

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. 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 in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-trade funds that are the subject of this filing have been previously filed with the Commission.<sup>10</sup> Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 File No. SR-Amex-2003-04 and should be submitted by March 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47365; File No. SR-DTC-2003-02]

#### Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers

February 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 3, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 11, 2003, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the 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 clarify that DTC will only honor requests for withdrawal of certificates submitted by its participants and not by the issuer of the securities.

#### 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. The 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

Recently a number of issuers of securities have requested that DTC exit from the depository all securities of their issues ("Issuer Withdrawal Request" or "Issuer Withdrawal Requests"). The issuers have also advised DTC that they will refuse to reregister any securities into the name of DTC or its nominee, Cede & Co. These issuers have no legal or beneficial interest in the securities they are requesting to be exited from DTC. The securities at issue generally became eligible for DTC services at the request, or for the convenience, of DTC's participants who wish to utilize DTC's book-entry transfer system. The subject securities are held by DTC for the benefit of its participants.

DTC's current rules and procedures permit participants to submit withdrawal requests if they wish to withdraw their securities from DTC. However, DTC's current rules and procedures do not provide for DTC to comply with an Issuer Withdrawal Request without participants' instructions. Through the proposed rule filing, DTC is seeking to clarify the procedures that it will follow upon receiving an Issuer Withdrawal Request. Upon receipt of an Issuer Withdrawal Request, DTC will, among other things:

- Issue an "Important Notice" notifying participants of the receipt of the Issuer Withdrawal Request and reminding participants that they can utilize DTC withdrawal procedures if they wish to withdraw their securities from DTC.

- Notify the transfer agent for the issuer that failure to reregister certificates pursuant to DTC's instructions is a violation of the transfer agent's obligations under, among other things, DTC's rule and procedures, such as DTC's Operational Arrangements.

- Process in the ordinary course of business withdrawal requests submitted by participants and refuse to effectuate withdrawals based upon the Issuer Withdrawal Request.

Since this is a clarification of DTC's rules and procedures, DTC will

<sup>10</sup> See *supra* notes 3, 4, and 5.

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>13</sup> 15 U.S.C. 78s(b)(1).

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