

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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-28 and should be submitted on or before June 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49764; File No. SR-DTC-2003-10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to a New Messaging Service for Stock Loan Recalls

May 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 8, 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.

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

The proposed rule change would allow DTC to activate its Universal Hub for Stock Loan Recalls ("Universal

Hub"), a new messaging service providing participants an efficient means to facilitate the notification, acknowledgement, and maintenance of stock loan recall information.

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.²

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

Currently, industry participants utilize faxes and phone calls to recall securities on loan. Processing stock loan recalls is generally paper intensive, increasing the risk of transmission errors and delaying response time. The lack of formal, automated mechanisms to notify borrowers of a loan recall has proven inefficient for the industry.

To remedy these issues and to support the Securities Industry Association's Straight Through Processing Securities Lending Subcommittee's goals, DTC has developed a universal messaging hub which, among other things, will automate the labor-intensive stock loan recall process. The goal of the Universal Hub is to provide a central point of access for DTC participants engaging in stock loan recall transactions to send and receive recall notices, acknowledgements, cancellations, buy-in execution details, and corporate action notices. DTC participants utilizing either vendor-supplied Automated Stock Loan Recall Messaging Systems (ARMS) or their own stock loan recall capability will be able to connect directly to the Universal Hub. By providing a central point of access to all parties, the Universal Hub provides interoperability between various ARMS users and DTC participants and permits ARMS vendors and DTC participants to avoid the costs and inefficiencies of building bilateral links.

The Universal Hub's message formats will be based on ISO 15022 standards and will be supported on MQ Series and DTC's standard file transfer capabilities.

The Universal Hub will create an acknowledgement/receipt record for each message processed to notify the sender that the Universal Hub has received the message and that the message was forwarded to the receiver. In addition, the Universal Hub will create a receipt record for the sender indicating that the counterparty to the stock loan recall retrieved the message from the Universal Hub. Each message will be assigned an internal control number for audit trail purposes. If the Universal Hub cannot deliver a message, it will reject the message back to the sender for resolution. The Universal Hub will only edit the header of the message to ensure successful delivery of the message. The Universal Hub will not edit the data in the actual stock loan recall message. Participants remain responsible for the details provided in their recall messages.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act³ and the rules and regulations thereunder applicable to DTC because it will further automate the processing of stock loan recalls while furthering the industry's efforts to achieve straight-through processing thus facilitating the prompt and accurate processing of securities transactions.

(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 discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed Universal Hub.

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 the self-regulatory

¹⁸ 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.

³ 15 U.S.C. 78q-1(b)(3)(A).

organization 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2003-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-DTC-2003-10. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 on DTC's Web site at www.dtc.org. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-

2003-10 and should be submitted on or before June 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49755; File No. SR-ISE-2004-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Fee Changes

May 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 27, 2004, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 Exchange is proposing to amend its Schedule of Fees to adopt a \$.10 per contract surcharge for certain transactions excluding Public Customer Orders in options on exchange traded funds ("ETFs") based on certain licensed indexes.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B and C below, of

the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to adopt a \$.10 per contract surcharge for certain transactions in options on exchange traded funds based on (i) four indexes developed by Lehman Brothers Inc. including the Lehman Brothers 1-3 year Treasury Bond Index, the Lehman Brothers 7-10 year Treasury Bond Index, the Lehman Brothers 20+ year Treasury Bond Index and the Lehman Brothers U.S. Aggregate Index (collectively, the "Lehman Indexes") and (ii) one index developed by Goldman, Sachs & Co., the GS \$ InvesTop™ Index (the "Goldman Index"). The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a \$.10 per contract fee for transactions in certain licensed products. This surcharge fee item excludes Public Customer Orders.³

The Exchange recently licensed the right to list options on ETFs based on the Lehman Indexes and the Goldman Index. In order to defray the licensing costs associated with listing these new products, the Exchange is proposing to add these new products to the surcharge fee item in the Exchange's Schedule of Fees. The Exchange believes that charging the participants that trade in options on these products is the most equitable means of recovering the costs of the licenses. Because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged with respect to non-Public Customer Orders.

For example, if broker A has a Public Customer Order that broker A gives to broker B (an ISE electronic access member) to execute on the ISE, broker B will not be charged the proposed \$.10 fee. On the other hand, if broker A gives broker B (an ISE electronic access member) an order for the account of broker A (or another broker-dealer), broker B will be charged the \$.10 fee.⁴

³ Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

⁴ Telephone conversation between Joseph W. Ferraro, Assistant General Counsel, ISE, and Ronessa A. Butler, Attorney, Division of Market Regulation, Commission, May 10, 2004.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.