

Section 6(b)(5)⁶ of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is 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 Exchange did not solicit or receive written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁷ and subparagraph (f)(1) of Rule 19b-4 thereunder⁸ because it constitutes as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of such 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, for the protection of investors, or otherwise in the furtherance 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-2001-24 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44260; File No. SR-DTC-2001-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Make Foreign Securities Eligible for Depository Services

May 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on, February 23, 2001, 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 on the proposed rule change from interested parties.

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

The proposed rule change would allow DTC to make eligible for depository services foreign securities that are presently eligible for the National Securities Clearing Corporation's ("NSCC") foreign security comparison and netting 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, 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 these statements.

(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 provide DTC and NSCC participants who are presently using NSCC's foreign securities clearing services the use, if applicable, of depository services at DTC for these securities. These securities are generally foreign ordinary equities that have been assigned security numbers (CINS) and NASD symbols to automate the comparison process. Most trades in foreign ordinary shares that are executed between two U.S. broker-dealers are forwarded to NASD's Automated Confirmation Transaction system and submitted as locked-in trades to NSCC.

Today, through NSCC's Foreign Securities Comparison and Netting system, foreign securities are compared and netted on a bilateral basis in a standardized and automated fashion through NSCC's over-the-counter system. Receive and deliver instructions are automatically generated by NSCC and are distributed to participants on the morning after comparison, which expedites the settlement process for non-U.S. equity transactions. Trades are netted on a bilateral participant-to-participant basis thereby reducing the number of deliveries for settlement in the local market. NSCC does not currently and will not under the proposed rule change guarantee the ultimate settlement of these transactions or the clearance cash adjustment.

Given the increase in activity over the last few years, U.S. broker-dealers have become concerned about the number of potential risk and operational issues associated with the current process, such as the lack of straight through processing ("STP") from the point of trade to settlement. It is DTC's plan to enhance the settlement part of the process and to deliver an automated approach to complete the STP process from trade to settlement. In doing so, many operational issues will be minimized or eliminated.

Today, there is a separation between the physical movement of these foreign securities and the money settlement of the trades (*i.e.*, there is no delivery versus payment ("DVP") as there is true for U.S. trades). The delivery of the

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

⁹ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

securities occurs in the foreign markets and then some time later the payment is made in the U.S.

Currently, trades in these foreign securities executed in the U.S. must settle in the local market without the benefit of any of DTC's infrastructure. Therefore, U.S. based broker-dealers who trade in foreign securities in the U.S. must set up correspondent relationships in the local market. Additionally, the U.S. broker-dealers must each deal separately with the inherent inefficiencies, such as large time-zone differences, in this structure. Also, the need to set up such correspondent relationships puts smaller broker-dealers at a disadvantage because many smaller broker-dealers do not have the resources or trading volumes to justify such relationships and therefore must enlist a large broker-dealer to perform such services for their clients. As a result, trading costs for the underlying investors are increased.

DTC's plan is to open a custodial account in a local market with an agent bank or central securities depository ("CSD") (collectively "custodian") that will hold shares on DTC's behalf. DTC's participants will be able to communicate with DTC with respect to foreign securities as they do today with respect to currently eligible U.S. securities. Due to differences in local market practice from that in the U.S., the eligibility procedures for foreign securities will likely differ from those currently used by DTC for eligible U.S. securities. However, participants will be made aware of this fact and of the eligibility criteria and procedures. These securities will be "tagged" in DTC's system in order for DTC participants to readily identify them.

DTC's first such link will be with Citibank N.A., Hong Kong Branch, acting as DTC's custodian.² Through the custodian, a participant would move overseas inventory from its current custodian into DTC's account at DTC's foreign custodian. Upon notification from its custodian that the foreign securities are being held in its account, DTC would update the participant's securities position at DTC. Once the position is on DTC's books and records, the participant would be able to move the position by book-entry DVP if desired. In addition, other activities, such as automated customer account transfer services and stock loan, that are currently available for U.S. securities would also be available for foreign

securities once they are made DTC eligible.

The DTC Risk Management Committee will review this service before DTC goes live with it. The committee will use the same due diligence template that it has used on all "outward bound" links with foreign CSDs.

The principal benefits that will attend DTC's making these foreign securities eligible for certain depository services are: (1) connecting the delivery to the settlement on a DVP basis; (2) accelerating the speed of settlement of cross-border transactions in these foreign securities; (3) eliminating most physical movements of these foreign securities; (4) reducing costs and risks to DTC participants (DTC's providing these benefits to its participants is consistent with DTC's objective of providing efficient book-entry clearance and settlement facilities while at the same time reducing risks to its participants.); and (5) making these services available to a large number of U.S. entities (*i.e.*, DTC participants and their clients and customers).

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) and (F) of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will reduce risks and associated costs to DTC participants. Further, the proposed rule change will be implemented and designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure safeguarding of securities and funds that are in the custody or control of DTC or for which DTC is responsible.

(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

This concept was presented to the operations and planning committee of DTC and DTC Board of Directors. A number of DTC firms have voiced strong support of this project at the Board level.

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 **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. 20549-0609. 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 also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-03 and should be submitted by May 31, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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² DTC will submit a proposed rule change under Section 19(b) before establishing any new link with any foreign custodian.