

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003-28 and should be submitted by July 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48005; File No. SR-DTC-2002-16]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Enhancements to the Elective Dividend Service

June 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 22, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange 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

The proposed rule change enables foreign participants to receive dividend, interest, or principal payments in foreign currency directly from foreign issuers through DTC's Direct Payment Option ("DPO") of its Elective Dividend Service ("EDS") for DTC-eligible securities issued by foreign issuers that were not initially issued with the option of payment in either U.S. or foreign currency.

#### 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

Currently, DTC offers its participants the option of receiving a dividend, interest, or principal payment either in foreign currency (outside of DTC) or in U.S. dollars (within DTC) when the foreign currency option is included in the initial offering terms of the DTC-eligible issue.<sup>3</sup> For DTC-eligible securities issued by foreign issuers that are not initially issued with the option of payment in either U.S. or foreign currency, the issuer must arrange for payment to DTC in U.S. dollars through a U.S. transfer or paying agent. In order for a non-U.S. DTC participant that is organized and resides in the same foreign jurisdiction as the issuer to receive payment in its home country and in its home currency, it must withdraw the securities from DTC and arrange for processing of the foreign currency payment directly with the paying agent. In order to once again achieve the benefits of immobilization of the security after the payment is made, the participant must then

redeposit the certificate after payment has been made.

DTC believes that the physical movement of certificates solely to achieve payment in the currency of the foreign jurisdiction where the issuer and payee both reside presents to DTC participants various inefficiencies, cost, and risk such as the inefficiencies of handling physical securities and the associated risk of loss and the risk of currency fluctuation.

Under DTC's new rule, in order for an issue to be eligible for the DPO option (1) the issuer and transfer agent must agree to the arrangement (since the option has not been established at initial issuance) and (2) the issuer must certify that the income generated by the security is not U.S.-source income, in order to assure U.S. withholding tax requirements do not apply. Once an issue is eligible for the DPO option, the participant must elect to receive foreign currency directly from the issuer via DTC's EDS system, as is the case with issues that are currently eligible for foreign currency options established at initial instances. Similarly, the election will include the payment instructions to the issuer and payment/transfer agent to enable them to make payment directly to the non-U.S. participant outside of DTC.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>4</sup> and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by further immobilizing securities certificates and eliminating the need for customers to withdraw and redeposit physical securities in order to achieve payment outside of DTC.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

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

Written comments from DTC's participants or others have not been solicited or received on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> This service was first introduced in 1991. Securities Exchange Act Release No. 29144 (Apr. 30, 1991), 56 FR 21182 (May 7, 1991).

<sup>4</sup> 15 U.S.C. 78q-1.

of the Act and Securities Exchange Act Rule 19b-4(f)(4) because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in DTC's custody or control and does not significantly affect the respective rights or obligations of DTC or the persons using the service. 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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For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48007; File No. SR-DTC-2003-07]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Establish a Transaction Look-Ahead Process

June 10, 2003.

#### I. Introduction

On April 9, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2003-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on April 28, 2003.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of the proposed rule change is to establish a transaction look-ahead process ("Look-Ahead") which will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap.<sup>3</sup>

DTC's system controls prevent the processing of a transaction (*i.e.*, cause the transaction to recycle) when the deliverer has insufficient position or insufficient collateral, the receiver has insufficient collateral, or the processing of the transaction would cause the receiver's net debit cap to be breached. For purposes of these controls, each transaction is assessed individually without regard to offsetting transactions that might resolve any system control issue presented by the initial transaction itself.

In principle, a long series of back-to-back transactions could be blocked as a result of the first transaction failing. For example, if a transaction fails because of insufficient position, insufficient collateral, or breaching of the net debit cap, then a second transaction could fail because it is dependent on the first delivery to establish the necessary securities position, then a third could fail, and so on. This does in fact occur

quite often in the money market instrument ("MMI") market because of the large values involved when issuing/paying agents sell new commercial paper to broker-dealers who then make deliveries to custodians, who in turn have maturities of commercial paper awaiting acceptance by the issuing/paying agents.

DTC plans to introduce Look-Ahead in June. Look-Ahead will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap. Look-Ahead will identify receive transactions pending due to a net debit cap insufficiency and will link them to offsetting delivery transactions in the same security pending for a quantity deficiency. DTC will calculate the net effect of the offsetting transactions on the three participants involved, and if the net of the transactions results in positive risk management controls in all three accounts, the transactions will be completed. Initially, this capability will be available only for muni and corporate bonds, including MMIs where it is expected to have the widest application.

As a result of Look-Ahead, the number of recycling transactions should be reduced which could also reduce the need for intraday funding by participants. Participants will not be required to make systemic changes and can continue to process their deliveries as they do today.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>4</sup> The Commission finds that DTC's proposed rule change is consistent with this requirement because by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap, the proposed rule change should reduce the number of blocked transactions at DTC which will promote the prompt and accurate clearance and settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

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

<sup>2</sup> Securities Exchange Act Release No. 47709 (April 21, 2003), 68 FR 22432.

<sup>3</sup> The net debit cap, based upon the activity of the participant, is the maximum amount a participant may owe for transactions. Currently, the maximum allowable net debit cap is \$1.8 billion per participant.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 17 CFR 200.30-3(a)(12).