

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49709; File No. SR-DTC-2004-03)

May 14, 2004

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Processing of Deliveries in DTC's Money Market Instrument Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on, March 18, 2004, 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 parties.

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

Under the proposed rule change, DTC would modify its procedures relating to how deliveries are processed in DTC's Money Market Instrument ("MMI") Program.

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 these statements.

¹ 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

Under DTC’s procedures applicable to MMI transactions, early on the maturity date (generally around 2:00 a.m.)² DTC initiates deliveries of maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the Issuing/Paying Agent (“IPA”). These transactions are processed as the equivalent of valued delivery orders (“DO”). The IPA can “refuse to pay” for maturing paper of a particular issuer by communicating that intention to DTC before 3:00 p.m. on the maturity date. DTC will inform all participants by broadcast message. DTC will then, among other things, reverse any completed maturity presentments by recrediting them to presenting participants.

The MMI procedures also provide for participants that are receivers of new MMI issuance DOs (e.g., custodian banks) to have until 3:30 p.m. to reclaim those DOs back to the IPA.³ Since the reclaim can be “matched” with a DO processed on the same day, the reclaim is permitted to bypass the Receiver Authorized Delivery (“RAD”) system and DTC’s risk management controls (e.g., net debit cap and collateral monitor) if the value of the DO is less than \$15 million.⁴

² All times are Eastern Standard Time.

³ Reclaims, or reclamations, are the means by which receivers can return erroneous deliveries.

⁴ RAD is a control mechanism that allows participants to review transactions prior to completion of processing and that limits participants’ exposure from misdirected or erroneously entered delivery orders. The bypassing of DTC’s risk management controls is designed to address industry concern that the receiver not be “stuck” with a delivery it should not have received because of DTC’s risk management controls.

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. IPAs have raised concerns about potentially having to fund an issuer's maturity at a level higher than anticipated at the time IPA decides not to exercise a "refusal to pay" because the IPA fails to receive the settlement credits associated with new issuance DOs that are reclaimed after 3:00 p.m. As a result, IPAs are forced to make "refusal to pay" decisions based on incomplete data and increases the exposure of an IPA to an individual issuer.

The proposed rule change would address these concerns by subjecting reclamations of all new MMI issuance DOs received after 2:30 p.m. to RAD controls and treating them as original transactions subject to DTC's normal risk management controls.⁵ To reduce the potential impact of the proposed change in the processing of reclaims received after 2:30 p.m., the proposed rule change would provide receivers of new issuance DOs with the option of having those deliveries made subject to RAD at 2:00 p.m. thereby giving these participants electing this option one-half hour to consider whether to accept or reject the DOs.⁶ While the cutoff for the Issuing/Paying agent

⁵ As a result, these post 2:30 p.m. reclamations will not be eligible for processing during the exclusive reclaim period (3:20 pm. to 3:30 p.m.) and may not be "re-reclaimed" by the receiver.

⁶ All new issuance DOs processed after 2:00 p.m. will automatically be subject to RAD unless the participant instructs DTC to the contrary. DTC participants may opt-out of forced RAD by completing the "Forced MMI RAD Election Form" and submitting it to their DTC relationship manager. The election form is available on DTC's website www.dtc.org as Attachment A to DTC Important Notice #5337. A participant that, at first, elected to opt out of the forced RAD functionality may opt back in by submitting a completed election form to its DTC relationship manager.

(“IPA”) to exercise its “refusal to pay” option will remain at 3:00 p.m., the proposed rule change clarifies that since under certain circumstances DTC may extend the 2:00 p.m. and 2:30 p.m. cutoffs referred to above, DTC may also extend the 3:00 p.m. cutoff.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act⁷ and the rules and regulations thereunder because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC’s risk management controls.

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

DTC perceives no impact on competition by reason of the proposed rule change.

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

The subject proposals were developed in consultation with participants in the MMI market and are included as recommendations in a Discussion Paper issued jointly by The Bond Market Association and The Depository Trust & Clearing Corporation on March 31, 2003. DTC advised participants of the proposed modifications in Important Notice 5337 (March 19, 2004).

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 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 DTC consents, the Commission will:

(A) by order approve such proposed rule change or

⁷ 15 U.S.C. 78q(b)(3)(A).

(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. Please include File Number SR-DTC-2004-03 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-2004-03. 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-2004-03 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).