change is substantially similar to existing FINRA Rule 4240.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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.* Please include File Number SR–CBOE–2013–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–123. 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 the Exchange. 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–CBOE–2013–123 and should be submitted on or before January 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–30590 Filed 12–23–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71132; File No. SR–DTC–2013–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Specify Procedures Available to Issuers of Securities Deposited at DTC for Book Entry Services When DTC Imposes or Intends To Impose Restrictions on the Further Deposit and/or Book Entry Transfer of Those Securities

December 18, 2013.

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 5, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared by DTC. 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 modifies DTC's Rules & Procedures (''Rules'') to specify procedures available to issuers of securities deposited at DTC for book entry services when DTC imposes or intends to impose restrictions on the further deposit and/or book entry transfer of those securities, 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, DTC 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. DTC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Purpose

A. Background: DTC's Role Under Section 17A of the Securities Exchange Act of 1934, as amended (captioned ''National System for Clearance and Settlement of Securities Transactions'')

DTC is the nation's central securities depository, registered as a clearing agency under Section 17A of the Exchange Act (''Section 17A'').[3] DTC performs services and maintains securities accounts for its participants, primarily banks and broker dealers (''Participants'').[4] Among the services DTC provides to its Participants, a Participant may present a Security (as defined in Rule 1, Section 1 of the DTC Rules) to be made eligible for DTC's depository and book-entry services and, if the Security is accepted by DTC as eligible for those services and is deposited with DTC for credit to the securities account of a Participant, it becomes an ''Eligible Security'' (as defined in Rule 1, Section 1 of the DTC Rules). (The determination of eligibility is described more fully in Section 3.B., below.) Thereafter, other Participants may deposit that Eligible Security into their respective DTC accounts. Once the Eligible Security is credited to the account of one or more Participants, interests in that Eligible Security may be transferred among Participants by book-entry in accordance with the DTC Rules and Procedures.

As provided in the DTC Rules and Procedures, DTC processes the transfer of interests in Eligible Securities among DTC Participants by credits and debits to Participant accounts in accordance with the instructions of delivering and receiving Participants who are parties to the transaction. Participants in DTC agree to be bound by the Rules and Procedures of DTC as a condition of membership.

To facilitate book-entry transfer and other services that DTC provides for its Participants with respect to Deposited Securities (as defined in Rule 1, Section 1 of the DTC Rules), Eligible Securities are registered on the books of the issuer (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. Eligible Securities of an issue deposited at DTC are maintained in ''fungible bulk;'' *i.e.,* each Participant to whose DTC account securities of that issue have been credited has a *pro rata* (proportionate) interest in DTC's entire inventory of that issue, but none of the securities on deposit is identifiable to or ''owned'' by any particular Participant.[5]

DTC's deposit and book-entry transfer services facilitate the operation of the nation's securities markets. By serving as registered holder of trillions of dollars of securities, DTC processes the enormous volume of daily securities transactions by the book-entry movement of interests, without the need to transfer physical certificates.

The Commission has recognized that DTC plays a ''critical function'' in the national system for securities clearance and settlement.[6] More recently, the federal Financial Stability Oversight Council, which was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, designated DTC as a Systemically Important Financial Market Utility (as defined therein).[7]

B. Eligibility Standards for Securities are Set Forth in DTC Rules and Procedures

In furtherance of Section 17A's requirement that DTC's Rules be ''designed to promote the prompt and accurate clearance and settlement of securities transactions . . . and, in general, to protect investors and the public interest,'' DTC's Rules and Procedures provide standards for determining eligibility.[8]

DTC Rule 5 authorizes DTC to determine whether to accept a security as an Eligible Security and when an Eligible Security will cease to be such. DTC Rule 6 provides that DTC ''may limit certain services to particular issues of Eligible Securities.''

DTC's Operational Arrangements, Section I.A.2., addresses specific standards for making a security an Eligible Security:

Generally, the issues that may be made eligible for DTC's book-entry delivery, settlement and depository services are those that have been issued in a transaction that: (i) Has been registered with the Commission pursuant to the Securities Act of 1933 (''Securities Act''); (ii) was exempt from registration pursuant to a Securities Act exemption that does not involve (or, at the time of the request for eligibility no longer involves) transfer or ownership restrictions; or (iii) permits resale of the securities pursuant to Rule 144A or Regulation S and in all cases such securities otherwise meet DTC's eligibility criteria.

Thus, an essential element of DTC eligibility is that the securities are ''freely tradeable'' or, if restricted by Rule 144A or Reg S, are processed through a separate program in which Participants acknowledge and agree to comply with the applicable restrictions.

In determining whether deposited securities satisfy DTC's eligibility requirements, Section I.B.2. of DTC's Operational Arrangements provides that DTC may require an issuer to provide an opinion from outside counsel in order ''to substantiate the legal basis for eligibility.''[9] Additionally, DTC may require legal opinions, *inter alia,* otherwise ''. . . to protect DTC and its Participants from risk.''[10] That is, DTC may require the issuer's outside counsel to provide a legal opinion in support of the eligibility determination.

C. DTC's Compliance Monitoring Program and Imposition of Deposit Chills and Global Locks

DTC maintains a robust system for monitoring its compliance with governing law including, without limitation, the AML requirements of the BSA, and OFAC sanctions.[11]

Where such monitoring raises concerns as to whether securities held at DTC have been distributed in violation of federal law including, without limitation, the requirements of Section 5

[3] *See* Securities Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983).

[4] *See* 15 U.S.C. 78c(a)(24).

[5] *See* Securities Exchange Act Release No. 19678 (Apr. 15, 1983), 48 FR 17603, 17605, n.5 (Apr. 25, 1983) (describing fungible bulk); *see also* N.Y. Uniform Commercial Code, § 8–503, Off. Cmt 1 (''. . . all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds'').

[6] *See* Securities Exchange Act Release No. 47978, Order Granting Approval of a Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers, 68 Fed. Reg. 35037, 35041 (Jun. 4, 2003).

[7] *See http://www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx.*

[8] *See* DTC Rule 5, *http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf; see also* Operational Arrangements (Jan. 2012), Section I.A., *available at http://www.dtcc.com/downloads/legal/rules_proc/eligibility/operational-arrangements.pdf.*

[9] Section I.A.1 of the Operational Arrangements further specifies that such counsel must be ''an experienced securities practitioner, licensed to practice law in the relevant jurisdiction and in good standing in any bar to which such practitioner is admitted. Such counsel must be engaged in an independent private practice (i.e., not in-house counsel) and may not have a beneficial ownership interest in the security for which the opinion is being provided or be an officer, director or employee of the Issuer. ''

[10] *Id.*

[11] *See* 31 U.S.C. 5318 (authorizing Secretary of the Treasury to require financial institutions to establish AML procedures); 31 CFR 1020.210 (AML standards for certain financial institutions); 31 CFR 500.202 (prohibiting, *inter alia,* dealing in a security registered in the name of a person subject to OFAC sanctions).

of the Securities Act,[12] DTC may impose a Deposit Chill or Global Lock.

There are two principal scenarios under which DTC imposes these restrictions, as described in more detail below.

(1) Deposit Chills: Large Volume Deposits

DTC is mindful that various regulatory agencies have identified unusually large volumes of deposits of unregistered shares of low priced or thinly-traded securities as a ''red flag'' for possible unlawful distribution of securities.

For instance, in pursuing an enforcement action with respect to illegal sales of penny stocks, the Commission has highlighted as problematical ''sales that represented a high percentage of trading volume or of an issuer's public float.'' [13]

Similarly, the Financial Industry Regulatory Authority, Inc. (''FINRA'') has advised broker-dealers to be on alert for ''red flags'' of possible illegal distribution of unregistered securities. Although DTC is not subject to FINRA oversight, DTC has nonetheless taken account of FINRA's ''red flags'' in considering if Deposited Securities continue to comply with DTC's eligibility requirements. As stated by FINRA:

Recently, FINRA has investigated and brought several enforcement actions concerning unregistered distributions of securities. A common theme in these cases was that firms resold large amounts of low-priced equity securities in over-the-counter transactions.

The following are examples of red flags of unlawful unregistered distributions . . .;

- A customer of the broker opens a new account and delivers physical certificates representing a large block of thinly traded or low-priced securities;
- A customer of the broker deposits share certificates that are recently issued or represent a large percentage of the float for the security;
- The company was a shell company when it issued the shares;
- A customer of the broker with limited or no other assets under management at the firm receives an electronic transfer or journal transactions of large amounts of low-priced, unlisted securities;
- The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies;
- The issuer's SEC filings are not current, are incomplete, or nonexistent.[14]

The federal Financial Crimes Enforcement Network (''FinCen''), which is responsible for enforcing the AML provisions of the BSA, has similarly recognized that ''substantial deposit, transfer or journal of very low-priced and thinly traded securities'' implicates anti-money laundering monitoring concerns.[15]

When DTC detects large volume deposits of a low-priced or thinly-traded security, and its monitoring otherwise suggests that an issue may not be freely-tradeable, it imposes a Deposit Chill on that issue. The Deposit Chill blocks the deposit of further securities of the issue, although other services, including book-entry transfer movements, continue to be provided with respect to the Eligible Securities deposited at DTC before the Deposit Chill.

Section 2 of proposed Rule 22(A) addresses the procedures by which DTC gives affected issuers notice of a Deposit Chill and the procedures they may follow to object to the restriction, under the standards discussed in Section D(1), below.

Section 2 also provides that if an issuer fails to respond to a notice of a Deposit Chill as required, or if DTC determines that the response is insufficient to establish that Deposited Securities satisfy DTC's eligibility requirements, a Global Lock will be instituted. Under such circumstances, an issuer would be given notice of the impending Global Lock and an opportunity to demonstrate that a response to the Deposit Chill notice had, in fact, been submitted or that in reviewing the response, DTC had made a clerical mistake or oversight.

(2) Global Locks: Enforcement Proceedings

When DTC becomes aware of a law-enforcement or regulatory proceeding alleging violations of federal law or regulations (an ''Enforcement Proceeding''), particularly those alleging any violation of Section 5 of the Securities Act, relating to securities of an issue on deposit at DTC, DTC imposes a Global Lock on that issue. A Global Lock prevents additional deposits and restricts all book-entry and related depository services with respect to the issue.[16]

Sections 2, 3 and 4 of proposed Rule 22(B) address the procedures by which DTC gives affected issuers notice of the Global Lock and the procedures they may follow to object to the restriction, under the standards discussed in Section D(2), below.

D. Grounds for Releasing Deposit Chills and Global Locks

The fair procedures set forth in proposed Rules 22(A) and (B) are designed to enable issuers to object to a Deposit Chill or Global Lock prior to imposition of the restriction by DTC or

[12] *See* 15 U.S.C. 77e (prohibiting sales of unregistered securities, subject to 15 U.S.C. 77(d)).

[13] *See e.g.* Order Making Finding and Imposing Remedial Sanctions, *In the Matter of Ronald S. Bloomfield, et al.,* SEC Rel. No. 62750 (Aug 20, 2010), *available at http://www.sec.gov/litigation/admin/2010/34-62750.pdf* (enumerating red flags relating to how penny stocks were sold, including (a) repeated delivery in and selling to the public of privately obtained shares of penny stocks; (b) selling within weeks of receipt; (c) selling while promotional activity was occurring; and (d) sales that represented a high percentage of trading volume or of an issuer's public float).

[14] *See* Financial Industry Regulatory Authority, Inc., *Regulatory Notice 09–05, available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117716.pdf* (footnotes omitted); *see also* Review of Disciplinary Action Taken by FINRA, *In the Matter of the Application of World Trade Financial Corp., et al.,* Securities Exchange Act Release No. 66114, Jan. 6, 2012, *available at http://sec.gov/litigation/opinions/2012/34-66114.pdf* (sustaining FINRA violations and sanctions, where customers deposited large blocks of recently issued, little known stock into firm accounts and directed registered representative to sell shortly thereafter, and registered representative failed to inquire whether proposed sales qualified for exemption from registration and were part of an unlawful distribution.); Order Accepting Settlement, *Dept. of Enforcement v. NevWest Securities Corp et al.,* NASD Case No. E0220040112–01 (Mar. 13, 2007), *available at http://wwv.sec.gov/about/offices/ocie/am12007/nasdnev-nevwest.pdf* (finding that NevWest failed to adequately implement anti-money laundering procedures by failing adequately to perform due diligence, file Suspicious Activity Reports, or cease trading in multiple accounts owned and controlled by customer, regarding over 500 transactions involving more than 250 billion shares of sub-penny stock.)

[15] Financial Crimes Enforcement Network, *The SAR Activity Review: Trends Tips & Issues,* Issue 15, pp. 23–25 (BSA Advisory Group, May 2009), *available at http://fincen.gov/news_room/rp/files/sar_tti_15.pdf,* citing Financial Industry Regulatory Authority, Inc., *Regulatory Notice 09–05, available at http://www.finra.org/Industry/Regulation/Notices/2009/P117713; see also* Financial Crimes Enforcement Network, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering* (2006), *available at http://www.fincen.gov/LLCAssessment_FINAL.pdf* (''These 'pump and dump' schemes often involve shell companies with low market capitalization whose stock trades at pennies per share on the 'pink sheets' (*www.pinksheets.com*), OTC Bulletin Board, or other over-the-counter trading and information systems. One indicator of this scheme is concentrated trading in normally thinly traded stocks.'').

[16] Globally Locked Eligible Securities continue to be Eligible Securities unless and until DTC makes a determination under its Rules to terminate eligibility, as to which DTC Rule 22, Right to Contest Decisions, would apply; alternatively, those securities may be held in custody only at DTC, as provided in the DTC Rules and Procedures applicable to custody only, i.e., not for book-entry transfer and asset services applicable to Eligible Securities. *See generally http://www.dtcc.com/products/asset/services/custody.php#overview.*

to cause DTC to release Deposit Chills and Global Locks imposed without such prior notice or at any time during the continuance of any such restriction, pursuant to the standards set forth below.

(1) Release of Deposit Chills

In order to challenge a Deposit Chill, proposed Rule 22(A) provides the affected issuer with the opportunity to establish that the issue meets DTC's eligibility requirements, including by submitting an opinion from independent legal counsel establishing that the securities deposited at DTC are freely tradeable. DTC's reliance on legal opinions for this purpose is authorized by DTC's Operational Arrangements, which expressly authorize DTC to require opinions ''to substantiate the legal basis for eligibility,'' or otherwise ''. . . to protect DTC and its Participants from risk.'' [17] If the issuer successfully demonstrates that the deposited securities continue to satisfy DTC's eligibility requirements, DTC would not impose the Deposit Chill or, if already in effect, would release it.

(2) Release of Global Locks

In order to challenge a Global Lock, proposed Rule 22(B)(2)(b) provides the affected issuer with the opportunity to establish that (i) DTC has made a mistake in associating the issuer's Eligible Securities with the specified Enforcement Proceeding or (ii) that the Enforcement Proceeding has been has been withdrawn or dismissed on the merits with prejudice or otherwise resolved in a final, non-appealable judgment in favor of the defendants allegedly responsible for the alleged violations of Section 5 of the Securities Act relating to the Eligible Securities. If the issuer successfully demonstrates either factor, DTC would not impose the Global Lock or, if already in effect, DTC would release it.

Otherwise, proposed Rule 22(B)(3) provides that DTC will release a Global Lock within either one year or six months, as the case may be,[18] after the final disposition of the Enforcement Proceeding with respect to those defendants alleged to have been responsible for the illegal distribution of the Eligible Securities that were subject to the Global Lock. Similarly, pursuant to proposed Rule 22(B)(4), where a Global Lock has been imposed because an issuer has failed to satisfy DTC's concerns that led to a Deposit Chill,[19] the one year/six month waiting period also applies, but runs from the date of the imposition of the Global Lock.

The proposed standard to release a Global Lock after the passage of six months or one year (from the appropriate starting date) was developed by analogy to the safe harbor provision of the Securities Act, Rule 144, which, under certain circumstances, permits the unregistered resale of restricted securities (as defined under paragraph (a)(3) of the Rule) after expiration of the relevant holding period. However, again by reference to Rule 144, this approach is not applicable to an issuer that is, or was, a shell company as defined in Rule 144(i)(1), unless the issuer has filed the specified disclosure required by Rule 144(i)(2).

E. Legal Principles Underlying Fair Procedures Challenging Deposit Chills and Global Locks

(1) Section 17A(b)(3) and (5)

Under Section 17A, where a registered clearing agency denies or limits access to the agency's services to a ''person,'' it must employ ''fair procedures.'' [20] Such procedures require the clearing agency to give the person notice and an opportunity to address the specific grounds for denial or prohibition or limitation and to keep a record.[21]

In its decision in *IPWG,* the Commission ruled, *inter alia,* that issuers are ''persons'' for the purposes of Section 17(a)(b)(3).

(i) Fair Procedures in Advance of the Imposition of a Deposit Chill or Global Lock

Section 17A does not specify the nature of the fair procedures DTC must provide to ''persons,'' including issuers. In *IPWG,* the Commission observed that:

> ''Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that ''a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record.'' [22]

The Commission further ruled in *IPWG* that DTC ''should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly'' in the cases where DTC denies or limits services with respect to an issuer's securities. Consistent with the Commission's broad directive, and as set forth below in Sections 3F(1) and (2), proposed Rules 22(A) and 22(B) encompass uniform fair procedures for issuers whose securities may be or are subject to a Deposit Chill or Global Lock. These procedures include:

- Advance notice (except as provided in the following section) that a Deposit Chill or Global Lock will be imposed;
- An explanation of the specific grounds upon which the restrictions are being or have been imposed;
- The actions that the issuer must take in order to prevent or remove the restriction;
- The process DTC will undertake to review written submissions of the issuer and to render a final decision concerning the restriction; and
- Maintaining a complete record for submission to the Commission in the event an issuer appeals.

(ii) Fair Procedures Where a Deposit Chill or Global Lock Is Imposed Without Advance Notice

In *IPWG*, the Commission opined that, when faced with justifiable circumstances, DTC may design fair procedures ''in accordance with its own internal needs and circumstances,'' [23] recognizing that:

If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.[24]

For example, where DTC's monitoring suggests that marketplace actors are

[17] *See,* supra, n.11; *see also* DTC Rule 5 (providing that DTC ''shall accept a Security as an Eligible Security only . . . upon such inquiry, or based upon such criteria, as the Corporation may, in its sole discretion, determine from time to time.'').

[18] Six months applies to issuers that are required to file, and have filed, all reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, and one year applies to issuers that are not publicly reporting.

[19] *See* proposed Rule 22(A)(2)(c); *see also* Section 3.F.1. *infra.*

[20] *See* Exchange Act, Section 17A(b)(3)(H); 15 U.S.C. 78q–1(b)(3)(H).

[21] *See* Exchange Act, Section 17A(b)(5)(B); 15 U.S.C. 78q–1(b)(5)(B).

[22] IPWG at *http://www.sec.gov/litigation/opinions/2012/34-66611.pdf.*

[23] *Id.* at 12, fn. 36.

[24] *Id.* at 12–13 (footnote omitted); *see also ATIG* at 3, fn. 5 (affirming that DTC may, consistent with *IPWG*, impose a Deposit Chill or Global Lock without advance notice in order to avert an imminent harm).

continuing to cause the deposit of Eligible Securities that are not freely-tradeable, DTC would need to act quickly to stop further improper deposits, and thus may impose a restriction without prior notice. Otherwise, if DTC were to provide prior notice, marketplace actors would have additional time to make such deposits and accelerate the deposit volume during the notice period. In these cases, the risk of harm to the national clearance and settlement system stemming from comingling or further comingling of non-freely tradeable securities with DTC's fungible bulk for that issue outweighs any potential impact on the issuer as a result of not giving it advance notice of the restriction.

As described below in Sections 3.F(1) and (2), where a restriction is imposed before notice in order to forestall, among other things, imminent harm, injury or other such consequence, DTC will provide notice to the affected issuer within three business days from the imposition of the restriction. After DTC has provided such notice, the affected issuer is afforded the same fair procedures as issuers that received advance of a restriction.

F. Fair Procedures: Summary of Proposed Rule Changes

DTC proposes to: (i) Adopt a new Rule 22(A) that provides specific fair procedures for issuers in connection with imposition and release of Deposit Chills; and (ii) adopt a new Rule 22(B) that provides specific fair procedures for issuers in connection with imposition and release of Global Locks. DTC additionally proposes to amend Rule 1, Section 1 in the definition of ''Procedures'' to include, expressly, the Operational Arrangements.[25]

The substantive elements of the proposed rules are as follows:

(1) Proposed Rule 22(A)

Section 1 provides that Rule 22(A) sets forth the fair procedures available to issuers where DTC intends to impose or has imposed a Deposit Chill as a result of DTC having detected large volume deposits with respect to the issuer's Eligible Securities.

Section 2 provides that issuers will be given twenty business days' advance notice that DTC intends to impose a Deposit Chill or, if DTC reasonably determines that it is faced with, among other things, imminent harm, injury or other such consequence, to DTC or its Participants, or where the Corporation otherwise reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through the Corporation, whether or not such circumstances are otherwise specified by Rule 22(A), notice will be given within three business days after the Deposit Chill has been imposed. In addition to setting forth the contents of the notice, Section 2(a) sets forth the issuer's right to contest the action by submitting a response to the notice and the time frame for doing so.

Section 2(b) requires, consistent with DTC's Operational Arrangements, that the issuer support the response with a legal opinion, prepared by independent counsel, confirming that the issuer's securities deposited at DTC satisfy DTC's eligibility requirements. As guidance for the issuer and its counsel, DTC will provide a template legal opinion. DTC will accept, from counsel to the issuer reasonably acceptable to DTC,[26] an opinion that includes the material opinions and other matters set forth in the template.

Section 2(b)(i) provides that, in response to the Deposit Chill Response, DTC may present the issuer with a request for additional information (the ''Additional Request''), to which the issuer shall submit a response to the Corporation (the ''Additional Response'') in a time frame set by the Corporation, which shall not be less than 10 business days from the date of the Additional Request.

Section 2(c) establishes the time frame in which DTC will provide the issuer with a written decision in connection with the issuer's timely response to notice of the Deposit Chill. Specifically, DTC will provide each issuer that submits a Deposit Chill Response or Additional Response with a written decision within twenty business days after DTC receives the Deposit Chill Response or the Additional Response or, in the case of a Deposit Chill imposed before issuance of the Deposit Chill Notice, within ten business days after receipt by DTC of the Deposit Chill Response or Additional Response.

Section 2(c) also provides that if the issuer does not submit a response to the notice or does not do so in a timely matter, or if DTC reasonably determines that the response does not establish that the issuer's securities on deposit at DTC satisfy DTC's eligibility requirements, DTC will impose a Global Lock on the issue. An officer of DTC who did not play any role in the determination regarding the Deposit Chill notice will review the issuer's response and decide whether the response has satisfied DTC's eligibility standards. Once the officer has made a decision: (i) If the decision is in favor of the issuer, DTC will not impose or will release the Global Lock, as the case may be; or (ii) if the decision is that the issuer's response is not satisfactory, DTC will nevertheless not impose the Global Lock until DTC has given the issuer notice of the adverse decision and the opportunity to demonstrate that DTC's determination was the result of DTC's clerical mistake or a mistake arising from an oversight or omission in reviewing the issuer's response. This added process will not constitute a substantive review. It will be limited to DTC making a determination whether, as the issuer has asserted, there was a clerical mistake or mistake arising from an oversight or omission. Absent such a showing, the Global Lock will be imposed.

Section 2(d) specifies the contents of the ''record'' in the event that the issuer appeals to the Commission from an adverse decision.

Section 3(a) provides that the issuer's right to respond to the notice is dependent on compliance with the time periods specified for making submissions.

Section 3(b)(i) reserves to DTC the right: (x) To lift a Deposit Chill, or (y) to impose a Deposit Chill after it has provided a Deposit Chill Notice but before it has received or resolved a Deposit Chill Response (including after any Additional Request when an Additional Response is pending) without waiting for the applicable notice periods to run, in either case, in order to prevent imminent harm, injury or other such consequences to DTC or its Participants or where DTC reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through it, irrespective of whether Rule 22(A) provides specific grounds for doing so. Section 3(b)(ii) specifically provides that Rule 22(A) does not apply to processing interruptions based upon ordinary course operational requirements such as those in

[25] DTC's *existing* Rule 22 is primarily focused on procedures applicable to DTC's Participants that are facing disciplinary actions as a result of violating DTC's Rules. Rule 22, however, also sets forth the fair procedures available to issuers where DTC determines that an issuer's Eligible Securities should no longer be deemed to be such or, as provided by Rule 5, where DTC determines not to approve a security as an Eligible Security. Rule 22 does not address the fair procedures applicable to issuers stemming from Deposit Chills or Global Locks. DTC has determined to set forth such procedures in the two proposed rules.

[26] In determining whether counsel is acceptable for this purpose DTC refers to the relevant provisions set forth in the Operational Arrangements. *See, supra,* n.12.

connection with corporate actions and reorganization events that may occur at the request of the issuer or its representatives, or other such processing interruptions specifically set forth in the Procedures.

Section 3(b)(iii) recognizes that Rule 22(A) shall not displace any legal or regulatory requirements that DTC is subject to under applicable law, rule or regulation. This could conceivably include imposing a Deposit Chill where required by applicable law, rule or regulation and for reasons that may not include large volume deposits of low value or thinly traded securities. If, however, DTC imposed a Deposit Chill under such circumstances, DTC would afford the affected issuer the fair procedures set forth in proposed Rule 22(A) (except if prohibited by law, rule or regulation). Section 3(b)(iv) emphasizes that while DTC may freely communicate with the issuer or its representative, substantive communications must be in writing in order to provide the Commission with a complete record in the event of an appeal.

Section 3(c) provides that in the event that the Corporation shall impose a Deposit Chill pursuant to Section 3(b)(i) of Rule 22(A), the procedures contained in Section 2(c) of Rule 22(A) shall apply, including that the Corporation shall provide the Deposit Chill Response within ten (10) business days after the Corporation receives the Deposit Chill Response or the Additional Response.

Section 3(d) sets forth the means by which DTC shall send notice to the issuer.

(2) Proposed Rule 22(B)

Section 1 provides that Rule 22(B) sets forth the fair procedures available to issuers where DTC imposes a Global Lock with respect to an issuer's Eligible Securities, in two situations. Section 1(a) refers to a Global Lock based upon an Enforcement Proceeding with respect to an issue of securities that DTC determines were deposited at DTC. Section 1(b) refers to a Global Lock where an issuer has failed to satisfy the requirements to object to the imposition of, or for lifting, a Deposit Chill pursuant to Rule 22(A).

Section 2(a) provides that issuers will be given twenty business days' advance notice that DTC intends to impose a Global Lock or if DTC reasonably determines that it is faced with, among other things, imminent harm, injury or other such consequence to itself or its Participants, or where the Corporation otherwise reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through the Corporation, whether or not such circumstances are otherwise specified by Rule 22(B), notice will be given within three business days after the Global Lock has been imposed. In addition to setting forth the contents of the notice, Section 2(a) sets forth the issuer's right to contest the action by submitting a response to the notice and the time frame for doing so.

Pursuant to Section 2(b)(i), if the issuer is able to demonstrate that an error had been made in identifying its securities as the subject of the underlying Enforcement Proceeding, the Global Lock would not be imposed or, had it already been imposed (whether by virtue of being imposed without notice or at any time after the imposition of a Global Lock), it would be released. Pursuant to Section 2(b)(ii), if, at any time, the Enforcement Proceeding has been withdrawn or dismissed on the merits with prejudice or otherwise resolved in a final, non-appealable judgment in favor of the Defendants allegedly responsible for the violations of Section 5 of the Securities Act relating to the Eligible Securities, the Global Lock would not be imposed or, had if it had already been imposed, it would be released. In reviewing the issuer's response, DTC will not provide a forum for litigating or re-litigating the allegations or findings in the Enforcement Proceeding, provided, however, that the issuer's response may include a demonstration that the allegations or findings in the Enforcement Proceeding have been rejected by a court or that the issuer can otherwise satisfy the criteria set forth in Section 3 of proposed Rule 22(B).

Section 2(c) sets forth the time frame in which DTC will provide the issuer with a written decision responsive to the Global Lock Response. Specifically, DTC will provide each issuer that submits a Global Lock Response with a written decision within twenty business days after DTC receives Global Lock Response or, in the case of a Global Lock imposed before issuance of the Global Lock Notice, within ten business days of its imposition.

Section 2(d) specifies the contents of the ''record'' in the event that the issuer appeals to the Commission from a determination by DTC.

Section 3 provides for the release of Global Locks. In the case of Global Locks imposed pursuant to Section 1(a), the restriction will be lifted either six months or one year, as the case may be, after the Enforcement Proceeding has been withdrawn or dismissed on the merits with prejudice or otherwise resolved in a final, non-appealable judgment in favor of the Defendants allegedly responsible for the violations of Section 5 of the Securities Act relating to the Eligible Securities. The six-month period applies to affected issuers that file periodic reports pursuant to Section 13(a) and 15(d) of the Exchange Act) and the one-year period applies to issuers that are not public reporting companies. In support of the foregoing: (i) The Issuer may be required to submit a legal opinion, in form and substance satisfactory to the Corporation, from independent securities counsel to the issuer, reasonably acceptable to the Corporation, and/or (ii) such other evidence or other documentation as the Corporation may reasonably require. Companies defined in Securities Act Rule 144(i)(1) are not entitled to take advantage of this procedure and the Global Lock will remain in effect for any shell company issuer, unless it complies, or has complied, with the requirements of Securities Act Rule 144(i)(2).

Section 4 is similar to Section 3, except that the one-year and six-month time frames are measured from the date of the imposition of the Global Lock pursuant to Section 1(b).

Section 5(a) provides that the issuer's right to respond to the notice is dependent on compliance with the time periods for making submissions.

Section 5(b)(i) reserves to DTC the right: (x) To lift a Global Lock, or (y) to impose a Global Lock after DTC has provided a Global Lock Notice but before it has received or resolved a Global Lock Response without waiting for the applicable notice periods to run, in either case, in order to prevent imminent harm, injury or other such consequences to DTC or its Participants or where DTC reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through it, irrespective of whether Rule 22(B) provides specific grounds for doing so. Section 5(b)(ii) specifically provides that Rule 22(B) does not apply to processing interruptions based upon ordinary course operational requirements such as those in connection with corporate actions and reorganization events that may occur at the request of the issuer or its representatives, or other such processing interruptions set forth in the Procedures.

Section 5(b)(iii) recognizes that Rule 22(B) shall not displace any legal or regulatory requirements that DTC is subject to under applicable law, rule or regulation. This could conceivably

include imposing a Global Lock where required by applicable law, rule or regulation and for reasons that may not include an Enforcement Proceeding. If, however, DTC imposed a Global Lock under such circumstances, DTC would afford the affected issuer the fair procedures set forth in proposed Rule 22(B) (except if prohibited by law, rule or regulation). Section 5(b)(iv) provides that while DTC may freely communicate with the issuer or its representative, substantive communications must be in writing in order to provide the Commission with a complete record in the event of an appeal.

Section 5(c) sets forth the means by which DTC shall send notice to the issuer.

Statutory Basis

The proposed Rules 22(A) and (B) establish a procedure which provides for: (a) criteria for notice to an issuer that a Deposit Chill or Global Lock will be imposed, (b) an explanation of the specific grounds upon which the restrictions are being or have been imposed, (c) the actions that the issuer must take in order to prevent or remove the restriction, (d) the process DTC will undertake to review written submissions of the issuer and to render a final decision concerning the restriction, and (e) maintenance of a complete record for submission to the Commission in the event an issuer appeals. As such the proposed rule change is in accordance with Section 17A(b)(5)(B) of the Act [27] and encompasses a uniform procedure for issuers whose securities may be or are subject to a Deposit Chill or Global Lock. Therefore, the proposed rule change is consistent with the requirements of the Section 17A(b)(3)(H) of the Act,[28] which requires that the rules of a registered clearing agency are in accordance with the provisions of Section 17A(b)(5)(B) of the Act, and in general provide a fair procedure with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule changes will have any impact on, or impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, because the proposed procedures as described above will apply to all issues that may subject to Deposit Chill or Global Lock.

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

Written comments relating to the proposed rule change have not yet been solicited or received with respect to this filing. To the extent DTC receives written comments on the proposed Rule change DTC will forward such comments to the Commission.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2013–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2013–11. 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 such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/en/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–2013–11 and should be submitted on or before January 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

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[27] *See* 15 U.S.C. 78q–1(b)(5)(B) which provides: ''In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

[28] 15 U.S.C. 78q–1(b)(3)(H).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71133; File No. SR–NYSEArca–2013–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of Manna Core Equity Enhanced Dividend Income Fund Under NYSE Arca Equities Rule 8.600

December 18, 2013.

I. Introduction

On October 23, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed