

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received by the Exchange on this proposal, as amended.

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

Within 35 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 90 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 Exchange 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-Amex-2005-033 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-033. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2005-033 and should be submitted on or before June 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51675; File No. SR-DTC-2005-03]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Collection of Fees for Services Provided by Other Entities**

May 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 26, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("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 would amend DTC's rules to allow DTC to collect fees for services provided by unregulated subsidiaries of The Depository Trust and Clearing Corporation ("DTCC") and by other entities.

#### **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 such statements.<sup>2</sup>

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

DTC is a subsidiary of DTCC. Participants of DTC and their affiliates may from time to time utilize the services of DTCC subsidiaries that are not registered as clearing agencies with the Commission. Such subsidiaries include Global Asset Solutions LLC and DTCC Deriv/Serv LLC. In addition,

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

participants of DTC and their affiliates may utilize the services of other third parties. DTC has determined that it would be more efficient and less costly if the fees that members agree to pay for such services were collected by DTC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of DTCC and third party that is not a registered clearing agency.

DTC's rules currently allow for fee collection arrangements with respect to collection of fees from participants. The proposed rule change would further clarify this practice and facilitate collection of fees with respect to affiliates of participants. DTC will enter into appropriate agreements with such subsidiaries and others regarding the collection of fees.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because DTC will implement this service in a manner whereby DTC will be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

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

DTC does not believe that the proposed rule change would 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 been solicited or 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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2005-03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-DTC-2005-03. 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, 450 Fifth Street, NW., 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 <http://www.dtc.com>. 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-2005-03 and should be submitted on or before June 3, 2005. For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51666; File No. SR-ISE-2003-07]

**Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Amendment Nos. 2, 3, 4, and 5 Thereto Relating to the Pricing of Block and Facilitation Trades**

May 9, 2005.

**I. Introduction**

On February 25, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the entry and execution of block and facilitation trades at the midpoint between the standard trading increments. On December 18, 2003, the ISE amended the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on January 20, 2004.<sup>3</sup>

The Commission received two comment letters in response to the proposed rule change, which were submitted by the Boston Stock Exchange and its wholly-owned subsidiary, Boston Options Exchange Regulation (collectively, "BSE"),<sup>4</sup> and the Chicago Board Options Exchange, Incorporated ("CBOE").<sup>5</sup> The ISE submitted a letter in response to the BSE Letter on March 4, 2004.<sup>6</sup> Also, on March 4, 2004, the ISE filed Amendment No. 2 to the proposed rule change.<sup>7</sup> On March 24, 2004, the

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 49056 (January 12, 2004), 69 FR 2798.

<sup>4</sup> See Letter from Glenn Verdi, Chief Regulatory Officer, Boston Options Exchange Regulation, to Jonathan G. Katz, Secretary, Commission, dated February 26, 2004 ("BSE Letter").

<sup>5</sup> See E-mail from Steve Youhn, CBOE, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, and Ira Brandriss, Assistant Director, Division, Commission, dated April 26, 2005 ("CBOE Letter").

<sup>6</sup> See Letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated March 4, 2004.

<sup>7</sup> In Amendment No. 2, the ISE revised the text of the proposed rule change to remove language relating to the ISE's Solicited Order Mechanism. This language, however, was reinserted in Amendment No. 4 because the Commission had approved the ISE's Solicited Order Mechanism. See Securities Exchange Act Release No. 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (SR-ISE-2001-22).