

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

1. Purpose

The Exchange proposes to continue the Prospective Fee Reduction Program ("Program") through the close of the current Exchange fiscal year on December 31, 2005.<sup>3</sup> No other changes to the Program are proposed. The current Program took effect on August 1, 2004.<sup>4</sup> The Program is intended to reduce Market-Maker and DPM transaction fees in periods of high volume. As before, the Exchange will continue to monitor its financial results to determine whether the Program should be continued, modified, or eliminated in the future.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*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**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

<sup>3</sup> The Exchange also proposes certain minor clarifying changes to the table headings in section 19 of the Fees Schedule to reconcile those headings with a previous rule change. See Securities Exchange Act Release No. 51027 (January 12, 2005), 70 FR 3407 (January 24, 2005). CBOE represents that the instant proposed rule change imposes no new fees or fees reductions. Telephone conversation between Steve L. Kuan, Special Counsel, Division of Market Regulation, Commission, and Jaime Galvan, Assistant Secretary, CBOE, on July 14, 2005.

<sup>4</sup> See Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> At any time within 60 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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-52 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-52. 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 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-52 and should be submitted on or before August 18, 2005.

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

Margaret H. McFarland,  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52104; File No. SR-DTC-2005-06]

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

July 21, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 29, 2005, 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 persons.

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

DTC proposes to add a new Agency Lending Disclosure feature to its SMART/Track service. The new feature will enable securities agent lenders to disclose to securities borrowers information regarding the principal lenders of securities loans.

**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,

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

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

and C below, of the most significant aspects of such statements.<sup>2</sup>

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

In 2003, the Commission approved a proposed rule change that allowed DTC to activate its Universal Hub (now known as SMART/Track) messaging service. The service was designed to provide participants with an automated, electronic mechanism to notify and to acknowledge stock loan recalls.<sup>3</sup> In 2004, the Commission approved a second rule change that added a Corporate Action Liability Notification Service to SMART/Track. This addition provided participants with an automated, electronic mechanism to notify, acknowledge, and maintain corporate action liability information.<sup>4</sup>

In order to address the Commission's concerns about transparency in securities lending transactions, the Industry Agent Lending Task Force ("Task Force") recently released a proposal in that outlined how and what information agent lenders should disclose about the allocation of loans to broker-dealer borrowers.<sup>5</sup> The disclosure proposal focused on the need for borrowers to be able to monitor their credit exposures and calculate their required regulatory capital charges on a principal-lender basis. Currently, borrowers do not always know the underlying counterparties or principal lenders on a loan-by-loan basis because agent lenders frequently reveal open securities loans at the gross level and not at the principal level. Without this information, borrowers cannot determine their credit exposure on any given day or calculate the applicable capital charges.

The Task Force and its working groups have collaborated with the securities industry to identify the data that agent lenders should provide to enable borrowers to monitor their credit exposure and to calculate their capital requirements for securities executed under securities lending agreements. The Task Force asked DTC, in its role

as an industry utility, to develop a central communications facility for the transmission of agency lending data between agent lenders and borrowers. DTC has actively participated in these efforts as a member of the Task Force's Infrastructure Working Group and has developed SMART/Track for Agency Lending Disclosure.<sup>6</sup>

SMART/Track for Agency Lending Disclosure will provide a communications interface between agent lenders and borrowers that will enable them to transmit periodic and daily files of principal lender data either through a vendor or directly to SMART/Track. By providing a single point of access, vendors, individual agent lenders, and borrowers will no longer have to build or maintain bilateral links to transmit loan information.

By transmitting agency lending data files, SMART/Track for Agency Lending Disclosure will essentially be acting as a "post office." That is, it will only validate the header and trailer of the files to verify that it can successfully deliver the file to the designated counterparty. DTC will not edit or validate the data contained within the files and will not be responsible for any such data.

SMART/Track will maintain and update a table that identifies the relationship between vendors and agent lenders and borrowers so that users will not have to keep track of the relationship between their counterparties and a vendor, if any. SMART/Track will also contain tools that will help users track the status of messages.

In addition to providing a communications facility for transmitting periodic and daily files for loan data, the Task Force asked DTC to provide a mechanism to assign unique identifiers to those principal lenders that do not have U.S. tax identification numbers. While most principal lenders have a nine-digit U.S. tax identification number, there is a small universe of lenders that do not. SMART/Track will create and maintain a table of unique identifiers. Agent lenders and borrowers as well as vendors will be able to search the table to determine if DTC has assigned a unique identifier to a principal lender. If DTC has not previously assigned a unique identifier to a principal lender, agent lenders and borrowers will be able to request that DTC does so.

SMART/Track for Agency Lending Disclosure will be subject to DTC's

general standard of liability for information services, which is responsibility for gross negligence and willful misconduct. Furthermore, although the service will be available primarily to DTC participants, agent lenders that are not DTC participants will be able to use SMART/Track for Agency Lending Disclosure by signing a user agreement.<sup>7</sup>

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote important disclosure relating to securities loans arranged by agent lenders and will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control of DTC.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*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 with the Task Force, with which DTC has worked closely in developing the SMART/Track for Agency Lending Disclosure. DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

**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)<sup>8</sup> of the Act and Rule 19b-4(f)(4)<sup>9</sup> thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. 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

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

<sup>3</sup> Securities Exchange Act Release No. 50029 (July 15, 2004), 69 FR 43870 (July 22, 2004) [File No. SR-DTC-2003-10].

<sup>4</sup> Securities Exchange Act Release No. 50887 (Dec. 20, 2004), 69 FR 77802 (Dec. 28, 2004) [File No. SR-DTC-2004-11].

<sup>5</sup> Refer to the Task Force's Web site at <http://www.agencylending.capco.com> and [http://www.agencylending.capco.com/documents/Taskforce%20wide%20documents/Agent%20Lender%20Disclosure%20\(final%20final\).doc](http://www.agencylending.capco.com/documents/Taskforce%20wide%20documents/Agent%20Lender%20Disclosure%20(final%20final).doc).

<sup>6</sup> The SMART/Track for Agency Lending Disclosure Procedures are attached as Exhibit 5 to DTC's proposed rule filing.

<sup>7</sup> The form user agreement is attached as Exhibit 2 to DTC's proposed rule filing.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(4).

in furtherance of the purposes 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2005-06 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-DTC-2005-06. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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-2005-06 and should be submitted on or before August 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52110; No. SR-OCC-2005-11]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform Its Year-End Financial Reporting Deadline Applicable to Clearing Members Primarily Regulated as Futures Commission Merchants With the Commodity Futures Trading Commission's Regulations

July 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 14, 2005, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the 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 conform OCC's year-end financial reporting deadline applicable to clearing members primarily regulated as Futures Commission Merchants ("FCM") with the Commodity Futures Trading Commission's ("CFTC") Regulation 1.10(b)(ii).

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

In its filing with the Commission, OCC 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. OCC 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

OCC Rule 306, Interpretation .02 currently provides that a clearing member that is not fully registered with the SEC as a broker-dealer but that is registered with the CFTC as an FCM must file its annual audited financial report on Form 1-FR-FCM with OCC within 60 days of the end of its fiscal year unless OCC consents to an extension.<sup>3</sup> However, under CFTC Regulation 1.10(b)(ii), an FCM has up to 90 days after the close of its fiscal year to file that report with the CFTC. Clearing members that comply with CFTC Regulation 1.10(b)(ii) have requested that OCC conform its year-end financial reporting deadline to CFTC's to provide a consistent filing requirement.

OCC believes the proposed rule change is consistent with Section 17A of the Act,<sup>4</sup> as amended, because the change is designed to facilitate the establishment of coordinated facilities for clearance and settlement of transactions by conforming OCC's rules to the CFTC financial reporting obligation. The proposed rule change is not inconsistent with the existing rules of OCC.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> thereunder because it does not adversely affect the

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

<sup>3</sup> This 60-day deadline mirrors the year-end financial reporting deadline applicable to broker-dealers.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(4).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).