[Release No. 34–38323; File No. SR–DTC–97–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Implementing the Dividend Processing Phase of the Custody Service for Certain Non-depository Eligible Securities

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 23, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–97–01) 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 implement the dividend processing phase of DTC's custody service for certain non-depository eligible securities. The Commission has already approved establishment of the basic custody service and the redemption and reorganization processing phase.[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 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.[3]

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

Under the proposed rule change, DTC will implement the third phase of its custody service to offer to its participants dividend processing services for certain non-depository eligible securities.[4] In connection with the new service, DTC will announce, collect, and distribute dividend, interest, periodic principal, and other distributions (''dividend payments'') to participants that hold securities through DTC's custody service (''custody issues'').

In order to facilitate the collection of dividends on custody issues and to permit the book-entry movement of securities when a customer wishes to move his account from one participant to another, DTC proposes to register certificates held in its custody service in a second nominee name, DTC & Co., when requested to do so by a participant.[5] DTC believes that such registration is necessary in order to permit DTC, under its nominee name DTC & Co., to collect dividend payments relating to custody issues directly from paying agents.[6] Without such registration, paying agents would disburse individual dividend payments for the custody issues directly to the participant or participants' customer instead of DTC.

DTC believes that registration in its new nominee name will result in efficiencies for participants by enabling DTC to offer dividend collection and disbursement services for custody issues. DTC also believes that nominee name registration will facilitate the book-entry movement of custody issues if a customer wishes to move its position from one participant to another. Furthermore, DTC believes that registration into a second nominee name has the collateral benefit of identifying a security as a deposit that is eligible for only limited DTC custody services and not for full DTC book-entry services.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by reducing the costs and risks associated with the collection and disbursement of dividend payments. Furthermore, DTC believes that the proposed service will reduce processing expenses and labor costs for participants by establishing uniform procedures for clearance and settlement which will increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(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

DTC has not solicited participant comments 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. Persons making written submissions should file six copies thereof with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37314 (July 14, 1996), 61 FR 29158 [File No. SR–DTC–96–08] (order approving a proposed rule change establishing custody service) (''July approval order''). In the July approval order, the Commission required that DTC provide the Commission with at least thirty days advance notice of the implementation of reorganization processing (''Phase II''). The July approval order also required DTC to seek the Commission's reapproval of Phase II if the manner of implementation or operation of Phase II deviated from the plan described in the original filing [File No. SR–DTC–96–08]. DTC has represented to the Commission that the manner of implementation of Phase II does not differ substantially from the plan previously submitted, and therefore, DTC plans to implement Phase II of the custody service on April 1, 1997. Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

[3] The Commission has modified the text of the summaries submitted by DTC.

[4] For a more detailed description of the custody service, refer to the July approval order, *supra* note 2.

[5] In the July approved order, the Commission noted that securities certificates will be held in customer or firm name only and would not be transferred into DTC's nominee name utilized for regular depository eligible securities, Cede & Co. Although the basic custody service and the redemption and reorganization services phases do not require custody issues to be registered in the new DTC nominee name, participants wishing to use the dividend processing feature of the custody service for custody issues must register such custody issues in the new nominee name of DTC & Co.

[6] Letter from Lori A. Brazer, Assistant Counsel, DTC (February 4, 1997).

[7] 15 U.S.C. 78q–1.

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 Room, 450 Fifth Street, NW., Washington, DC 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–97–01 and should be submitted by March 24, 1997.

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

Margaret H. McFarland

Deputy Secretary.

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[Release No. 34–38333; File No. SR–DTC–97–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Charges

February 24, 1997.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on February 3, 1997, 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

The proposed rule change establishes fees for DTC's Foreign Tax Withholding Service and Non-Transferable Issue Safekeeping Service and eliminates the fee DTC charges its participants for unnecessary inquiries.

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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]

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

(1) Foreign Tax Withholding Service Fee

DTC's Foreign Tax Withholding Service allows DTC participants to certify to foreign-issue paying agents for DTC-eligible issues the tax-treaty and, where applicable, the tax exempt withholding rates that they are entitled to based on the tax classes of their customers.[3] DTC's participants make the certification to the foreign-issue paying agents by using the Elective Dividend Service (''EDS'') which is supported by DTC's Participant Terminal System (''PTS''). This procedure eliminates the need for processing more complex and time-consuming reclamations of previously withheld taxes.[4]

According to DTC, it has expended considerable time and incurred significant legal fees to implement the Foreign Tax Withholding Service and continues to devote its resources to monitoring individual distributions to ensure that existing arrangements are processed correctly or to facilitate any special arrangements, if necessary. DTC also states that the processing of withholding certifications on individual distributions sometimes requires DTC's staff to contact the participant to obtain additional information to complete the certifications. Accordingly, the proposed rule change establishes a fee for DTC's Foreign Tax Withholding Service of $7.00 per CUSIP regardless of the number of tax classifications requested by a participant for a single CUSIP. This fee is in addition to the cash or stock dividend fee, as applicable, which is charged on a per credit basis.

(2) Non-Transferable Issue Safekeeping Fee

DTC established the Non-Transferable Issue Safekeeping Service to allow nontransferable securities to be deposited at DTC.[5] The service requires DTC's staff to periodically follow up on each nontransferable security (*i.e.*, generally, at least annually) to determine the issuer's status in its state of incorporation, to determine if the issue is again transferable, and to make the results of these inquiries available to interested participants.

According to DTC, as a result of its absorption of the Midwest Securities Trust Company, the number of nontransferable issues on DTC's books has doubled from roughly 8,000 to more than 16,000. DTC also believes that the ongoing effort and cost to carefully monitor these additional non-transferable issues should be apportioned among those holding positions in these securities. Therefore, the proposed rule change establishes a fee for DTC's Non-Transferable Issue Safekeeping Service of $.17 per CUSIP per month in addition to regular monthly long position charges for these issues.

(3) Elimination of Fees Regarding Unnecessary Dividend, Reorganization and Reconciliation Inquiries

Currently, DTC charges its participants $6.00 when a participant submits certain unnecessary inquiries for processing at DTC's Dividends, Reconciliation, and Reorganization departments. DTC classifies an inquiry as unnecessary if a participant could have obtained the information independently from automated DTC sources readily available to a participant rather than have DTC staff conduct the research. An inquiry with incomplete or inaccurate data from a participant also is considered unnecessary. Because the average daily volume of unnecessary

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a more detailed description of the Foreign Tax Withholding Service, refer to Securities Exchange Act Release No. 3211 (April 19, 1993), 58 FR 22003 [File No. SR–DTC–92–17] (notice of filing and immediate effectiveness relating to eligibility in the foreign securities option of the existing elective dividends function).

[4] EDS was developed for issues from foreign countries that have tax treaties with the U.S. that permit the withholding of foreign taxes from distributions of foreign issues at different rates for different classes of beneficial owners. EDS enables a DTC participant to use PTS to certify the number of foreign securities credited to the participant's account as of the record date that are entitled to favorable tax treatment at source (*i.e.*, the tax exempt benefit to which the participant is entitled will be included in the payment DTC receives from the foreign payor). Without this service, many DTC participants that are entitled to favorable tax treatment find the procedures for claiming refunds so burdensome that they forgo their refund and thereby frustrate the purpose of the tax treaty.

[5] Securities Exchange Act Release No. 31673 (December 30, 1992), 58 FR 3046 [File No. SR–DTC–92–16] (order approving proposed rule change).