

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52524; No. SR-DTC-2005-10)

September 28, 2005

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Procedures Relating to the Destruction of Certain Non-Transferable Securities Certificates that Are Held in DTC's Internal Removal Account Known as PREM

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 18, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC has filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The purpose of this rule filing is to clarify certain procedures with respect to an earlier filing submitted by DTC and approved by the Commission that allowed DTC to destroy certain non-transferable securities certificates.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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 these statements.

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

The purpose of this rule filing is to clarify certain procedures pertaining to the previously approved File No. SR-DTC-2003-09.⁵ In File No. SR-DTC-2003-09, DTC proposed a new service designed to allow DTC to destroy certain certificates representing positions in securities for which transfer agent services are no longer available (“non-transferable certificates”). At the time of the original filing, DTC held 1.2 million such certificates, representing nearly 22% of DTC’s entire certificate inventory. DTC instituted the Destruction of Non-Transferable Securities Certificates Program (“Program”) in order to eliminate the significant risks and costs associated with the ongoing maintenance of custody, control, and audit of these non-transferable certificates.

Prior to instituting the Program, many participants used DTC’s Position Removal (“PREM”) function to have positions in issues of non-transferable certificates moved from their participant accounts to a DTC internal PREM account. However, the certificates representing those positions were still held in DTC’s vaults with all the risks and costs associated with storing such certificates, maintaining the related accounts, and monitoring the status of such issues. Under the Program, DTC extended the PREM process by indicating that using PREM to move a position constituted an acknowledgement by the participant that DTC could cease crediting the security to the participant’s securities account and that DTC could at its option

⁵ Securities Exchange Act Release No. 49930 (June 28, 2004), 69 FR 41003 (July 7, 2004).

and based upon its own criteria include the certificates underlying the position in a certificate destruction program.

In File No. DTC-2003-09, DTC indicated that it would implement the Program “beginning first with issues in which all participant positions have been put in PREM.” However, the Commission’s approval order of File No. DTC-2003-09 stated that “DTC will implement this new program with issues in which all participant positions have been moved to PREM.” DTC’s intent in the original filing was to start the Program with fully PREMed issues but to thereafter continue with those issues which had not been fully PREMed. The purpose of the present filing is to clarify this point and to make clear that DTC did not in File No. DTC-2003-09 intend that in the future it would be a prerequisite for the destruction of a particular issue of non-transferable certificates that every participant must have moved their respective positions in that issue to a PREM account. DTC wishes to make clear that it may destroy any non-transferable certificates for which the positions have been PREMed even if all participants have not yet moved their positions into PREM. DTC will maintain a certificate or certificates representing those positions that have not yet been entered into PREM. DTC has no intention of clarifying or modifying any other part of File No. DTC-2003-09 with this filing.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the change is designed to facilitate the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, and the safeguarding of securities and funds.

(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 that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(f)(1)⁷ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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, 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. Please include File Number SR-DTC-2005-

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303. All submissions should refer to File Number SR-DTC-2005-10. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at www.DTCC.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-2005-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz
Secretary

⁸ 17 CFR 200.30-3(a)(12).