

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

1. Purpose

Section 623 of the Amex *Company Guide* requires listed companies to disseminate statements of earnings and operating results in the form of a press release.<sup>5</sup> Under Section 623, listed companies whose common stock is listed on the Amex or another national securities exchange are not required to send these reports to shareholders. However, a company which lists a non-equity security on the Amex (e.g., bonds or preferred stock) and does not have common stock listed on a national securities exchange is required to send interim reports to holders of its Amex listed securities.

The requirement to send interim reports to security holders has been in existence for many years, and, according to the Amex, appears to have been intended to address concerns that companies that did not have listed common stock received little or no media attention. However, with the advent of the Internet and EDGAR, investors have ready access to all issuer press releases and SEC filings. The Amex represents that neither the New York Stock Exchange, Inc. nor The Nasdaq Stock Market, Inc. require that interim reports be sent to security holders, whether or not the issuer has listed common stock. Additionally, the Amex represents that some issuers impacted by this requirement have complained that it is unnecessarily costly to send interim reports to security holders.

Accordingly, the Exchange is proposing that the requirement to send interim reports to security holders be eliminated.<sup>6</sup> Other non-substantive and stylistic revisions have also been made to Sections 132, 623, and 624 of the Amex *Company Guide* to make these sections less confusing.

<sup>5</sup> The Amex represents that Section 624 of the *Company Guide* sets forth certain limited exceptions to this requirement, primarily for companies that are dependent upon long-term contracts that make release of quarterly results impracticable or misleading. The Amex further represents that exceptions are virtually never requested.

<sup>6</sup> The Commission notes, however, that if companies choose to mail interim reports to shareholders, they should be sent to both registered and beneficial shareholders. Nothing in this proposal will change this requirement. See Amex Section 623; see also Securities Exchange Act Release No. 36541 (November 20, 1995), 60 FR 62921 (December 7, 1995).

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b)<sup>7</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 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 90 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 the Exchange 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, as amended, 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

comment letters should refer to File No. SR-Amex-2003-84. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-2003-84 and should be submitted by February 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49044; File No. SR-DTC-2003-14]

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

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 1, 2003, 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.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

The proposed rule change updates DTC's Services Guide.

### **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.<sup>2</sup>

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

In January 2001, DTC filed File No. SR-DTC-2001-01<sup>3</sup> with the Commission which constituted a restatement of certain sections of the Participant Operating Procedures ("POP") and Participant Terminal System ("PTS") Manual of DTC. Both the POP and the PTS Manual are hardcopy, multi-volume manuals that, among other things, provide participants with procedures and information pertaining to a number of DTC services and describe and document functions and applications of DTC systems.

In that rule filing DTC explained that both POP and the PTS Manual would better serve participants and other authorized users if they were restated together utilizing modern electronic media. As a result, DTC developed Services Guides to replace POP and PTS Manual documentation. DTC has filed Services Guides for the following DTC services: Custody, Deposits, Dividend, Reorganization, Settlement, and Underwriting. In this filing, the Participant Inquiry Notification System ("PINS") function of the Services Guides is being updated to include the End of Month Confirmation Procedures, which previously were included in DTC's POP and PTS Manual, and the fines that are imposed for failure to confirm the month end position statement in a timely manner. No substantive changes are being made to the procedures of DTC.

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

<sup>3</sup> Securities Exchange Act Release No. 44719, 66 FR 44656 (August 24, 2001).

The Services Guide update will be implemented upon filing and will be available to participants and other authorized users via CD-ROM and the Internet at DTC's Web site.

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 it will contribute to the ease of use of DTC's services and PTS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change enhances the utilization of DTC's existing services.

#### *(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*

File No. SR-DTC-2001-01 dealt with the original Services Guides which were developed through discussions with a number of participants. Because this rule filing deals with an update to the existing Services Guides, written comments from participants or others have not been solicited or received on this proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(4)<sup>5</sup> promulgated thereunder because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. 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, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

### **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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-DTC-2003-14. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and DTC's Web site at [www.dtc.org/impNtc/mor/index.html](http://www.dtc.org/impNtc/mor/index.html). All submissions should refer to File No. SR-DTC-2003-14 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).