

PBOT under the Vendor/Subvendor Agreement. This credit is also currently given to vendors paying the Enterprise License Fee.

Phlx proposes to eliminate the ability to access the market data on a "snapshot" basis and consequently proposes to eliminate the snapshot data fee, effective January 1, 2008. The Exchange states that only a few vendors currently elect to use snapshot data. Consequently, PBOT seeks to eliminate the associated operational and accounting expenses of administering the snapshot data fee. Phlx is also proposing to eliminate the applicability of the 15% Administrative Fee credit to market data vendors paying the Enterprise License Fee.

### III. Discussion

After careful consideration, the Commission finds that the amended proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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. The Commission also finds that the proposal is consistent with section 6(b)(4) of the Act,<sup>14</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission also continues to believe that PBOT's MDDN fee structure is consistent with Rule 603 under the Act<sup>15</sup> regarding the distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

The Commission believes that the Exchange's proposal to eliminate snapshot requests for index value data and the associated fee is consistent with the Act. The Exchange makes available the same market data through other means, and, in the absence of a compelling regulatory concern, it is a

reasonable exercise of the Exchange's business judgment to choose the means of delivery of this data.

With respect to Phlx's proposal to eliminate the applicability of the Administrative Fee credit to vendors electing to pay the Enterprise License Fee, the Commission believes that the rule change is reasonable. The Exchange represents that, unlike vendors electing to receive market data pursuant to the device fee, vendors electing to receive market data pursuant to the Enterprise License Fee are not required to bear the same ongoing administrative expenses. In particular, vendors paying the device fee must prepare and deliver to PBOT a detailed monthly accounting and report of Devices. By contrast, a vendor paying the Enterprise License Fee is required only to submit an initial certification, and must notify PBOT of any changes to its qualification, but has no requirement to submit any on-going accounting to PBOT.<sup>16</sup> Thus, the administrative costs to a firm associated with monitoring its ongoing eligibility for the Enterprise License Fee should be substantially less than the administrative costs to a vendor subject to the device fee.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Phlx-2007-75), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57071; File No. SR-DTC-2007-15]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Stock Loan and Repurchase Processing

December 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 7, 2007, 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. 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)<sup>3</sup> thereunder so that 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

Under the proposed rule change, DTC will provide participants using DTC's Stock Loan REPO Adjustment Menu ("SLRM") system with new warning messages advising participants if any corrective action is needed to complete their stock loan or repurchase transaction.

#### 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>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 17 CFR 242.603.

<sup>16</sup> The Exchange notes that several large vendors are currently paying the Enterprise License Fee. To be eligible for the Enterprise License Fee, a vendor must certify to PBOT that it qualifies for the Enterprise License Fee, including that market distribution is predominantly to non-professional users, and must immediately notify PBOT if it can no longer certify its qualification.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<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).

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

Prior to this rule change, DTC's SLRM system did not validate the reason code used to reclaim a stock loan or repurchase ("repo") transaction. DTC participants have stated that the majority of errors associated with this process arose when the wrong reason code was used by counterparties.

To reduce the frequency of these errors and the associated burden of correcting them, DTC is modifying its system by providing warning messages that advise a participant that a transaction will be rejected due to an incorrect reason code for reclaiming these items. As a result, users will be prompted to correct the reason code. In addition, if a participant that is to return the stock of a loan or repo transaction does not have sufficient inventory in its DTC deliverer/CUSIP/contra account to cover the return, it will receive a notification advising that an insufficient position exists so that it can take corrective action. Finally, if there is an open repo position for the same major/ contra/CUSIP in DTC's system, a new warning message will be displayed stating that an open repo position for the contra/CUSIP exists.

A new help screen will be displayed in SLRM to guide users when they submit a stock loan or repo transaction. The screen will describe the impact that a given action will have on the originator's stock loan or repo account and the related dividend payment. Also, the SLRM summary screen will be modified to list outstanding adjustments for a period of twenty business days instead of the current five business days. This will give participants more time to react to open stock loan or repo items so that they may be reconciled in a more timely fashion.

Proposed system changes will necessitate revisions to existing DTC Service Guides.<sup>4</sup>

DTC states that the proposed rule change is consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC as it allows for more efficient processing of certain transactions and will not adversely affect the safeguarding of funds or securities in DTC's custody and 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 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*

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

**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>6</sup> of the Act and Rule 19b-4(f)(4)<sup>7</sup> thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 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.

**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 No. SR-DTC-2007-15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2007-15. 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 Room, 450 Fifth Street, NW., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-15 and should be submitted on or before January 28, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>8</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>4</sup> The affected section of DTC's Guide is attached as Exhibit 5 to DTC's rule filing.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).