

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52665; File No. SR-DTC-2005-16)

October 25, 2005

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Require Members To Purchase Shares of the Common Stock of The Depository Trust & Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on October 4, 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 this proposed rule change is to amend the rules of DTC to require that participants of DTC other than Limited Participants purchase shares of common stock of The Depository Trust & Clearing Corporation (“DTCC”).

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.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

(a) DTCC is a holding company for three registered clearing agencies: DTC, the National Securities Clearing Corporation ("NSCC"), and the Fixed Income Clearing Corporation ("FICC"). Pursuant to DTCC's current Shareholders Agreement ("Current Shareholders Agreement"), substantially all members and participants of DTC, NSCC, and FICC ("Participants") are entitled but are not required to purchase DTCC common shares. Participants are allocated an entitlement to purchase DTCC common shares on the basis of their relative use of the services of DTC, NSCC, and FICC. As of the last periodic allocation of share entitlements in 2003, approximately 1,100 Participants had a right to purchase DTCC common shares; however, only 190 Participants currently own any DTCC common shares and of these only 86 own DTCC common shares up to the full amounts of their share entitlements.

DTCC is currently soliciting the consent of its common shareholders to amend the Current Shareholders Agreement pursuant to which Participants of DTC, NSCC, and FICC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC would be required to purchase DTCC common shares ("Mandatory Purchaser Participants")³ in accordance with the terms of the Current Shareholders Agreement while preserving the right but not the obligation of other Participants that make only limited use of their services to purchase DTCC common shares ("Voluntary Purchaser Participants").⁴

³ Under the Proposed Shareholders Agreement, a Mandatory Purchaser Participant that is a Participant in more than one clearing agency will be required to purchase DTCC common shares based upon its relative use of the services of all clearing agencies of which it is a Participant.

⁴ The proposed DTCC Shareholders Agreement ("Proposed Shareholders Agreement") marked to show the proposed amendments is attached to the proposed rule change as Exhibit 3 and is available on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. The effective date of the Proposed Shareholders Agreement would be the later of (i) approval by DTCC common shareholders owning two-thirds of the outstanding DTCC common shares and (ii)

Holders of DTCC common shares are entitled to elect all of the directors of DTCC other than two directors that DTCC preferred shareholders are entitled to elect.⁵ DTCC common shareholders are entitled to vote on all other matters submitted to a vote of DTCC shareholders, and each DTCC common shareholder is entitled to one vote per DTCC common share. DTCC common shareholders are entitled to cumulate their votes for the election of directors. In addition, DTCC common shareholders are entitled to receive, when and if declared by the Board of Directors of DTCC, out of assets of DTCC dividends payable in cash or stock or otherwise. However, since DTC, NSCC, and FICC provide their services to their Participants on a cost-basis with revenues in excess of expenses and necessary reserves rebated or on a discounted basis, as a matter of policy and practice DTCC does not pay any dividends on DTCC common shares. The proposed amendments to the Current Shareholders Agreement will have no effect on these rights of DTCC common shareholders and preferred shareholders.

Pursuant to certain covenants in the Current Shareholders Agreement, a person elected a director of DTCC also serves as a director of each of DTC, NSCC, and FICC. The proposed changes in the Current Shareholders Agreement will have no effect on these covenants.

The system for allocating entitlements to purchase shares, which was incorporated into the Current Shareholders Agreement, was first implemented by DTC with respect to DTC

approval by the Commission of the proposed rule change and similar proposed rule changes being submitted by NSCC and FICC.

⁵ In connection with the 1999 integration of DTC and NSCC and formation of DTCC, the New York Stock Exchange (“NYSE”) and the National Association of Securities Dealers (“NASD”), the then coowners of NSCC, each received 10,000 DTCC preferred shares in exchange for their NSCC common stock. DTCC preferred shareholders have no right to vote on any matters submitted to a vote of DTCC shareholders except that each of the two DTCC preferred shareholders are entitled to elect one director. DTCC preferred shareholders have no right to receive any dividends. In the event of any liquidation, dissolution or winding up of the affairs of DTCC, DTCC preferred shareholders are entitled to a liquidation preference of \$300 per share of DTCC preferred stock.

common shares in 1973. At that time, the banks that were users of DTC's services purchased their DTC common shares directly but for logistical and other reasons the NYSE, the NASD and the American Stock Exchange ("AMEX") (collectively, the "Self-Regulatory Organizations") purchased the DTC common shares allocated to the broker-dealers that were members of the Self-Regulatory Organizations and users of the services of DTC. It was anticipated that over time as broker-dealers exercised their right to purchase DTC common shares, the number of DTC common shares held by broker-dealers directly would increase and the number of DTC common shares held by the Self-Regulatory Organizations would correspondingly decrease, potentially to zero, since the share entitlements of the Self-Regulatory Organizations were a function of the unexercised share entitlements of their members.

The Self-Regulatory Organizations, notwithstanding the passage of time and the opportunity afforded their members to purchase DTCC common shares, continue to hold a significant block of DTCC common shares. NYSE holds approximately 29% of the outstanding DTCC common shares, and the NASD and the AMEX each holds approximately 3.7%. Accordingly, a total of approximately 36.4% of the outstanding DTCC common shares are not held by Participants but rather are held in a representative capacity by the Self-Regulatory Organizations for broker-dealer Participants which have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. It is also the case that a significant number of Participants other than broker-dealers have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. Ownership of DTCC common shares (and previously ownership of DTC common shares) is not a financial investment but instead is a

vehicle for supporting each registered clearing agency and influencing its policies and operations through the election of directors.

By providing that all DTCC common shares are owned by Participants, DTC believes that these proposed rule changes and the proposed amendments to the Current Shareholders Agreement will guarantee that Participants continue to govern and control the activities of DTC, NSCC, and FICC, including the kinds and quality of services provided and the service fees charged. In particular, Participants will be in a position to assure that DTC, NSCC, and FICC continue the practices of establishing fees that are cost-based and use-based and of returning to Participants in the form of cash rebates or discounts revenues in excess of expenses and necessary reserves. Finally, because they introduce the greatest risks to the clearing agencies and obtain the greatest benefits from clearing agency services, it is appropriate to require those Participants making full use of the services of DTC, NSCC, or FICC to contribute to DTCC's capital through the purchase of its common shares.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to DTC because DTC believes the proposed changes to the Current Shareholders Agreement will assure fair representation of DTC's participants in the selection of DTC's directors and the administration of its affairs.

(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.

⁶ 15 U.S.C. 78q-1.

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

Written comments relating to the proposed rule change have not yet 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

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. Please include File Number SR-DTC-2005-16 in 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-2005-16. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, <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-2005-16 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.⁷

Jonathan G. Katz
Secretary

⁷ 17 CFR 200.30-3(a)(12).