

Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice of the proposal as amended was published in the **Federal Register** on February 9, 2006.<sup>3</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

DTC is (1) revising fees for special requests for Security Position Reports ("SPRs") and for weekly, monthly, and quarterly dividend record date SPR subscriptions,<sup>4</sup> (2) revising existing fees for audit confirmations provided to issuers and their agents, and (3) implementing new fees for (a) audit confirmations for certificates of deposit ("CDs") provided to issuers and their agents and (b) access by transfer agents to DTC's imaging database.

### *Fees for Issuance of Security Position Reports*

Several types of SPRs are available through DTC. These include: (1) Weekly reports showing daily closing positions during that week; (2) monthly reports showing closing positions on the last business day of the month; (3) quarterly dividend record date reports showing closing positions on the dividend record date; and (4) special requests showing closing positions for the date specified.

DTC charges fees for SPRs. Currently, the fee charged to issuers or trustees for weekly, monthly, and quarterly dividend record date SPR subscriptions is \$1,950, \$450, and \$150, respectively. The fee charged to issuers or trustees for special requests is \$85 per special request. The purpose of this filing is to formally seek Commission approval of these fees. Because DTC incurs significantly higher costs for the production of special request SPRs relative to the costs of producing reports by subscription and because DTC has determined that a fee increase is necessary to more fully recover costs associated with such production, DTC is increasing the fee charged to issuers or trustees for special request SPRs from \$85 to \$120 per special request. The increase will become effective on a date in the first quarter of 2006 to be announced by DTC upon the Commission's approval of this proposed rule change.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Securities Exchange Act Release No. 53219 (February 3, 2006), 71 FR 6800.

<sup>4</sup> Weekly reports, monthly reports, and quarterly dividend record date reports are available by annual subscription only.

### *Fees Charged to Issuers/Agents*

#### 1. Audit Confirmations

DTC receives frequent requests from issuers and/or their agents for confirmations of audit information relating to securities held by DTC. In connection with the processing of such requests for audit confirmations, DTC currently charges a fee of \$10.00 per request containing up to and including five CUSIPs and \$2.13 for each CUSIP beyond the fifth CUSIP. DTC also receives requests from issuers and/or their agents for confirmations relating to information concerning CDs deposited at DTC. A fee is not currently charged to process these CD audit confirmation requests. Providing issuers and/or their agents with audit confirmation information requires the allocation of significant resources to process the requests resulting in considerable cost to DTC. To more fully recover the costs associated with such audit confirmation processing, DTC is (1) increasing fees related to processing of audit confirmations to \$22 per request for requests of up to and including five CUSIPs and an additional \$5.00 per item for each CUSIP beyond the fifth CUSIP and (2) implementing fees for CD confirmation requests that are identical to those for audit confirmation requests relating to securities. The proposed audit confirmation fees will be effective upon approval by the Commission.

#### 2. Imaging

DTC frequently receives requests from transfer agents for access to DTC's security image database to obtain copies of certificates deposited at DTC. DTC incurs significant costs to maintain the database but currently does not charge transfer agents for access to the database. Therefore, in order to recover costs associated with this function, DTC is implementing a new subscription fee of \$350 per month for access to the DTC security image database. This fee will be effective upon approval by the Commission.<sup>5</sup>

## III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(D)

<sup>5</sup> DTC has separately filed a proposed rule change (File No. SR-DTC-2005-22) with the Commission to impose a subscription fee in the same amount on participants who subscribe for access to the DTC security image database. Securities Exchange Act Release No. 53463 (March 10, 2006).

of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.<sup>6</sup> The Commission believes that DTC's rule change is consistent with this section because it will provide for the equitable allocation of reasonable dues, fees, and other charges among the users of DTC's services.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2005-21) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53463; File No. SR-DTC-2005-22]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule**

March 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 22, 2006, amended the proposed rule change 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 purpose of the proposed rule change is to revise DTC's fee schedule.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 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 these statements.<sup>2</sup>

### (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 revise fees for certain services provided by DTC.

These changes include:<sup>3</sup>

(1) Elimination of fees charged for Mainframe Dual Host ("MDH") messaging and computer-to-computer ("CCF") file transfer services. The costs previously covered by these charges will be absorbed into the overall cost structure of the business lines affected (principally DTC Settlement and Asset Services) and will be covered by service fees.<sup>4</sup>

(2) Decreases to Settlement Services fees as part of DTC's continuing efforts to realign fees with costs.

(3) Restructuring of fees for Corporate Actions by charging fees per announcement and to compensate for the elimination of CCF charges.

(4) Increases in Custody and Asset Servicing, Underwriting, and Tax Services to realign fees with costs.

In addition, DTC is implementing certain disincentive fees to discourage activities which increase industry inefficiencies. These disincentive fees include fees for Withdrawals by Transfer, fees related to requirements for physical presentation on corporate action transactions, and fees for late submissions of deposits on restricted securities.

Also, DTC is introducing fees associated with new services. In particular, such fees relate to Canadian Settlement services, SMART/Track for Buy-Ins, and Agency Lender Disclosure.<sup>5</sup> In addition, a new fee is

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

<sup>3</sup> The specific changes to DTC's fee schedule are attached as an exhibit to the filing.

<sup>4</sup> MDH and CCF are communications platforms used by participants to interact with DTC.

<sup>5</sup> For further information regarding Canadian Settlement services, see Securities Exchange Act Release No. 52784 (November 16, 2005), 70 FR

being added for a processing enhancement, known as the Certificate Verification process, to the existing Deposits service which allows participants to submit files through DTC to appropriate transfer agents in order to verify that certificates destined for transfer are valid certificates prior to physical processing of certificates. Such verification provides for a decrease in deposit rejects and for improved transaction turnaround.<sup>6</sup>

These proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, to discourage manual and exception processing, and to encourage immobilization and dematerialization of securities. The effective date for these fee adjustments was January 1, 2006.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act<sup>7</sup> and the rules and regulations thereunder applicable to DTC because it provides for the equitable allocation of reasonable dues, fees, and other charges among DTC's participants.

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

DTC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder because the proposed rule change establishes or

70902 (November 23, 2005) [File No. SR-DTC-2005-08]. For further information regarding SMART/Track for Buy-Ins, see Securities Exchange Act Release No. 53032 (December 28, 2005), 71 FR 1457 (January 9, 2006) [File No. SR-DTC-2005-19]. For further information regarding SMART/Track for Agency Lending Disclosure, see Securities Exchange Act Release No. 52104 (July 21, 2005), 70 FR 43730 [File No. SR-DTC-2005-06].

<sup>6</sup> For further information regarding DTC's Deposits service, see Securities Exchange Act Release No. 46391 (August 21, 2002), 67 FR 55050 (August 27, 2002) [File No. SR-DTC-2002-07].

<sup>7</sup> 15 U.S.C. 78q-1.

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

changes a due, fee, or other charge applicable only to a participant. 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>10</sup>

## 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-2005-22 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2005-22. 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

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 22, 2006, the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

be available for inspection and copying at the principal office of DTC and on DTC's Web site at <https://login.dtcc.com/dtcorg/>. 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-2005-22 and should be submitted on or before April 7, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53450; File No. SR-ISE-2006-04]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Its Proposal To Reorganize From Its Current Structure Into a Holding Company Structure

March 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 12, 2006, the International Securities Exchange, Inc. ("ISE, Inc.") 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 by ISE, Inc. The Exchange filed Amendment No. 1 to the proposed rule change on March 3, 2006, and withdrew Amendment No. 1 on March 3, 2006. On March 3, 2006, the Exchange filed Amendment No. 2.<sup>3</sup> 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

ISE, Inc. is proposing to reorganize from its current structure into a holding company structure as more fully described below. The text of the proposed rule change is available on

ISE, Inc.'s Web site (<http://www.iseoptions.com>), at the principal office of ISE, Inc., and at the Commission's Public Reference Room. The text of Exhibit 5 of the proposed rule change, as well as Amendment No. 2, is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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

In its filing with the Commission, ISE, Inc. 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. ISE, Inc. 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

ISE, Inc. proposes to reorganize from the current structure of ISE, Inc., a Delaware corporation, into a holding company structure (the "Reorganization").<sup>4</sup> A holding company, International Securities Exchange Holdings, Inc., a Delaware corporation ("ISE Holdings"), and its wholly owned subsidiary, International Securities Exchange, LLC, a Delaware limited liability company ("ISE, LLC"), have been formed in contemplation of the Reorganization. Consummation of the Reorganization is conditioned upon

<sup>4</sup> For a discussion of ISE, Inc.'s current capital stock and governance structure, see Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR-ISE-2004-29) (relating to the approval of certain amendments to ISE, Inc.'s Certificate of Incorporation, Constitution, and ISE Rules in connection with ISE, Inc.'s initial public offering) ("IPO Order"). In connection with the initial public offering, ISE, Inc. filed a registration statement on Form S-1 with the Commission (File No. 333-117145).

This proposed rule change includes: (a) The deletion of the Amended and Restated Certificate of Incorporation of ISE, Inc. ("ISE, Inc. Amended Certificate") and Amended and Restated Constitution of ISE, Inc. ("ISE, Inc. Amended Constitution"); (b) the proposed Certificate of Incorporation of International Securities Exchange Holdings, Inc. ("Holdings Certificate"); (c) the proposed Bylaws of International Securities Exchange Holdings, Inc. ("Holdings Bylaws"); (d) the proposed Limited Liability Company Agreement of International Securities Exchange, LLC ("LLC Agreement"); (e) the proposed Constitution of International Securities Exchange, LLC ("LLC Constitution"); and (f) certain proposed amendments to the Rules of ISE, Inc. (the "ISE Rules") to reflect the Reorganization.

satisfaction of certain conditions, including approval of the Reorganization by the Commission.<sup>5</sup> After satisfaction of these conditions, ISE, Inc. will merge into ISE, LLC, with ISE, LLC as the surviving entity of the merger (the "Merger"). In the Merger:

(1) Each outstanding share of Class A Common Stock will be converted into one share of ISE Holdings common stock, par value \$.01 per share ("ISE Holdings Common Stock");

(2) Each outstanding share of Series B-1 Common Stock will be converted into one PMM Right ("PMM Right"). Each PMM Right provides the holder with (a) the right to vote on the election of the PMM Directors of ISE, LLC,<sup>6</sup> (b) the right to vote on any change in, amendment or modification of, the Core Rights<sup>7</sup> or the definition of Core Rights, and (c) the predicate to obtaining the trading rights and privileges associated with each PMM Right as set forth in the LLC Constitution and ISE Rules for a PMM;

(3) Each outstanding share of Series B-2 Common Stock will be converted into one CMM Right ("CMM Right"). Each CMM Right provides the holder with (a) the right to vote on the election of the CMM Directors,<sup>8</sup> (b) the right to vote on any change in, amendment or modification of, the Core Rights or the definition of Core Rights, and (c) the predicate to obtaining the trading rights and privileges of each CMM Right as set

<sup>5</sup> ISE, Inc. has received a private letter ruling from the Internal Revenue Service relating to the treatment of the proposed Reorganization under U.S. Federal tax law with respect to ISE, Inc., its stockholders, and ISE Holdings. The ruling provides assurances that the Reorganization and related transactions will not result in any material taxes to the holders of shares of ISE, Inc. Class A Common Stock, par value \$.01 per share ("Class A Common Stock"), ISE, Inc. Class B Common Stock, Series B-1, par value \$.01 per share ("Series B-1 Common Stock"), ISE, Inc. Class B Common Stock, Series B-2, par value \$.01 per share ("Series B-2 Common Stock"), or ISE, Inc. Class B Common Stock, Series B-3, par value \$.01 per share ("Series B-3 Common Stock" and together with the Series B-1 Common Stock and Series B-2 Common Stock, the "Class B Common Stock"). See Internal Revenue Service PLR-135357-04 (November 17, 2004).

<sup>6</sup> "PMM Directors" as defined in Section 3.2(b) of proposed LLC Constitution means two directors, who must be officers, directors, or partners of Primary Market Makers ("PMMs"), elected by a plurality vote of the holders of the PMM Rights voting together as a class.

<sup>7</sup> "Core Rights" as defined in Section 2.2 of proposed LLC Agreement means any increase in the number of authorized PMM Rights or CMM Rights.

<sup>8</sup> "CMM Directors" as defined in Section 3.2(b) of proposed LLC Constitution means two directors, who must be officers, directors, or partners of Competitive Market Makers ("CMMs"), elected by a plurality vote of the holders of the CMM Rights voting together as a class.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Partial Amendment No. 2 dated March 3, 2006 ("Amendment No. 2").