

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50887; File No. SR-DTC-2004-11)

December 20, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand The Depository Trust Company's SMART/Track Service to Include Corporate Action Liability Notification

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 15, 2004, 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change relates to a proposal by DTC to enhance its SMART/Track service (formerly called the Universal Hub service) by adding a new phase consisting of a Corporate Action Liability Notification Service that will provide industry participants an efficient means to facilitate the notification, acknowledgement, and maintenance of corporate action liability information.

II. Self-Regulatory Organization'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

¹ 15 U.S.C. 78s(b)(1).

below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In July 2004, the Commission approved DTC rule filing SR-DTC-2003-10 that allowed DTC to implement the SMART/Track service, which was then called the Universal Hub.³ SR-DTC-2003-10 focused on the first phase of the service, a stock loan recall notification service. This filing relates to the Corporate Action Liability Notification Service, which is the second of the planned phases of SMART/Track.

When one party is owed securities by its counterparty, and those securities are the subject of a voluntary corporate action, it is industry practice for the owed party to send to the counterparty a liability notice that holds the counterparty liable for delivery of the securities in time for the owed party to participate in the voluntary corporate action ("Liability Notice"). It is also customary in the industry for the counterparty receiving the Liability Notice to reject the notice, deliver the securities that are the subject of the Liability Notice to the sender of the notice, or convert or exchange the securities to the corresponding corporate actions proceeds. Currently, industry participants use faxes and phone calls to communicate Liability Notices. Lack of a formal mechanism to send and receive Liability Notices has proved to be inefficient as the process is paper intensive and subject to transmission error and delays in response time.

² The Commission has modified the text of the summaries prepared by DTC.

³ Securities Exchange Act Release No. 34-50029 (July 15, 2004), 69 FR 43870 (July 22, 2004).

To remedy these issues and to support the industry groups with which DTC has worked on this project,⁴ DTC developed the Corporate Action Liability Notification Service to automate this labor-intensive process.

The goal of the Corporate Action Liability Notification Service is to provide a central point of access for industry participants to send and to receive Liability Notices, to respond to Liability Notices, and to review status information relating to Liability Notices. In addition, a link to DTC's Reorganization Inquiry for Participants System ("RIPS") allows some fields to be populated automatically when the corporate action event is in RIPS. The sender of the message, however, remains responsible for the content of the message. By providing a central point of access to all parties, the Corporate Action Liability Notification Service provides interoperability between participants and permits participants to avoid the costs and inefficiencies of each participant building multiple automated bilateral links to its counterparties.

The Corporate Action Liability Notification Service is subject to DTC's general standard of liability for information services (i.e., responsibility for gross negligence and willful misconduct). The service will be available only to DTC participants. If, in the future, DTC decides to make the Corporate Action Liability Notification Service available to non-participants, DTC will file another proposed rule change.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC because the proposed will promote efficiencies relating to Liability Notices. The proposed rule change will be

⁴ These groups include the Corporate Actions Division of the Securities Industry Association ("SIA") and the Corporate Actions Liability Working Group, a subcommittee of the SIA's STP Steering Committee.

⁵ 15 U.S.C. 78q-1.

implemented consistently with the safeguarding of securities and funds in the custody or control of DTC because DTC will be acting as a notification service.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

DTC has discussed this rule change proposal with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed Corporate Action Liability Notification Service. Written comments relating to the proposed rule change have not yet been solicited or received. 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 upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(4)⁷ thereunder because the proposed rule effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which DTC is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(4).

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-2004-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-DTC-2004-11. 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 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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection

and copying at the principal office of DTC and on DTC's Web site at www.dtc.org. 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-2004-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).