

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51439; File No. SR-DTC-2004-12)

March 28, 2005

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Revise Fees for Low Volume Tender Offers

I. Introduction

On November 19, 2004, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change File No. SR-DTC-2004-12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposed rule change was published in the Federal Register on February 15, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change adjusts the fees DTC charges for low volume tender offers so that the fees may be aligned with the estimated costs incurred by DTC. DTC notes that certain offerors in low volume tender offers processed through DTC have extended the expiration of their offers multiple times. For tender offers other than low volume tender offers, extensions are unusual and multiple extensions almost never occur. With respect to low volume tender offers, however, DTC has experienced offers being extended as many as 15 times. Because each extension involves significant processing costs for DTC, DTC is increasing the fee for low

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 51156 (February 8, 2005), 70 FR 7785.

volume tender offers from a flat fee of \$2,900 per offer to a fee of \$2,900 per offer and per each extension thereof.

### III. Discussion

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.<sup>3</sup> The Commission finds that DTC's proposed rule change is consistent with this requirement because by establishing a fee for extensions of low volume tender offers DTC is more equitably allocating the fees that cover its cost of providing the service to those participants who utilize the service.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> that the proposed rule change (File No. SR-DTC-2004-12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 17 CFR 200.30-3(a)(12).