

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53032; File No. SR-DTC-2005-19)

December 28, 2005

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on November 10, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on December 22, 2005, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4) thereunder<sup>3</sup> whereby the proposal was effective upon filing with the Commission. 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**

The proposed rule change will enhance DTC’s current SMART/Track service by adding an internet-based service called “SMART/Track for Buy-Ins.” The service will ultimately replace DTC’s existing buy-in service of its Participant Exchange (“PEX”) system and will provide additional features to enable users to track buy-in notices throughout their lifecycle.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

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.<sup>4</sup>

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

This rule filing will establish an internet-based buy-in service called "SMART/Track for Buy-Ins."<sup>5</sup> The service will ultimately replace DTC's current PEX platform and will be more user-friendly. It will provide real-time open buy-in information and will enable automated communication, warehousing, and tracking of various types of buy-in related notices that are required by the rules of other self-regulatory organizations ("SROs").<sup>6</sup> Through the service, users will be able to create and transmit notices, view notices they have received or sent, make changes to notices (if not yet transmitted) according to stated parameters, reject notices as

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<sup>4</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>5</sup> See DTC Important Notice B#8796 (Nov. 23, 2005) available online at [http://www.dtc.org/impNtc/ope/ope\\_8796.pdf](http://www.dtc.org/impNtc/ope/ope_8796.pdf). SMART/Track was established in 2004 and featured a stock loan recall notification service. Securities Exchange Act Release No. 50029 (July 15, 2004), 69 FR 43870 (July 22, 2004). DTC later added a corporate action liability notification service [Securities Exchange Act Release No. 50887 (Dec. 20, 2004), 69 FR 77802 (Dec. 28, 2004)] and an agency lending disclosure service to SMART/Track. [Securities Exchange Act Release No. 52104 (July 21, 2005), 70 FR 43730 (July 28, 2005)].

<sup>6</sup> E.g., New York Stock Exchange ("NYSE") Rule 282 and American Stock Exchange Rule 783. NYSE Rule 282 was recently amended to, among other things, eliminate the requirement for paper buy-in notices to permit electronic notices, including those from DTC. Securities Exchange Act Release No. 52842 (Nov. 28, 2005), 70 FR 72321 (Dec. 2, 2005) [File No. SR-NYSE-2005-50].

applicable, and search archives for active and aged notices. The service will have several features that will be implemented in phases.

The first phase of the service will be National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") buy-in execution notices. DTC participants will send these notices to CNS through SMART/Track. After CNS validates these notices (e.g. verifies certain details of the buy-in execution such as the quantity of the buy-in) the DTC participant that was bought-in will be notified of its liability through a SMART/Track notice.<sup>7</sup>

The second phase of the service will permit DTC participants to transmit CNS Notices of Intent to Buy-In and Buy-In Orders for processing. CNS will send notification to the DTC participant being bought-in of its potential liability through SMART/Track.

Notices pertaining to buy-ins other than CNS buy-ins ("non-CNS buy-ins")<sup>8</sup> and Municipal Securities Rulemaking Board ("MSRB") closeouts will be the final function implemented on SMART/Track. Users will be able to create and transmit to the designated counterparty buy-in intent notices and MSRB closeout notices through SMART/Track. Users receiving such buy-in notice or MSRB closeout notice will be able to accept or reject the notice online. The sender of such buy-in notice or MSRB closeout notice will be able to cancel a notice in any status, extend the delivery date, or change the quantity or amount.

Once fully implemented, the buy-in service will feature:

- Online cancellation and updating of a buy-in notice.
- Search and sort capability on any field in a buy-in notice.

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<sup>7</sup> Any notice or report received by participants through SMART/Track will be in addition to (and will not replace) any notices or reports currently being distributed to participants by their SRO with respect to their buy-in activity.

<sup>8</sup> Non-CNS buy-ins include NYSE, AMEX, NASD, and NSCC Balance-Order buy-ins.

- Audit trail with a complete record of actions taken regarding a notice, including time, date, and the person taking the action.
- Links to DTC systems to indicate if the security subject to a buy-in is undergoing a dividend or corporate action or has been chilled for delivery.
- Automatic archiving.
- Seven-year record retention that is easily available online.

SMART/Track for Buy-Ins is subject to DTC's gross negligence and willful misconduct standard of liability for information services.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by providing important and timely notifications relating to buy-ins between participant counterparties.

**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.

**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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>10</sup> of the Act and Rule 19b-4(f)(4)<sup>11</sup> thereunder because it effects a change in an existing service of

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<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(4).

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, as amended, 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 No. SR-DTC-2005-19 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-9303.

All submissions should refer to File No. SR-DTC-2005-19. 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,

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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 submission should refer to File No. SR-DTC-2005-19 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>12</sup>

Nancy M. Morris  
Secretary

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