settlement. Operational risk arises as well since manual intervention is required to make the reversals which introduces the possibility of a manual error by staff making the entries. Similar risks arise in the case of a modification of the event type or change in interest rate, each of which requires manual intervention by DTC to make the adjustment requested by the IPA and potential movement of Securities and/or reversal of funds credits and debits. In addition, incorrect information previously provided by an IPA that requires adjustment and related to a transaction that has been acknowledged by an IPA could present settlement risk to DTC and Participants in the event DTC was unable to make the requested adjustment on that date and the IPA was not able to meet its related obligation to make payment for the affected MMI Securities.

¹⁸ Tasks involved for DTC to make an adjustment, may include, but not be limited to, receiving the request from the Participant, determining the positions that would be impacted by the adjustment, reviewing the positions and obligations of the affected Participants, and effectuating the adjustment. Most issues for which adjustments are requested have many holders, and the processing of the adjustments causes heightened operational risk to DTC and its Participants.

As a Participant, an IPA maintains a responsibility to check the accuracy, where applicable, of all statements and reports received from DTC and to notify DTC of any discrepancies.¹⁹ DTC relies, among other things, upon the duty of Participants and other authorized users to exercise diligence in all aspects of each transaction processed through DTC.²⁰ IPAs receive output and have access to reports on DTC's MMI System regarding the status of their issues. Failure of Participants to correct errors and discrepancies, including those relating to data that is provided by them for MMI Securities they service, such as Event Dates, types and rates, in a timely manner may create undue settlement and operational risk to DTC and its Participants, such as those described above.

In this regard, adjustments can normally be made by an IPA during the lifecycle of the MMI Security with minimal intervention by DTC if the adjustment is made prior to an Event Date because the MMI System would not yet have begun processing the event. However, if an IPA does not act to correct the information for its issue prior to an Event Date, DTC would process the event using the existing information that was previously entered by the IPA in the MMI System.²¹ Once processing on the Event Date has begun, adjustments require intervention by DTC in the form of manual entry of movements of MMI Securities and funds to effectuate the adjustments. DTC staff must perform a significant amount of work to input the adjustment and ensure it settles accurately in a

¹⁹ See Settlement Guide, supra note 7 at 2.

²⁰ Id.

²¹ The terms of an MMI Security, including maturity date, redemption dates, and interest rates are established at the time of the Securities issuance, and are entered directly by the IPA into the MMI System in connection with the issuance of the MMI Security, as described above.

timely fashion. Depending on the amount, an adjustment may have a significant effect on the amount of a Participant's net settlement balance, presenting settlement risk and settlement uncertainty to DTC and the Participant. In addition, the Participant that held an MMI for which the transaction has been processed must be contacted, and agreement by the Participant to the adjustment must be received, prior to entering the adjustment, which can extend the period of uncertainty relating to settlement of the transaction.

Considering the risks presented by the processing of adjustments relating to MMI Securities as discussed above, DTC is proposing to add new fees to the Fee Guide to encourage an IPA to implement practices that promote efficient market behavior, including meeting an IPA's obligations to reconcile its activity at DTC and ensure its accuracy in accordance with the Rules. The fees would be intended to (i) deter behavior by an IPA, such as the input of incorrect information and/or a failure to timely reconcile its MMI activity, that could result in the IPA requesting an adjustment that presents settlement and operational risk to DTC and its Participants that the MMI Rule Change was designed to eliminate, and (ii) encourage IPAs, through disincentives, to perform the necessary levels of due diligence and operational disciplines to fulfill their obligations. The proposed fees would be set on a sliding scale, categorized by three types of adjustment requests, that considers the level of settlement risk DTC believes an adjustment type presents to DTC and its Participants, as described below.

First, adjustments requiring position reinstatement to reverse a processed transaction either on Event Date or after Event Date, would cause the IPA for the affected MMI Security to incur a fee of \$10,000 per CUSIP. This type of adjustment would incur the highest of the three proposed adjustment fee amounts because it involves the

movement of MMI Securities positions between an IPA and Participants and the debit of funds previously credited to Participants for the redemption of the MMI Securities. This type of adjustment presents the highest level of risk as it involves the reinstatement of the full position and the debiting of the full value of an issue that was previously credited to Participants holding the issue. This type of adjustment would present a higher level of settlement risk than an adjustment of an event type, such as an interest payment, that would typically be for a percentage amount that is less than the full value of the MMI Securities outstanding for the CUSIP.

Second, events requiring the modification of the event type would cause the IPA for the affected MMI Security to incur a fee of \$7,500 per CUSIP. This type of adjustment would incur the second highest fee of the three proposed adjustment fee categories because it would typically involve the movement of Securities and funds, though not for the entire outstanding amount of the issue, and therefore presents potential settlement risk to DTC and Participants, although potentially less than if a reinstatement to reverse a full redemption of a Security was required to make the requested adjustment.

Third, events requiring a rate change and possibly a manual allocation of funds relating to the corrected rate would cause the IPA for the affected issue to incur a charge of \$2,000 per CUSIP. This type of adjustment would incur the lowest fee amount of the three proposed adjustment fee categories because it would involve the movement of funds, either in the form of an allocation to, or a debit from, Participants holding an MMI Security, and would not involve the movement of MMI Securities.

Proposed Rule Change

Pursuant to the proposed rule change, the following entries would be added to the Fee Guide in the Corporate Actions section²² under the heading for “Agent Fees”:

| <u>Fee Name</u> | <u>Amount (\$)</u> | <u>Conditions</u> |
|--|--------------------|-------------------|
| MMI Position Reinstatement (Maturity Date/Call Date/Payable Date Correction) | 10,000 | per CUSIP |
| Event Type Modification (Change of Principal to Interest) | 7,500 | per CUSIP |
| Rate Change (Post-Payable) And Manual Allocations | 2,000 | per CUSIP |

Over the course of the previous two years, DTC has discussed with impacted Participants the (i) risks associated with Participants’ practices with respect to MMI processing that results in their requests to make late adjustments and (ii) proposed fees. While Participants have been informed of these risks and the potential for the fee proposal, and, the requests from Participants for late adjustments have continued to an extent that DTC believes the implementation of proposed fees is necessary to encourage the Participants to adjust their practices to avoid the need for the late adjustments to their MMI activity.

Implementation Timeframe

The proposed rule change would become effective upon filing with the Commission such that the text of the Fee Guide would be revised as set forth above.

²² See Fee Guide, supra note 5 at 6-8.

(2) Statutory Basis

DTC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.

Specifically, DTC believes that this proposal is consistent with Sections 17A(b)(3)(D)²³ and 17A(b)(3)(F)²⁴ of the Act and Rule 17Ad-22(e)(23)(ii),²⁵ as promulgated under the Act, for the reasons described below.

(i) Section 17A(b)(3)(D) of the Act requires, inter alia, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.²⁶ For the reasons set forth below, DTC believes that the proposed rule change described above would provide for the equitable allocation of reasonable dues, fees, and other charges among participants.

DTC believes that the proposed rule change to add new fees as described above under a new heading “MMI Exception Processing Fees” would provide for the equitable allocation of reasonable fees.²⁷ Each proposed fee under this heading would be charged to a Participant in accordance with the types and numbers of MMI-related adjustments requested by a Participant. In this regard, DTC believes the proposed MMI exception processing fees would be equitably allocated because each Participant that requests an adjustment relating to an MMI event that has reached its Event Date would be charged in

²³ 15 U.S.C. 78q-1(b)(3)(D).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(23)(ii).

²⁶ 15 U.S.C. 78q-1(b)(3)(D).

²⁷ Id.

accordance with the risk DTC believes that the Participant's exception processing request presents to DTC and its Participants, based on the proposed three categories of adjustments and respective fees, as described above. Further, DTC believes that the proposed fees would be reasonable. As discussed above, the proposed fees were designed specifically to incentivize Participants to accurately input information relating to MMI Securities and timely address any discrepancies so as to avoid the risks to DTC and Participants associated with exception processing in this regard. DTC believes that charging fees in the amounts as proposed would provide the necessary encouragement to Participants to adjust their own practices with respect to MMI processing so as to avoid (i) the risks discussed above to DTC and its Participants associated with late MMI adjustment processing and (ii) incurring the proposed fees.

(ii) Section 17A(b)(3)(F)²⁸ of the Act requires, inter alia, that the Rules provide for the prompt and accurate clearance and settlement of securities transactions by DTC. DTC believes that the proposed MMI exception processing fees, as described above, would provide for the prompt and accurate clearance and settlement of securities transactions, because DTC believes it would encourage IPAs to make timely adjustments to MMI issues they are responsible for, and avoid unexpected transactions that reverse payments and Securities movements associated with MMI transactions that are subject to an adjustment on or after the relevant Event Date. Therefore, the proposed rule change would enhance certainty for Participants with respect to their settlement obligations by allowing them to (i) allocate funds and Securities accordingly and (ii) promote their ability to satisfy their settlement obligations in a timely manner.

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

(iii) Rule 17Ad-22(e)(23)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in DTC.²⁹ DTC believes that the proposed rule changes with respect to implementing MMI exception processing fees would help ensure that the pricing structure of the Fee Guide is well-defined and clear to Participants. Having a well-defined and clear Fee Guide would help Participants to better understand the fees and help provide Participants with increased predictability and certainty regarding the fees they incur in participating in DTC. In this way, DTC believes the proposed rule changes to the Fee Guide, as described above, are consistent with Rule 17Ad-22(e)(23)(ii) under the Act, cited above.

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

Impact on Competition. DTC believes that the proposed rule change to add new fees as described above may have an impact on competition, because these proposed adjustments could result in a fee increase to Participants for the relevant service.³⁰ DTC believes that the proposed fees for adjustments to MMI processing requested by Participants could create a burden on competition by negatively affecting such Participants' operating costs. However, DTC believes that the 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.³¹

²⁹ 17 CFR 240.17Ad-22(e)(23)(ii).

³⁰ 15 U.S.C. 78q-1(b)(3)(I).

³¹ Id.

Burden on Competition Would Not Be Significant. DTC believes that any burden on competition that may be imposed by the proposed fees for adjustments would be insignificant because a Participant can avoid the fee by submitting adjustments before an Event Date for a given Security.

Burden on Competition Would Be Necessary and Appropriate. DTC believes that any burden on competition that is created by the proposed fees for MMI adjustments would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³² The proposal necessary to manage the potential risks posed to the Participants relating to adjustments, as described above. The proposal is appropriate because of the size of the proposed fees are tied to the underlying risks associated with adjustment requests, as described above. Therefore, DTC believes that any burden on competition that may be imposed by the proposed rule changes would be necessary and appropriate, as permitted by Section 17A(b)(3)(I) of the Act.³³

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

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

³² 15 U.S.C. 78q-1(b)(3)(I).

³³ Id.

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)³⁴ of the Act and paragraph (f)³⁵ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2021-001 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

³⁴ 15 U.S.C 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-DTC-2021-001. 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 such 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-2021-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier
Assistant Secretary

³⁶ 17 CFR 200.30-3(a)(12).