

November 29, 1994. The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-94-16) 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 clarify its policy regarding depository-to-depository services and fees by filing the following statement:

DTC shall make available to any other securities depository that is registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (a "depository") any service that DTC makes available to its Participants generally, provided that such depository makes its services available to DTC on the same basis.

DTC shall charge such depository for the services rendered by DTC and shall pay such depository for services rendered to DTC only such fees as DTC and the depository negotiate, but if DTC and such depository do not have an agreement on fees, DTC shall (i) render book-entry delivery services to such depository without charge if and so long as such depository shall render book-entry delivery services to DTC on the same basis and (ii) charge its published fees for services relating to the physical handling of certificates rendered by DTC to such depository and pay such depository its published fees for custody-related services rendered by such depository to DTC.²

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 that 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 such statements.

(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 state DTC's policy respecting depository-to-depository services and fees. DTC states that this policy statement reflects the practices that have been followed by DTC and the other depositories since the beginning of interdepository processing and is consistent with the Commission's expressed views concerning these matters.

From the very beginning of interdepository processing, in the mid-1970s and through the present, DTC and the other depositories have charged and paid each other for services rendered only such fees that have been negotiated. For example, in 1975, Pacific Securities Depository Trust Company ("PSDTC") declared that it would not pay or levy charges on the other depositories. In September 1976, DTC was informed of the unilateral determination by the Midwest Securities Trust Company ("MSTC") Board that as a matter of principle MSTC would discontinue paying DTC for services other than for physical withdrawals of certificates. In 1977, DTC, PSDTC, and MSTC formally agreed to provide most services to each other without charge ("no charge agreement").

At the present time, DTC has an informal agreement with the Philadelphia Depository Trust Company covering custody-related services. Each depository charges the other its published fees for these services. In June 1992, DTC and MSTC entered into an agreement that provided for depository-to-depository charges for certain services. This agreement was terminated by DTC on June 1, 1994, effective August 1, 1994, in accordance with the procedure set forth in the agreement for termination by either party upon sixty days notice.³ DTC has advised MSTC that if a new agreement is not reached between DTC and MSTC, after November 30, 1994, DTC will continue to provide services to MSTC but in the manner and on the terms described in the policy statement,⁴ which is the subject of the proposed rule change.

³ See letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (November 11, 1994).

⁴ Letter from William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC, to Robert

DTC states that the Commission has been aware of and has commented in its releases on the practice followed by FTC and other depositories of paying each other only such fees as are negotiated rather than all fees charged to participants generally. DTC states that the Commission in its releases has never expressed the view that one depository, by virtue of executing a participant agreement with another depository in order to establish the legal framework for an interface relationship, thereby becomes subject to all of that other depository's published participant fees. DTC states that the Commission has expressed that belief that:

[R]egistered securities depositories are not similar to ordinary participants. Registered securities depositories are subject to special regulation that no other participants face including a specific statutory charge to cooperate with other registered securities depositories. Thus, the Commission believes that a "no-charge" policy with respect to interface account activity does not result in an inequitable allocation of fees.⁵

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)⁶ of the Act. DTC believes that implementation of the subject policy will help assure that depository interface services are available to participants of any depository thereby promoting the goal of one-account settlement. DTC also states that the policy will enable DTC to avoid paying another depository inappropriately high fees that might effect its inefficient operation and to avoid paying another depository higher per-unit fees than such depository charges its participants generally.⁷ DTC believes that managing the fees paid to other depositories, which currently account for approximately 60% of DTC's total cost of providing interface services to its participants, will help reduce the fees that DTC must charge its participants to recover those costs.

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

DTC believes that by promoting the goal of one-account settlement and by enabling DTC to control the interface costs that are paid by its participants, the proposed rule change would help

J. McGrail, Executive Vice President and Chief Operating Officer, MSTC (November 17, 1994).

⁵ Securities Exchange Act Release No. 20461 (December 7, 1983) at footnote 34.

⁶ 15 U.S.C. 78q-1(b)(3) (1988).

⁷ DTC states that the Commission has indicated that where one depository is entitled to charge another (e.g., for linked services), it expects that any offer of volume discounts to participants generally would also be made available to the other depository. Securities Exchange Act Release No. 23803 (March 31, 1986) at page 21.

² This policy statement does not apply to "linked services," which the Commission has described as arrangements where one depository (the "servicing depository") performs for another depository (the "using depository") (the core tasks necessary to deliver the services to the using depository's participants. The Commission has cited as examples of linked services DTC's processing of ID confirmations and affirmations and DTC's fourth-party delivery service. The Commission has expressed the view that a servicing depository should be permitted to charge a using depository the same fee it charges its participants for the same or a similar service. See Securities Exchange Act Release No. 23083 (March 31, 1986) at 15-23.