

people with perceived ties to the securities industry would not be defined as public arbitrators, while avoiding eliminating from the arbitrator pool individuals with minimal ties to the securities industry.

Finally, the NYSE stated that alternatives to panel composition and the method by which arbitrators are classified are beyond the scope of this rule filing. It therefore declined to address these issues at this time.<sup>21</sup> The NYSE also stated that it is prepared to discuss those issues at the appropriate time.<sup>22</sup>

## V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and, in particular, with section 6(b)(5) of the Act, which requires, among other things, that the NYSE's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>23</sup>

The Commission believes that the proposed rule change will promote the public interest by limiting certain people who have ties to the securities industry from serving as public arbitrators. In particular, by expanding the list of entities engaged in the securities business and companies they control, the rule will further limit the industry ties the public arbitrator may have. The new definition of "immediate family member" should have a similar result.<sup>24</sup>

The Commission appreciates the comments suggesting the elimination of securities industry arbitrators, and the further restriction on persons who have any ties to the securities industry from serving as public arbitrators. While these comments are beyond the scope of this rule filing, they raise important questions regarding the arbitration process. We understand that SICA is actively considering proposals from its membership regarding these issues. We note that the NYSE has stated it will review any rule regarding panel composition that SICA adopts to the UCA, and that it will propose a separate amendment further limiting the definition of public arbitrator.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> Section 19(b)(2) of the Act requires the Commission to approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act, and the applicable rules and regulations thereunder. This standard does not require the NYSE, NASD or SICA rules to be identical.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>25</sup> that the proposed rule change (SR-NYSE-2005-43), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54408; File No. SR-DTC-2006-12]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the LENS Service

September 6, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 28, 2006, 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. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. 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 proposed rule change will discontinue the posting of Asset-Backed Security notices on DTC's LENS system.

#### 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

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

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.<sup>4</sup>

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

In 1991, DTC created the LENS service to reduce the amount of paper that participants received in connection with DTC's distribution of legal and other notices. Participants consequently could access such notices through DTC's proprietary PTS 3270 terminal network.<sup>5</sup> In 2000, DTC enhanced this process by making the LENS service available over the Internet.<sup>6</sup> Benefits of the LENS service include: (a) Reducing distribution costs that are born by participants and (b) allowing for other enhancements relating to notice distribution, including: (i) The identification of CUSIP numbers, (ii) participants' ability to search by CUSIP, (iii) participant access to a computer record of past notices with automatic order capability, and (iv) equitable billing (*e.g.*, a participant only pays for those notices that it orders).

Recently, DTC has studied whether additional enhancements and efficiencies can be brought to the LENS service in terms of the value to participants of the information provided them through LENS and the associated costs. As part of this process, DTC reviewed a current practice relating to the posting of Asset-Backed Security ("ABS") notices on LENS.<sup>7</sup> Such ABS notices are now generally available over the Internet on the agents' Web sites and have been retrieved by DTC and posted on LENS at considerable expense. In light of the accessibility of ABS notices from other sources and the expense incurred by DTC in retrieving the information, DTC consulted with many of the participants with current subscriptions to the ABS portion of LENS and learned that DTC's posting of this information on LENS is of limited value versus the alternative of participants being able to obtain much

<sup>4</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>5</sup> Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 (June 19, 1991) [File No. SR-DTC-91-08].

<sup>6</sup> Securities Exchange Act Release No. 34-43964 (Feb. 14, 2001), 66 FR 1190 (Feb. 22, 2001) [File No. SR-DTC-2000-18].

<sup>7</sup> ABS notices provide investment and financial information specific to a respective ABS (*e.g.*, monthly principal and interest factors, credit worthiness, etc.).

of the information directly from agents' Web sites.

Therefore, DTC will no longer post ABS notices on LENS. DTC will distribute an Important Notice to its participants to notify them of this change to the LENS service and inform participants as to how they may obtain DTC's assistance in obtaining ABS information.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder because it controls costs associated with a service provided by DTC and therefore does not significantly affect the respective rights or obligations of DTC or persons using this service.

#### 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 not solicited or received written comments relating to the proposed rule change.

### 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) of the Act<sup>9</sup> and Rule 19b-4(f)(4)<sup>10</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 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, as amended, 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 No. SR-DTC-2006-12 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 No. SR-DTC-2006-12. 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 submission should refer to File No. SR-DTC-2006-12 and should be submitted on or before October 4, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54411; File No. SR-NASD-2004-171]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements

September 7, 2006.

#### I. Introduction

On November 2, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend NASD Rule 2340, which relates to customer account statements. On February 2, 2005, NASD filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on February 16, 2005.<sup>5</sup> The Commission received fifteen comment letters in response to the proposed rule change.<sup>6</sup> This order

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

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, NASD changed the proposed effective date from 30 days following Commission approval to 180 days following Commission approval, and changed the reference to "each customer" to "the customer" in the sentence proposed to be added as the second sentence to paragraph (a) of Rule 2340.

<sup>5</sup> Securities Exchange Act Release No. 51181 (Feb. 10, 2005), 70 FR 7990 (Feb. 16, 2005) ("Notice").

<sup>6</sup> See letter dated February 17, 2005 from Christopher Charles, President, Wulff, Hansen & Co. ("Wulff, Hansen"); email dated April 21, 2005 from Geraldine Genco ("Genco"); eight letters (dated February 28, 2005 from Lisa Roth, President, ComplianceMax Financial, LLC, dated March 2, 2005 from Candy J. Lee, NCM, CFP, President, Financial Services International Corp., dated March 7, 2005 from Rod P. Michel, World Trade Financial Corporation, dated March 4, 2005 from Robert L. Savage, President, Leonard Securities, Inc., dated March 7, 2005 from Robert J. Schoen, President, Quest Securities, Inc., dated March 2, 2005 from Matthew S. Merwin, CFP, President, FMN Capital Corporation, dated March 7, 2005 from Warner Griswold, Chief Operating Officer, Green Street Advisors, Inc., and dated March 11, 2005 from Craig Biddick, President, Mission Securities Corporation) that were versions of a form letter that the National Association of Independent Broker Dealers posted on its website and encouraged its members to submit ("NAIBD"); letter dated March 2, 2005 from John Miller ("Miller"); letter dated March 9, 2005 from Rosemary J. Shockman, President, Public Investors Arbitration Bar Association ("PIABA"); letter dated March 8, 2005 from Andrew C. Small, General Counsel, Scottrade, Inc. ("Scottrade"); letter dated March 9, 2005 from John Polanin, Jr., Chairman, Self Regulation and Supervisory Practices Committee, Securities Industry

Continued

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(4).

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