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By the Commission.  
Margaret H. McFarland,  
*Deputy Secretary.*  
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[Release No. 34-38007; File No. SR-DTC-96-21]

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Reversal of Reclamations by Issuing and Paying Agents**

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 5, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-96-21) 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 purpose of the proposed rule change is to put in place a new service which will allow for Issuing and Paying Agents ("IPA") to direct DTC to reverse all matched reclamations for a particular program made after 3:00 p.m. which are attributable to issuer failure.

**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 that 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 filed the proposed rule change because it has identified a substantial potential risk to IPAs in connection with money market instruments ("MMIs") which DTC wants to eliminate as soon as possible. The risk is brought about by the interplay between two different services available to DTC participants which were developed in order to serve two different functions.

Under DTC's MMI program, IPAs act as agents for MMI issuers. As such, IPAs issue MMIs on the issuers' behalf, and DTC automatically processes income and maturity payments to the IPAs' accounts. Both the credits generated from the issuances and the debits generated from income and maturity payments are netted into the IPA's DTC settlement obligation. An IPA may issue MMIs and make periodic payments of income, redemption, or other proceeds on MMIs upon presentation throughout the day while also being able to reverse transactions for a particular program in the event of the "issuer failure" by giving notice to DTC by 3:00 p.m. of the IPA's "refusal to pay."

This reversal mechanism is designed to make the MMI market more efficient by allowing IPAs to make issuances and payments with respect to a particular MMI program throughout the day while still affording the IPAs the protection of being able to reverse these transactions until 3:00 p.m. in the event that it becomes apparent that the issuer will be unable to honor its obligations under the particular program due to insolvency of default under a particular program.<sup>3</sup> If this mechanism were not in place, IPAs would have to wait until they had received funds from the issuers before making any payments or be at risk for the funds they had distributed throughout the day. In such a case, credits for payments on the MMIs would not be available to be used throughout the day by participants having positions in the MMIs as is currently the case.<sup>4</sup>

In anticipation of the conversion to the same day funds settlement ("SDFS"), DTC implemented a new processing schedule. As part of the new

processing schedule, DTC introduced an extended reclamation period that allowed participants to process reclaims of deliveries until 3:30 p.m.<sup>5</sup> The reclamation procedure is designed to provide the recipient of a delivery with the opportunity to reject the delivery.

The potential risk to IPAs comes about in the situation where information regarding an issuer's insolvency becomes available after the 3:00 p.m. refusal to pay deadline but before the end of the reclamation period at approximately 3:30 p.m. Under these circumstances, participants could unwind through the reclamation process issuances previously made by the IPA. However, the IPA would be unable to unwind income and maturity payments since these transactions can only be unwound through the refusal to pay procedure. As a result, an IPA's settlement balance would be debited by an amount equal to the reclaimed issuances. Depending upon the settlement procedures in place between the issuer and the IPA, this situation could result in a direct exposure to the IPA.

The proposed rule change is designed to restore the IPA's refusal to pay opportunity with respect to reclamations made to its account between 3:00 p.m. and the end of the reclamation period. The proposed rule change will allow IPAs to instruct DTC to reverse those reclaims that are processed after 3:00 p.m. in the event that the IPA believes the reclaims are associated with the issuer's insolvency. The IPA will be able to request the reversal of these reclamations by giving DTC oral notice within fifteen minutes after the end of the reclamation period. Subsequently, the IPA will be required to provide DTC within thirty minutes after the end of the reclamation period with written notice on the basis of which DTC could treat the issuer as insolvent under its rules.<sup>6</sup> A copy of the

<sup>5</sup> The end of the reclamation period is approximately 3:30, but this deadline may vary slightly depending upon the timing of the release of other DTC controls.

<sup>6</sup> DTC's Rule 12 which governs insolvency provides: "An issuer of MMI securities subject of any transaction in the MMI Program shall be treated by [DTC] in all respects as insolvent in the event that the issuer is determined to be insolvent by any agency which regulates such issuer or in the event of the entry of a decree or order by a court having jurisdiction in the premises adjudging the issuer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the issuer under the Federal Bankruptcy Code or any other applicable Federal or State law or appointing a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the issuer or of any substantial part of its property, or ordering the winding up or liquidation of its affairs or the institution by the issuer of proceedings to be

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> The Commission has modified the text of the summaries submitted by DTC.

<sup>3</sup> The "refusal to pay" deadline was set at 3:00 p.m. by the industry during the period when deliveries of MMIs were made physically.

<sup>4</sup> Currently, throughout the processing day a participant is allowed to use all payment credits it has received that day in connection with MMI programs, other than the single largest net payment, in order to meet its net debit cap and collateral monitor requirements.

IPAs written notice would then be provided to all participants.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will eliminate risks to IPAs present in the existing system and will therefore promote a more efficient marketplace. DTC believes that this new service will not affect the safeguarding of securities and funds in DTC's 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 will impact or impose a burden on competition.

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

The substance of the proposed rule change has been presented to the Public Securities Association MMI Task Force, which has given its support to providing a new service to IPAs. No written comments have been solicited or received from DTC participants. DTC will notify the Commission of any written comments received by DTC.

**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:

adjudicated a bankrupt or insolvent or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the issuer or of any substantial part of its property, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the issuer in furtherance of any such action and, notwithstanding the foregoing, upon the filing by the issuer of a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the issuer under the Federal Bankruptcy Code or any other applicable Federal or State law, or the filing against it or any such petition, at any time [DTC] receives notice thereof, either written or oral and from whatsoever source and, without awaiting any further adjudication, consent thereto, acceptance or approval of such filing, determines to its reasonable satisfaction that such has occurred."

(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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC.

All submissions should refer to the file number SR-DTC-96-21 and should be submitted by December 27, 1996.

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

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 96-31077 Filed 12-5-96; 8:45 am]

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**[Release No. 34-38006; File No. SR-DTC-96-19]**

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of a Surcharge**

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 21, 1996, 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

<sup>7</sup> 17 CFR 200.30-3(a)(12) (1996).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

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 establishes a surcharge of \$1.00 on all deposits submitted to DTC outside its Deposit Automated Management System ("DAM System"). The surcharge will go into effect on December 1, 1996.

**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*

The purpose of the proposed rule change is to establish a surcharge of \$1.00 on all deposits submitted to DTC outside its DAM System.<sup>3</sup> The surcharge will go into effect on December 1, 1996. DTC participants benefit in many ways by depositing securities into DTC using the DAM System. For example, the automation features of the DAM System reduce DTC's costs in handling these deposits. Therefore, the fee that DTC charges its participants for a deposit submitted through the DAM System is less than the fee charged for a deposit submitted outside the DAM System. The DAM System also automatically verifies certain deposit-related information thereby eliminating the need for participants to perform similar verifications.<sup>4</sup> Finally, the DAM System

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> The DAM System is an enhanced automated deposit service that enables DTC participants to send details of deposits to DTC in advance of forwarding physical certificates. For a more detailed description of the DAM System, see Securities Exchange Act Release No. 33412 (January 4, 1994), 59 FR 1769 [File No. SR-DTC-93-09] (order approving DAM Service).

<sup>4</sup> For example, in order to reduce the number of deposits rejected by DTC, participants will often refer to other functions available on DTC's Participant Terminal System ("PTS") such as the Security Inquiry (CONI) function to verify whether a security is eligible for deposit at DTC or the Dividend Announcement Inquiry (DIVA) feature to