

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38561; File No. SR-DTC-97-01]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Implementing the Dividend Processing Phase of the Custody Service for Non-depository Eligible Securities

April 30, 1997.

On January 23, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-97-01) 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 March 3, 1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change implements the third phase of DTC's custody service to offer to its participants dividend processing services for certain non-depository eligible securities.<sup>3</sup> In connection with the new service, DTC will announce, collect, and distribute dividend, interest, periodic principal, and other distributions ("dividend payments") to participants that hold securities through DTC's custody service ("custody issues").

To facilitate the collection of dividends on custody issues and to permit the book-entry movement of securities when a customer wishes to move its account from one participant to another, DTC proposes to register certificates held in its custody service in a second nominee name, DTC & Co., when requested to do so by a participant.<sup>4</sup> Such registration is

necessary so DTC under its nominee name DTC & Co. can collect dividend payments relating to custody issues directly from paying agents.<sup>5</sup> Without such registration, paying agents would disburse individual dividend payments for the custody issues directly to the participant or participants' customer instead of to DTC.

#### II. Discussion

Section 17A(b)(3)(F)<sup>6</sup> of the Act provides that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because implementation of the dividend processing phase should increase the use of the custody service by holders of custody issues. This increase should result in more securities being held at the depository facilities of a registered clearing agency, DTC, and being subject to DTC's safekeeping procedures. Furthermore, because certificates held through the custody service must be registered in DTC's second nominee name, DTC & Co, to be eligible for dividend processing, such registration will permit the book-entry movement of custody issues if a customer wishes to move its position from one participant to another. Accordingly, the dividend processing feature should help to reduce the processing of physical certificates and therefore reduce the associated risks.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-97-01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

<sup>6</sup> 15 USC 78q-1(b)(3)(F).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38564; File No. SR-DTC-96-22]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

April 30, 1997.

On December 4, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-96-22) 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 March 5, 1997.<sup>2</sup> The Commission received one comment letter in response to the filing.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change amends DTC's charge back and return of funds policies to shorten from ten business days to one business day after the payable date the period within which a paying agent can request that DTC return principal and income ("P&I") payments that have been allocated to participants.<sup>4</sup> The rule change also amends the procedure so if an agent requests the return of a P&I payment more than one business day after a payable date, DTC will work with the agent and participant to resolve the matter; but DTC will not return the allocated payments without the participant's consent.

Under its previous procedures,<sup>5</sup> if the paying agent notified DTC in writing

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

<sup>2</sup> Securities Exchange Act Release No. 38340 (February 26, 1997), 62 FR 10104.

<sup>3</sup> Letter from Thomas S. Dillon, Chairman, PSA Corporate Bond Operations Committee (March 26, 1997).

<sup>4</sup> Although the rule change reduces the time within which a paying agent can request a reversal of allocated funds from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable date ("P+1"), DTC would likely notify its participants on the morning of the following business day ("P+2"). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participants' daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation with Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC (December 18, 1996).

<sup>5</sup> For a complete description of the procedures relating to DTC's procedures, refer to Securities

<sup>1</sup> 15 USC 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 38323 (February 21, 1997), 62 FR 9473.

<sup>3</sup> For a more detailed description of DTC's custody service, refer to Securities Exchange Act Release No. 37314 (June 14, 1996), 61 FR 29158 [File No. SR-DTC-96-08] (order approving a proposed rule change establishing custody service) ("June approval order").

<sup>4</sup> In the June approval order, the Commission noted that securities certificates will be held in customer or firm name only and would not be transferred into DTC's nominee name utilized for regular depository eligible securities, Cede & Co. Although the basic custody service and the redemption and reorganization services phases do not require custody issues to be registered in the new DTC nominee name, participants wishing to use the dividend processing feature of the custody service for custody issues must have such custody issues registered in DTC's new nominee name of DTC & Co.

within ten business days of a payable date that an issuer failed to provide the paying agent with sufficient funds to cover the payments or that an issuer was bankrupt,<sup>6</sup> DTC would return P&I payments to the paying agent after the funds had been credited to the accounts of DTC participants.<sup>7</sup> However, PSA The Bond Market Trade Association ("PSA") expressed concern with the previous procedures and the associated risk of loss placed upon DTC participants in the event a payment was returned to a paying agent.<sup>8</sup> In response, DTC convened a joint working group of paying agents, PSA representatives, and other interested parties.<sup>9</sup> In October 1996, the working group concluded that DTC should reduce the period within which DTC will return funds to paying agents from ten business days to one business day. DTC concurred with the working group's recommendation and has amended its procedures accordingly.

## II. Comment Letter

The Commission received one comment letter in response to DTC's notice of a proposed rule change.<sup>10</sup> The commenter strongly supports the rule change and believes that the rule change will make significant progress toward achieving finality of payment that it believes the market expects. The commenter also noted that DTC's previous policy was inconsistent with

Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR-DTC-86-03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR-DTC-86-04] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR-DTC-88-17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back procedures apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR-DTC-95-03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

<sup>6</sup> DTC's procedures also allows DTC to return previously credited payments due to an error by the paying agent upon written request from a paying agent within ten business days of the payable date. The rule change does not alter this portion of DTC's procedures.

<sup>7</sup> The return of P&I payments to paying agents after the funds have been credited to the accounts of DTC participants is commonly referred to as a "clawback."

<sup>8</sup> Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

<sup>9</sup> The working group is composed of representatives from the Corporate Trust Advisory Board of the American Bankers Association, the Bank Depository User Group, the Corporate Trust Advisory Committee of the Corporate Fiduciaries Association of New York City, the New York Clearing House—Securities Committee, PSA, the Securities Industry Association, and DTC.

<sup>10</sup> *Supra* note 2.

market perceptions regarding the finality of DTC payments and contrary to widely accepted payment principles favoring finality.

## III. Discussion

Section 17A(b)(3)(F)<sup>11</sup> of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's rule change is consistent with DTC's obligations under the Act because the amended procedures should finalize P&I payments sooner which should reduce the uncertainty and potential risk of loss DTC's previous procedures placed on its participants.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-96-22) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38567; File No. SR-NYSE-97-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Consisting of an Information Memo Relating to Electronic Delivery of Information to Customers by Exchange Members and Member Organizations

May 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 24, 1997<sup>2</sup> the New York Stock

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

<sup>2</sup> On April 24, 1997, the NYSE amended the Information Memo, attached as Exhibit A to this notice. See letter from James E. Buck, Senior Vice

Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. 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 Exchange has filed with the Commission an Information Memo ("Memo") setting forth the Exchange's policy regarding electronic delivery of information required under Exchange rules to be furnished to customers.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Commission, in Release Nos. 34-37182<sup>3</sup> and 33-7233,<sup>4</sup> set forth standards whereby broker-dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media provided that they comply with certain prescribed standards.

The Information Memo (attached as Exhibit A to this notice) establishes Exchange policy regarding electronic

President and Secretary, NYSE, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 24, 1997.

<sup>3</sup> See, Securities Exchange Act Release No. 37182, May 9, 1996; 61 FR 24644, May 15, 1996, (Commission's interpretation concerning the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Act and the rules thereunder).

<sup>4</sup> See, Securities Act Release No. 7233, Oct. 6, 1995; 60 FR 53458, Oct. 13, 1995, (Commission's interpretation concerning the use of electronic media as a means of delivering information required to be disseminated pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940).