

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50006; File No. SR-DTC-2004-03)

July 12, 2004

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

On March 18, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-DTC-2004-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the Federal Register on May 20, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of this filing is to allow DTC to modify its procedures relating to how deliveries are processed in DTC's Money Market Instrument ("MMI") Program. Under DTC's current procedures applicable to MMI transactions, early on the maturity date (generally around 2:00 a.m.)³ 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

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49709 (May 14, 2004), 69 FR 29155 (May 20, 2004).

³ All times are Eastern Standard Time.

the maturity date. DTC will inform all participants of the IPA's refusal to pay 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.⁴ 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.⁵

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 are subject to increased exposure to individual issuers

⁴ Reclaims, or reclamations, are the means by which receivers can return erroneous deliveries.

⁵ RAD is a control mechanism that allows participants to review transactions prior to completion of processing in order to limit participants' exposure from misdirected or erroneously entered DOs. 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.

The rule change addresses 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.⁶ To reduce the potential impact of the change in the processing of reclaims received after 2:30 p.m., the rule change provides 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 new issuance DOs.⁷ While the cutoff for the Issuing/Paying agent ("IPA") to exercise its "refusal to pay" option will remain at 3:00 p.m., the 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.

II. Discussion

Section 17A(b)(3)(F)⁸ of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By moving up

⁶ As a result, reclamations made after 2:30 p.m. 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.

⁷ 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 new completed election form to its DTC relationship manager.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

the cutoff for reclamations for new MMI issuance DOs, DTC's proposed rule change will enable IPAs to make more informed decisions on whether to provide credit for a particular issuer and therefore to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

III. 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.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-DTC-2004-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson
Assistant Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).