

July 21, 2005

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement of the SMART/Track Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on June 29, 2005, 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

DTC proposes to add a new Agency Lending Disclosure feature to its SMART/Track service. The new feature will enable securities agent lenders to disclose to securities borrowers information regarding the principal lenders of securities loans.

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.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

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

In 2003, the Commission approved a proposed rule change that allowed DTC to activate its Universal Hub (now known as SMART/Track) messaging service. The service was designed to provide participants with an automated, electronic mechanism to notify and to acknowledge stock loan recalls.³ In 2004, the Commission approved a second rule change that added a Corporate Action Liability Notification Service to SMART/Track. This addition provided participants with an automated, electronic mechanism to notify, acknowledge, and maintain corporate action liability information.⁴

In order to address the Commission's concerns about transparency in securities lending transactions, the Industry Agent Lending Task Force ("Task Force") recently released a proposal in that outlined how and what information agent lenders should disclose about the allocation of loans to broker-dealer borrowers.⁵ The disclosure proposal focused on the need for borrowers to be able to monitor their credit exposures and calculate their required regulatory capital charges on a principal-lender basis. Currently, borrowers do not always know the underlying counterparties or principal lenders on a loan-by-loan basis because agent lenders frequently reveal open securities loans at the gross level and not at the principal level. Without this information, borrowers cannot determine their credit exposure on any given day or calculate the applicable capital charges.

³ Securities Exchange Act Release No. 50029 (July 15, 2004), 69 FR 43870 (July 22, 2004) [File No. SR-DTC-2003-10].

⁴ Securities Exchange Act Release No. 50887 (Dec. 20, 2004), 69 FR 77802 (Dec. 28, 2004) [File No. SR-DTC-2004-11].

⁵ Refer to the Task Force's Website at www.agencylending.capco.com and [http://www.agencylending.capco.com/documents/Taskforce%20wide%20documents/Agent%20Lender%20Disclosure%20\(final%20final\).doc](http://www.agencylending.capco.com/documents/Taskforce%20wide%20documents/Agent%20Lender%20Disclosure%20(final%20final).doc).

The Task Force and its working groups have collaborated with the securities industry to identify the data that agent lenders should provide to enable borrowers to monitor their credit exposure and to calculate their capital requirements for securities executed under securities lending agreements. The Task Force asked DTC, in its role as an industry utility, to develop a central communications facility for the transmission of agency lending data between agent lenders and borrowers. DTC has actively participated in these efforts as a member of the Task Force's Infrastructure Working Group and has developed SMART/Track for Agency Lending Disclosure.⁶

SMART/Track for Agency Lending Disclosure will provide a communications interface between agent lenders and borrowers that will enable them to transmit periodic and daily files of principal lender data either through a vendor or directly to SMART/Track. By providing a single point of access, vendors, individual agent lenders, and borrowers will no longer have to build or maintain bilateral links to transmit loan information.

By transmitting agency lending data files, SMART/Track for Agency Lending Disclosure will essentially be acting as a "post office." That is, it will only validate the header and trailer of the files to verify that it can successfully deliver the file to the designated counterparty. DTC will not edit or validate the data contained within the files and will not be responsible for any such data.

SMART/Track will maintain and update a table that identifies the relationship between vendors and agent lenders and borrowers so that users will not have to keep track of the relationship between their counterparties and a vendor, if any. SMART/Track will also contain tools that will help users track the status of messages.

⁶ The SMART/Track for Agency Lending Disclosure Procedures are attached as Exhibit 5 to DTC's proposed rule filing.

In addition to providing a communications facility for transmitting periodic and daily files for loan data, the Task Force asked DTC to provide a mechanism to assign unique identifiers to those principal lenders that do not have U.S. tax identification numbers. While most principal lenders have a nine-digit U.S. tax identification number, there is a small universe of lenders that do not. SMART/Track will create and maintain a table of unique identifiers. Agent lenders and borrowers as well as vendors will be able to search the table to determine if DTC has assigned a unique identifier to a principal lender. If DTC has not previously assigned a unique identifier to a principal lender, agent lenders and borrowers will be able to request that DTC does so.

SMART/Track for Agency Lending Disclosure will be subject to DTC's general standard of liability for information services, which is responsibility for gross negligence and willful misconduct. Furthermore, although the service will be available primarily to DTC participants, agent lenders that are not DTC participants will be able to use SMART/Track for Agency Lending Disclosure by signing a user agreement.⁷

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote important disclosure relating to securities loans arranged by agent lenders and will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control of DTC.

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.

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The form user agreement is attached as Exhibit 2 to DTC's proposed rule filing.

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

DTC has discussed this rule change proposal with the Task Force, with which DTC has worked closely in developing the SMART/Track for Agency Lending Disclosure. 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁸ of the Act and Rule 19b-4(f)(4)⁹ thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. At any time within 60 days of the filing of such proposed 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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2005-06 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303. All submissions should refer to File Number SR-DTC-2005-06. 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, 100 F Street, NE, Washington, DC 20549. 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.dtc.org/impNtc/mor/index.html>. 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-2005-06 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).