

positions.²⁰ Third, the facilitation exemption member is required to provide the Exchange with any information or document requested concerning the exempted options positions and the positions hedging them. Fourth, a facilitation exemption member is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Fifth, neither the member's nor the customer's order may be contingent upon "all or none" or "fill or kill" instructions and the orders may not be executed until the XII specialist has announced the orders to the entire crowd and crowd members have been given a reasonable time to participate in the trade. Finally, once liquidated or reduced, the member organization may not increase the exempted option positions without receiving approval from the Exchange again. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or on any underlying stock positions.

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also believes that the Amex has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate to increase the XII firm facilitation exemption to 400,000 contracts.

IV. Conclusion

Based on the above, the Commission believes that the proposed rule change will serve to provide market participants with greater flexibility without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-Amex97-44) is approved.

²⁰ In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

²¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39657; International Series Release No. 1116; File No. SR-DTC-97-22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Establishing an Omnibus Account at the Canadian Depository for Securities

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 30, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-97-22) 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 establish a DTC omnibus account at the Canadian Depository for Securities ("CDS").

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.²

²² 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 prepared by DTC.

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

Currently, DTC maintains a link with CDS that allows a CDS participant to establish an account at DTC or use CDS's omnibus account at DTC. The link permits CDS's participants to process book-entry transactions with other DTC participant. In addition, the link permits CDS and its participants to use DTC's custody, clearance, and settlement services for transactions involving securities eligible in both systems. However, the current link limits book-entry deliveries from a CDS participant to a DTC counterparty by requiring that the securities be physically held at DTC. As a result, a CDS participant is unable to deliver securities in its CDS account by book-entry movement.³

Occasionally, a CDS participant attempting to settle a trade with a DTC counterparty has sufficient inventory in its account at CDS to settle a transaction but does not have sufficient inventory in its DTC account. When this occurs, the CDS participant must physically withdraw the securities from CDS to make a physical deposit at DTC.⁴ The costs and risks associated with withdrawing and physically transporting certificates for purpose of redepositing them at DTC, which involves reregistration and forwarding of certificates to the U.S., can be significant. In addition, due to overlapping processing deadlines between CDS withdrawals and DTC deposits, a CDS participant may not be able to obtain same-day credit at DTC so that it can avoid a failure to deliver. As a result, a participant may incur certain expenses associated with its failure to deliver. Similarly, CDS participants face the same difficulties when on occasion they need to physically withdraw Canadian securities from DTC in order to redeposit them at CDS for reasons other than trade settlement (e.g., to repatriate their holdings of Canadian securities for inventory management purposes).

Under the proposed rule change, DTC will establish an omnibus account at CDS thereby creating a two-way interface between CDS and DTC. As a

³ CDS participants sometimes represent U.S. investors or U.S. intermediaries who are in turn also adversely affected.

⁴ As of October 1, 1997, new deposit procedures provide CDS participants same-day credit at DTC for securities deposited through DTC's deposit facilities in CDS offices in Vancouver, Toronto, Montreal, and Calgary. CDS, on behalf of DTC, arranges for the reregistration of Canadian securities into the name of Cede & Co. prior to sending them to DTC.

result of the proposed rule change, a CDS participant will be able to settle a cross-border transaction with a DTC counterparty by making a book-entry delivery from its participant account at CDS to the DTC omnibus account at CDS.⁵ The CDS participant would identify which DTC participant account should be credited with the position. This transaction would then result in an immediate credit to the receiving DTC participant account on DTC's books. The receiving DTC participant could then redeliver on a free or versus payment basis within DTC. Thus, there would be no need for the physical transporting of certificates to DTC. The securities would remain at CDS unless withdrawn by DTC. DTC and CDS would conduct automated daily reconciliation to ensure balanced books. In addition, to minimize any subsequent physical movement of securities, DTC and CDS would engage in weekly netting. The netting would reduce on an omnibus basis the number of securities in the same issue held by each depository on behalf of the other.

CDS would provide subcustody services as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at CDS in accordance with CDS procedures (as DTC currently provides for securities held by DTC on behalf of CDS). Whether DTC is holding its underlying inventory in Canada or in the U.S., DTC services to participants will be the same as currently provided.

DTC believes that the primary benefits of opening an omnibus account at CDS are: (i) The elimination of failed transactions on the trade settlement date that result from delays in the current process; (ii) the elimination of most physical movements of Canadian securities between CDS, DTC, and Canadian transfer agents, and the costs and risks associated with such movements; and (iii) the reduction of costs to DTC and CDS participants related to (i) and (ii). DTC believes that the realization of these benefits is consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and reducing risk to DTC participants by immobilizing certificates.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act⁶ and the rules and regulations thereunder applicable to DTC because

the proposed enhancements will reduce risks and associated costs to DTC and CDS participants by streamlining the processing of crossborder securities transactions between U.S. and Canadian entities.

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

DTC perceives no adverse impact on competition by reason of the proposed rule change.

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

The proposed rule change was developed through discussions with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

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, 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-97-22 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39658; File No. SR-DTC-97-14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries on Issues of Book Entry Only Securities

February 12, 1998.

On July 14, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-97-14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 8, 1997.² The Commission received no comment letters in response to the filing. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends DTC's procedures for running call lotteries for book-entry only ("BEO") issues of securities.³ Prior to the rule

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39373 (November 28, 1997), 62 FR 64612.

³ For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 [File No. SR-DTC-84-09] (filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992), 57 FR 12352 [File No. SR-DTC-90-02] (order temporarily approving a proposed rule change by the DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994), 59 FR 63396 [File Nos. SR-DTC-94-08 and SR-DTC-94-09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); and 36651 (December 28, 1995), 61 FR 429 [File No. SR-DTC-95-21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures).

⁵ International Depository & Clearing LLC, a subsidiary that DTC owns jointly with National Securities Clearing Corporation, is coordinating DTC's development of the proposed enhancement.

⁶ 15 U.S.C. 78q-1(b)(3)(F).