

continued listing requirements.<sup>34</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.<sup>35</sup> This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>36</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>37</sup> that the proposed rule change (SR-NASDAQ-2016-086), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Robert W. Errett,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78530; File No. SR-DTC-2016-006]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a Participants Fund Maintenance Fee

August 10, 2016.

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 29, 2016, The Depository Trust Company

<sup>34</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>35</sup> See *id.* at 42775.

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</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.

("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<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The proposed rule change was effective upon filing with the Commission. 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 consists of modifications to the Fee Schedule<sup>5</sup> of DTC in order to add a new fee that will be charged to Participants in connection with the maintenance of the Participants Fund, as described in greater detail below.<sup>6</sup>

#### 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 will add a fee that will be charged to Participants in connection with the maintenance of the Participants Fund.

###### Participants Fund Maintenance Fee

Pursuant to the proposed rule change, DTC proposes to introduce a new fee, to be known as the Participants Fund Maintenance Fee, which will be charged to Participants in arrears on a monthly basis.

The proposed rule change will (i) diversify DTC's revenue sources and

mitigate DTC's dependence on revenues driven by settlement volumes and (ii) add a stable revenue source that will contribute to DTC's operating margin by offsetting increasing costs and expenses, as further described below.

###### Diversify Revenue Sources

DTC's current revenues from settlement are variable, but, as a utility, DTC's expenses are largely fixed. The combination of fixed costs and variable revenues represents a financial risk for DTC. To mitigate such financial risk, DTC is seeking to further diversify its variable revenues with the proposed new fee, which will introduce a revenue source that is not dependent on settlement volumes. The Participants Fund Maintenance Fee will be ratably based on the Participant's average Actual Participants Fund Deposit.

###### Offset Increasing Costs and Expenses

DTC seeks to achieve a target operating margin to cover operating expenses and fund capital expenditures as well as investments in its services and risk management infrastructure; however, DTC faces continued increasing risk management costs as well as regulatory and compliance-related expenses that need to be offset by revenue growth in order to meet the target operating margin. Such increased costs and expenses, if not offset by revenue growth, could weaken DTC's financial position over time. As such, DTC is seeking to implement the Participants Fund Maintenance Fee to add an additional revenue source to offset increasing costs and expenses.

Proceeds of the Participants Fund Maintenance Fee will be used primarily to offset risk management costs, regulatory and compliance expenses and for general operating expenses.

###### Calculation

The amount of the monthly Participants Fund Maintenance Fee for a Participant will be calculated monthly, in arrears, as the product of 0.25% and the average of the Participant's Actual Participants Fund Deposit as of the end of each day of the month, multiplied by the number of days in that month and divided by 360; provided that, the investment rate of return on investment by DTC of the Participants Fund for that month is equal to or greater than 0.25%. No fee will be charged to any Participant for a month in which the monthly rate of return on investment of the Participants Fund is less than 0.25%.

Based on the 2015 average Actual Participants Fund Deposit, the expected annual revenue to be generated by the

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

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

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

<sup>6</sup> Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), available at [www.dtcc.com/~media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf).

Participants Fund Maintenance Fee is approximately \$5 million.

#### Participant Impact

The proposed rule change will impose the Participants Fund Maintenance Fee on all Participants.

The Participants Fund Maintenance Fee is a monthly fee based ratably upon the amount of the Participant's daily Actual Participants Fund Deposit; it is applicable when the monthly rate of return on investment of the Participants Fund is equal to or greater than 0.25%.

Because the Participants Fund Maintenance Fee per Participant is proportional to the average monthly Actual Participants Fund Deposit, Participants that, based on their usage of DTC's settlement service, place a greater demand on the settlement system will generally be subject to a higher fee, because such Participants are required to maintain higher deposits to the Participants Fund pursuant to the Rules.

DTC views the proposed implementation of the Participants Fund Maintenance Fee as a prudent way to minimize the magnitude of, and mitigate the need for, potential future increases in other fees.

The proposed change will take effect on August 1, 2016.

#### 2. Statutory Basis

Section 17A(b)(3)(D) of the Act<sup>7</sup> requires that DTC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The proposed fee is equitably allocated among Participants because it is based on each Participant's utilization of DTC's settlement service, as measured by their deposits to the Participants Fund. In addition, DTC believes that the proposed fee is reasonable because it will enable DTC to better align its revenue with the costs and expenses required for DTC to provide services to its Participants with a nominal impact on Participants. Therefore, DTC believes the proposed rule change is consistent with section 17A(b)(3)(D).<sup>8</sup>

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

DTC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee will be equitably allocated among Participants as described above. That is, a Participant that, based on its usage of DTC's settlement service,

places a greater demand on the settlement system will generally be subject to a higher fee, because such a Participant is required to maintain higher deposits to the Participants Fund pursuant to the Rules. Participants that place a lesser demand on the settlement system will pay less.

#### (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. DTC will notify the Commission of any written comments received by DTC.

#### 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)<sup>9</sup> of the Act and paragraph (f) of Rule 19b-4<sup>10</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2016-006 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-2016-006. 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 Web site (<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 Web site 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 Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2016-006 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78535; File No. SR-BatsEDGX-2016-42]

### Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 5, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 Exchange. The Exchange has designated the proposed rule change as

<sup>11</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>7</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f).