

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61477; File No. SR-DTC-2010-01)

February 3, 2010

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand its Invitation to Cover Shorts Capability to Include Short Positions Outside DTC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on January 15, 2010, 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 primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that the proposal 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to expand the Invitation to Cover Shorts (“ICS”) capability to include short positions outside DTC.

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 below.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.⁴

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

DTC rules require Participants to cover short positions immediately and provide 130% of the market value of the relevant security until the position is covered. DTC's ICS capability offers Participants a means to cover short positions by inviting tenders of securities from other Participants that hold long positions.⁵ Communication about these requests is facilitated through DTC's automated Participant Terminal System ("PTS").⁶

Participants initiate ICS requests by broadcasting a message to DTC.⁷ DTC in turn automatically identifies Participants with long positions in the relevant security⁸ and sends those Participants an automated PTS message asking for a response if the Participant wants to tender its securities. Participants inviting the tender are informed by DTC of any affirmative responses and the Participant responding to the tender offer is asked to send DTC an email or letter of

⁴ The Commission has modified the text of the summaries prepared by DTC.

⁵ Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185. DTC filed a proposed rule change with the Commission on April 4, 1989 to establish procedures for covering short positions using DTC's Participant Terminal System. The purpose of the rule change was to provide a means of reducing short positions at DTC. The ICS program is detailed in DTC's PTS Function Guide.

⁶ If the Participant initiating the ICS request holds a security similar to the security in which it has a short position, then its invitation may include an offer to sell or swap the similar security.

⁷ This message includes a quantity, price range, description, and CUSIP for the security. The Participant submitting the invitation also includes a contact name and phone number as well as any information about substitute securities.

⁸ Because of its role as a securities depository, DTC is uniquely positioned to identify Participants with long positions in certain securities.

authorization stating its willingness to sell its shares at the price agreed upon with the short Participant.⁹ Once the appropriate authorizations are received, DTC staff inputs journal adjustments to debit the long Participant's account and credit the short Participant's account. A special payment order is then created by DTC to move the corresponding funds from the settlement account of the short Participant to that of the long Participant.

Participants recently asked DTC to expand its ICS capability to include short positions outside DTC.¹⁰ Expanding ICS in this way would help Participants holding short positions outside DTC to avoid financial risks by locating Participants with long positions in those securities. Participants using the ICS capability for short positions outside DTC would be subject to similar procedures as apply to current use of the ICS capability. Once Participants agree to the transaction, DTC would either process it through the journal entry method described above or ask the Participants to communicate directly with one other and settle the obligation through a DTC delivery order.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹¹ and the rules and regulations thereunder applicable to DTC because the proposed rule change expands the existing ICS capability to increase efficiency by eliminating short positions of DTC Participants and will not adversely affect the safeguarding of securities and funds in DTC's custody or control.

⁹ Involvement in ICS transactions is purely discretionary by Participants. DTC facilitates communication and keeps Participant identities confidential until both parties agree to the transaction.

¹⁰ Until DTC develops an automated solution, these requests would be processed manually in a manner similar to the existing PTS application.

¹¹ 15 U.S.C. 78q-1.

(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.

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 pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(4)¹³ thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency 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 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:

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(4).

Electronic comments:

- Electronic comments may be submitted by using 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 No. SR-DTC-2009-01 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-2010-01. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2010-01.pdf.

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-2010-01 and should be submitted on or before [insert 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).