

change to the Plan to eliminate the special right of review of CSE rule changes is reasonable and consistent with the Act because it will eliminate an unfair and anti-competitive burden on the CSE.

The Commission also finds that the additional, technical amendments to the Plan provided in the proposal are reasonable and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,¹¹ that the amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-28170 Filed 10-20-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40552; SR-DTC-98-16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of a Proposed Rule Change Modifying the Initial Public Offering Tracking System

October 14, 1998

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 19, 1998, 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 from interested persons on the proposed rule change.

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

Under the proposed rule change, DTC will modify its Initial Public Offering ("IPO") tracking system. Specifically, DTC will process resales by institutional customers of shares in new issues that are being tracked through the IPO tracking system without first determining the identity of the syndicate members that distributed the shares being resold. In addition, DTC will begin to fill stock loans of shares in new issues with shares purchased in the

secondary market prior to using shares received in the initial distribution.²

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.³

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

1. Resales of IPO Shares by Institutions

The IPO tracking system⁴ allows lead managers of new issues to monitor "flipping"⁵ of shares in new issues that are distributed by book-entry through DTC rather than by use of certificates. When a lead manager in an IPO notifies DTC of its decision to use the IPO tracking system, the system establishes a database of information about the customers who purchased the IPO shares ("IPO database"). Before DTC processes a resale of IPO shares, the redelivering participant is required to provide information about its customer which is then compared with the customer detail in the IPO database so that DTC can determine and report to the lead manager the identity of the syndicate member(s) whose customer has resold IPO shares.

When IPO shares are sold by a retail customer, the customer detail used is

² DTC has prepared written procedures concerning resales by institutions and stock loans to implement the proposed rule change. The complete text of these procedures is attached as Exhibit 2 to DTC's filing, which is available for inspection and copying at the Commission's public reference room and through DTC.

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ For a detailed description of the IPO tracking system, refer to Securities Exchange Act Release No. 37208 (May 13, 1996) (order approving proposed rule change).

⁵ Flipping occurs when a syndicate's lead manager is supporting an IPO with a stabilization bid (i.e., the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping below its initial offering price), and shares in the IPO that had been distributed to investors are resold by those investors in the secondary market to a syndicate member. The lead manager may wish to identify flipped transactions so that underwriting concessions (i.e., the discount from the offering price received by syndicate members) can be recovered from the appropriate syndicate members.

normally provided by the same participant that populated the IPO database (i.e., the syndicate member). Therefore, it is unlikely for the processing of a resale of IPO shares to be delayed because of a failure to match the identity of the reselling customer with any of the customers included in the IPO database.

When the IPO shares are distributed to an institutional customer, the syndicate member making the distribution is rarely the same participant that acts as an institution's agent for settlement. As a result, before DTC will process an institutional customer's resale of IPO shares, the IPO tracking system must match customer detail provided by the redelivering participant (i.e., the institution's agent) with customer detail included in the IPO database by the syndicate member.

DTC believes that many redeliveries of IPO shares for institutional customers during the period from three days prior to closing to three days after closing are not being processed efficiently because the customer detail provided by the institution's agent does not match any customer in the IPO database.⁶ Usually, a mismatch occurs because incorrect customer account information (e.g., missing digits or transposed characters) was entered into the IPO database and does not match the customer account information entered by the reselling institution's agent.⁷ A failure to match may also occur when on the day an issue closes an institution's agent attempts to redeliver IPO shares that were not distributed to its participant account until late in the processing day.⁸

Therefore, DTC is proposing to process resales by institutional customers of shares in new issues that are being tracked through the IPO tracking system without first determining the identity of syndicate members that distributed the shares being resold. DTC intends for the

⁶ Because shares in new issues can be traded on a when-issued basis, the IPO tracking system allows participants to enter redeliveries of IPO shares as early as three business days prior to the date the issue closes and is distributed through the depository.

⁷ In order for processing of the redelivery to be effected in a timely manner, the institution's agent must immediately react to the mismatch either by reclaiming the IPO shares to the syndicate member that distributed the shares to the institution and requesting that the customer account information be corrected or by making adjustments to the IPO database itself.

⁸ Ordinarily, assuming the agent has sufficient position in an issue, the redelivery would be effected. However, if an issue is being tracked, the redelivery will fail because account information relating to its reselling institutional customer is not yet resident in the IPO database.

¹¹ 15 U.S.C. 78k-1(a)(3)(B).

¹² CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

proposed rule change to eliminate inefficiencies in the IPO tracking system that may unnecessarily cause redeliveries of IPO shares to fail. DTC believes that even with the proposed modification, a lead manager should in most cases be able to determine the identity of the syndicate member(s) whose institutional customer has resold IPO shares.⁹

2. Stock Loans

Currently, when a participant that has received a distribution of shares in an issue that is being tracked makes a stock loan in that issue, the system attempts to fulfill that delivery by first using shares received during the initial distribution. DTC then reports these transactions to the lead manager. Under the proposed rule change, DTC will attempt to satisfy the stock loan by first using the lending participant's "secondary market shares" (i.e., shares previously reported to the lead manager as having been "flipped" or shares purchased by the participant in the secondary market). As a result, stock loan transactions will not be reported to the lead manager to the extent that they are processed using secondary market shares. The purpose of this proposal is simply to eliminate unnecessary reporting.

DTC believes that the proposed rule change is consistent with Section 17A of the Act¹⁰ and the rules and regulations thereunder because it will eliminate inefficiencies in the system. In addition, DTC believes that the availability of the IPO tracking system reduces the costs, risks, and delays associated with the physical delivery of certificates.

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

DTC does not believe that the proposed rule change will impose any burden on competition 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

The proposed rule change is supported by the IPO Tracking Industry Working Group, an industry group representing underwriters and custodian banks that meets monthly with DTC to discuss the operation of the IPO tracking system.

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 DTC 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 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. 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. All submissions should refer to File No. SR-DTC-98-16 and should be submitted by November 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-28169 Filed 10-20-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40549; File No. SR-NSCC-98-11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change to Modify NSCC's Rules Regarding Its Mutual Fund Services Transfer Service

October 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ notice is hereby given that on July 30, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-11) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 will modify NSCC's procedures regarding its Mutual Fund Services transfer service.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The proposed rule change will modify NSCC's rules regarding its Mutual Fund Services transfer service. The Mutual Fund Services transfer service enables fund members and mutual fund processors to transfer between each other the value of Fund/Serv eligible mutual fund shares or UIT units on an automated basis.

The proposed rule change will enable NSCC to implement a request by a users

⁹ DTC has informed the Commission that the IPO tracking system will continue to try to determine the identity of the syndicate members whose institutional customer has resold IPO shares.

¹⁰ 15 U.S.C. 78q-1.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries submitted by NSCC.