

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58436; File No. SR-DTC-2008-11)

August 27, 2008

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change to Implement a New Service to Allow Issuers to Track and Limit the Number of Beneficial Owners for an Individual CUSIP

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on August 6, 2008, 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. 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 rule change is to implement a new service that will allow issuers, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners for an individual CUSIP. This service would be called the Security Holder Tracking Service (“SH Tracking Service”).

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

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

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

1. Background

A group of investment banks requested that DTC assist them in providing greater liquidity and access to capital for securities of closely held issuers that are traded in private equities markets.<sup>2</sup> Specifically, this group asked DTC to build a system that would allow these closely held securities to be eligible for DTC's depository services while allowing the issuer, typically through an agent, to monitor and control the number and character (e.g., qualified institutional buyers or "QIBs") of beneficial owners of its securities.<sup>3</sup> Currently, the processing and settlement of transactions of such issues is accomplished in a physical environment outside DTC.<sup>4</sup>

2. Proposed Rule Change

DTC proposes to implement its new SH Tracking Service that would facilitate the book-entry settlement and asset servicing for securities that are privately transacted. This service would allow issuers to track and limit the number of beneficial owners of its securities ("Tracked Securities").

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<sup>2</sup> Among the securities at issue are those that are commonly referred to as "Rule 144A securities." These securities are transacted pursuant to the terms of Rule 144A (17 CFR 230.144A), which provides a safe harbor from the registration requirements of Section 5 of the Securities Act of 1933. 15 U.S.C. 77e.

<sup>3</sup> Issuers must control the number of beneficial owners pursuant to certain regulatory registration and reporting requirements. In order for issuers to be able to avoid the periodic reporting requirements imposed by the Act they must not have more than 500 beneficial owners. 15 U.S.C. 78l(g), 15 U.S.C. 78m(a), 15 U.S.C. 78o(d).

<sup>4</sup> DTC already allows Rule 144A securities that are not investment grade rated debt to be eligible for deposit, book-entry delivery, and other depository services only if the Rule 144A securities are designated for inclusion in a system of a self-regulatory organization approved by the Commission for the reporting of quotation and trade information of Rule 144A transactions ("SRO system"). Securities Exchange Act Release No. 33327 (Dec. 13, 1993); 58 FR 67878 (Dec. 22, 1993).

The eligibility process for a Tracked Security to be made and remain DTC-eligible would not change from DTC's current process. However, under the new proposed system, DTC would be requested in writing to set up a specific CUSIP for tracking such securities<sup>5</sup> and would be notified who will perform the function of the issuer's administrator for the CUSIP in the SH Tracking Service.<sup>6</sup> Upon receipt of all of such documentation, DTC would make the CUSIP DTC-eligible and would activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC would perform asset servicing for the issue.

The issuer's administrator would control movements of the particular CUSIP for which it had been appointed. Once the tracking indicator has been activated on the master file and the Administrator has been appointed, no transfer of the securities would take place in the Tracked Security without the approval of the administrator through DTC's Inventory Management System ("IMS"). The administrator, based on requirements of the issuer, would be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the administrator, DTC would perform centralized book-entry settlement. IMS would only allow an administrator access to view and approve transactions for CUSIPs for which it had been appointed administrator as reflected in DTC's records.

Because DTC would be relying solely on the instructions of the administrator in order to effect settlement in Tracked Securities and would have no knowledge of the number or character of the underlying beneficial owners, use of the SH Tracking Service by any party would constitute an agreement that DTC shall not be liable for any loss or damages related to the use of the SH Tracking System. Each user of the SH Tracking Service would agree to indemnify and

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<sup>5</sup> DTC anticipates that this instruction will come from the underwriter at the time of the initial distribution at DTC.

<sup>6</sup> DTC anticipates that the issuer's transfer agent will serve as its administrator.

hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the SH Tracking Service.

The Tracked Securities would not be held as part of a Participant's general free account and would not be considered eligible collateral in DTC's settlement system.

Although the SH Tracking Service was developed to address the specific concerns of Rule144A securities, in practice DTC envisions that it could be utilized for other types of securities for which the number or character of the beneficial owners requires some level of control.

### 3. Fees

In an effort to recover the costs of building the SH Tracking Service, DTC proposes the following fees to be added to its Fee Schedule:

- \$25,000 per CUSIP for SH Tracking Services
- \$5 per delivery and receive for Tracked Securities
- \$5 per receive and delivery for reclaims of Tracked Securities

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder as it allows for more efficient processing of transactions that are currently being effected outside of DTC by physical processing. Therefore, it will not adversely affect the safeguarding of funds or securities in DTC's custody and control or for which it is responsible.

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

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<sup>7</sup> 15 U.S.C. 78q-1.

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

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

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date 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 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-DTC-2008-11 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-DTC-2008-11. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. to 3:00 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at [http://www.dtcc.com/legal/rule\\_filings/dtc/2008.php](http://www.dtcc.com/legal/rule_filings/dtc/2008.php). 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 No. SR-DTC-2008-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).