

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52393; File No. SR-DTC-2005-12)

September 8, 2005

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Scope and Update the Description of the Security Position Reports Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on August 23, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change 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

The purpose of the proposed rule change is to clarify the scope and update the description of DTC’s Security Position Reports (“SPRs”) Service it provides to issuers, trustees, and authorized agents.<sup>2</sup>

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

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

<sup>2</sup> DTC Rule 2 (“Participants and Pledgees”), Section 1 authorizes DTC to provide to the issuer of any security at any time credited to the account of the participant the name of the participant and the amount of the issuer’s securities so credited. DTC is also authorized to provide similar information to any appropriate governmental authority.

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.<sup>3</sup>

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

SPRs are reports prepared by DTC that show for each issuer whose securities are eligible for DTC's book entry services the identity of each DTC participant having that issuer's securities credited to its participant account as of a selected date and the quantity of securities so credited (*i.e.*, "security position"). Prior to the creation of DTC, issuers had direct access to SPR information from their transfer agents. Now, most securities are registered with the transfer agent in the name of DTC's nominee, Cede & Co., and issuers rely on DTC to provide them with SPR information. DTC also provides SPR information to trustees and authorized third party agents ("TPAs"). These entities typically need SPR information provided by DTC in order to properly conduct proxy, record date, and voting rights-related functions.<sup>4</sup>

Several types of SPRs are available: (1) weekly reports showing daily closing positions during that week; (2) monthly reports showing closing positions on the last

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<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> In 1979, the Commission mandated that each clearing agency make SPRs available to issuers whose securities the clearing agency holds in its name or in the name of its nominee. Securities Exchange Act Release No. 16443 (December 28, 1979), 44 FR 76777. In 1989, a DTC rule change authorized DTC to provide SPRs to resolution and indenture trustees for debt obligations on deposit at DTC. Securities Exchange Act Release No. 27426 (November 7, 1989), 54 FR 47624 [File No. SR-DTC-89-20]. TPAs are also provided with such information as a result of their role in carrying out functions on behalf of issuers or trustees. DTC is modifying its SPR process to require all TPAs that receive SPR information to agree on an annual basis to only use such information for the benefit of the issuer or trustee. Implementation of this modification is targeted for year end 2005.

business day of the month; (3) quarterly dividend record date reports showing closing positions on the dividend record date; and (4) special requests showing closing positions for the date specified. Weekly reports, monthly reports, and quarterly dividend record date reports are available by annual subscription only. SPRs are available via Web browser from DTC's secure internet site, by spreadsheet, by fax, and by computer-to-computer facility ("CCF") transmission.<sup>5</sup> DTC charges a fee for each SPR and offers discounts for high volume SPR users.<sup>6</sup>

Issuers and trustees control their SPR account and authorize third party agent access to SPRs via DTC's secure internet site. After an issuer or trustee registers for the Web-based service, DTC validates the registrant's status as an issuer or trustee. Once the registration is approved by DTC, an issuer or trustee may use the Web-based application to order SPRs for itself, as well as designate TPAs that may request SPRs.<sup>7</sup> Additionally, DTC requires an annual confirmation by issuers and trustees of their SPR account registration information, including reconfirmation of third party authorizations.<sup>8</sup>

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<sup>5</sup> CCF transmission is generally available only to trustees and third parties and not to issuers because issuers typically do not maintain the required CCF application/connection to DTC.

<sup>6</sup> DTC bills the issuer or trustee for all SPR requests including those made by their TPAs.

<sup>7</sup> DTC is developing a system enhancement to allow issuers and trustees to limit the type of SPR information available to a particular TPA (e.g., weekly subscriptions only).

<sup>8</sup> To allow issuers to better monitor what reports were ordered by whom and their cost, DTC is developing an enhancement that will provide issuers with sixty days of historical activity.

Similarly, subscriptions must be renewed annually. Delivery of SPR information is terminated for those TPAs that are not reconfirmed by the issuer.

Upon a TPA's first use of the Web-based system on behalf of a particular issuer or trustee, DTC verifies the validity of the TPA's usage and sends an electronic request to the authorizing issuer or trustee asking for verification of the TPA's approval to receive SPRs. Once such approval is verified, the authorized TPA may directly request SPRs through the Web-based system.

In addition to the SPR program outlined above, DTC provides certain SPR type information, known as "call lottery results," to auction agents for auction rate securities ("ARS"). ARS are securities whose interest or dividend rate is reset periodically. The reset interest rate is produced in an auction that is governed by a set of auction procedures established by the issuer, trustee, and its auction agent. In a typical auction, the auction agent, among other things: (1) receives bids from holders indicating at what interest/dividend rate they are willing to continue to hold the ARS and/or instructions from holders to sell their ARS unless a rate minimum is established; (2) determines which bids are valid and can be used in calculating the new rate; and (3) calculates the new rate ("clearing rate") by determining the lowest interest/dividend rate at which there are purchasers willing to buy all ARS offered in the auction.

Some ARS also have a "call lottery" feature, allowing the issuer to redeem a portion of the outstanding ARS shortly before the auction. Because of the typically short time period between the call lottery and the auction, a holder may have submitted a bid

before learning his position was called in the lottery<sup>9</sup>. In order to maintain the integrity of the auction process for the benefit of all parties involved, auction agents need the call lottery results to determine which bids came from valid holders and which bids should be ignored because the position has been called. Absent receiving such call lottery information, an auction agent may erroneously set the clearing rate using bids that are invalid because they represent positions that have been called.

As with other SPRs, trustees must authorize DTC to provide call lottery results to the auction agent for that issue. Once authorized, the auction agent is considered a TPA consistent with the SPR program. Currently, the SPR process for call lottery results is manual. DTC is considering enhancements to its SPR system to incorporate ARS call lottery results in its Web-based application.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to DTC because it is designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by clarifying the SPR service which should promote efficiencies in the proxy, record date, and voting rights functions performed by issuers, trustees, and authorized agents.

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<sup>9</sup> Similarly, because of timing pressures, the call lottery results are typically provided even prior to settlement of the redemption.

<sup>10</sup> 15 U.S.C. 78q-1.

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

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

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

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of the 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

#### 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 Number SR-DTC-2005-12 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-2005-12. 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 the principal office of DTC and on DTC's Web site at

<https://login.dtcc.com/dtcorg/>. 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-2005-12 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.<sup>13</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).