

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53219; File No. SR-DTC-2005-21)

February 3, 2006

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Implement and Revise Fees Related to Non-Participant Services

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on December 20, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on December 20, 2005, January 23, 2006, and January 25, 2006,<sup>2</sup> amended the proposed rule change as described in Items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to (1) revise fees for special requests for Security Position Reports (“SPRs”) and for weekly, monthly, and quarterly dividend record date SPR subscriptions,<sup>3</sup> (2) revise existing fees for audit confirmations provided to issuers and their agents, and (3) implement new fees for (a) audit confirmations for certificates of deposit (“CDs”) provided to issuers and their agents and (b) access by transfer agents to DTC’s imaging database.

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

<sup>2</sup> The proposed rule change filing was amended twice on January 25, 2006.

<sup>3</sup> Weekly reports, monthly reports, and quarterly dividend record date reports are available by annual subscription only.

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.<sup>4</sup>

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

Fees for Issuance of Security Position Reports

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

DTC charges a fee for SPRs. Currently, the fee charged to issuers or trustees for weekly, monthly, and quarterly dividend record date SPR subscriptions is \$1,950, \$450, \$150, respectively. The fee charged to issuers or trustees for special requests is \$85. Under this filing, DTC formally seeks Commission approval of these fees. DTC incurs significantly higher costs for the production of special request SPRs relative to the costs of producing reports by subscription and because DTC has determined that a fee increase is necessary to more fully

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

recover costs associated with such production, DTC proposes to increase the fee charged to issuers or trustees for special request SPRs to \$120. The proposed increase will become effective on a date in the first quarter of 2006 to be announced by DTC upon the Commission's approval of this proposed rule change. The fees for weekly, monthly, and quarterly dividend record date SPR subscriptions will remain unchanged.

#### Fees Charged to Issuers/Agents

##### 1. Audit Confirmations

DTC receives frequent requests from issuers and/or their agents for confirmations of audit information relating to securities held by DTC. In connection with the processing of such requests for audit confirmations, DTC currently charges a fee of \$10.00 per request containing up to and including five CUSIPs and \$2.13 for each CUSIP beyond the fifth CUSIP. DTC also receives requests from issuers and/or their agents for confirmations relating to information concerning CDs deposited at DTC. A fee is not currently charged to process these CD audit confirmation requests. Providing issuers and/or their agents with audit confirmation information requires the allocation of significant resources to process the requests resulting in considerable cost to DTC. To more fully recover the costs associated with such audit confirmation processing, DTC proposes to (1) increase fees relating to processing of audit confirmations to \$22 per request for requests of up to and including five CUSIPs and an additional \$5.00 per item for each CUSIP beyond the fifth CUSIP and (2) implement fees for CD confirmation requests that are identical to those proposed for audit confirmation requests relating to securities. The proposed audit confirmation fees will be effective upon approval by the Commission.

## 2. Imaging

DTC frequently receives requests from transfer agents for access to DTC's security image database to obtain copies of certificates deposited at DTC. DTC incurs significant costs to maintain the database but currently does not charge transfer agents for access to the database. Therefore, in order to recover costs associated with this function, DTC proposes to implement a new subscription fee of \$350 per month for access to the DTC security image database. This fee will be effective upon approval by the Commission.<sup>5</sup>

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to DTC because it should provide for the equitable allocation of reasonable dues, fees, and other charges among the users of DTC's services.

### (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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<sup>5</sup> DTC has separately filed a proposed rule change (File No. SR-DTC-2005-22) with the Commission to impose a subscription fee in the same amount on participants who subscribe for access to the DTC security image database.

<sup>6</sup> 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 have not been solicited with respect to the proposed rule change, and none have been received.

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, 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 Number SR-DTC-2005-21 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 20549-1090.

All submissions should refer to File Number SR-DTC-2005-21. 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-2005-21 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>7</sup>

Nancy M. Morris  
Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

