2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[70] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[71] in that it would create a governance and regulatory structure of the Exchange that is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange represents that it remains committed to its role as a national securities exchange and does not believe that the proposed change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as described above, the Exchange believes that it has proposed specific provisions in the Bylaws of both CHX Holdings and the demutualized CHX that reinforce the ability of the Exchange to perform its self-regulatory functions.

Moreover, according to the CHX, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the demutualization. Instead, the CHX represents that the proposed rule change primarily consists of: organizational changes to the CHX Certificate of Incorporation and Bylaws reflecting the change in corporate form; governance changes that will reduce the size of the CHX Board and modify certain provisions governing the CHX committees; and membership rule changes that are necessary to implement the new CHX trading permit structure, which will replace the existing structure of owning and leasing Exchange memberships as a basis for trading rights. The proposed rule change also includes the CHX Holdings Certificate of Incorporation and Bylaws. Although the proposed governance structure does not reflect all of the proposals put forward by the Commission in its latest release on self-regulatory governance,[72] the Exchange believes that it is consistent with governance changes approved by the Commission for other demutualized exchanges and does not serve to erode the principles articulated in the Commission's recent governance release.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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*. Please include File Number SR–CHX 2004–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CHX–2004–26. 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 changes 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR–CHX–2004–26 and should be submitted on or before January 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[73]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–28275 Filed 12–27–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50887; File No. SR–DTC–2004–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Depository Trust Company's SMART/Track Service To Include Corporate Action Liability Notification

December 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 2004, the Depository Trust Company (''DTC'') 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 DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(5).

[72] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (File No. S7–39–04).

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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

The proposed rule change relates to a proposal by DTC to enhance its SMART/Track service (formerly called the Universal Hub service) by adding a new phase consisting of a Corporate Action Liability Notification Service that will provide industry participants an efficient means to facilitate the notification, acknowledgement, and maintenance of corporate action liability information.

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.[2]

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

In July 2004, the Commission approved DTC rule filing SR–DTC–2003–10 that allowed DTC to implement the SMART/Track service, which was then called the Universal Hub.[3] SR–DTC–2003–10 focused on the first phase of the service, a stock loan recall notification service. This filing relates to the Corporate Action Liability Notification Service, which is the second of the planned phases of SMART/Track.

When one party is owed securities by its counterparty, and those securities are the subject of a voluntary corporate action, it is industry practice for the owed party to send to the counterparty a liability notice that holds the counterparty liable for delivery of the securities in time for the owed party to participate in the voluntary corporate action (''Liability Notice''). It is also customary in the industry for the counterparty receiving the Liability Notice to reject the notice, deliver the securities that are the subject of the Liability Notice to the sender of the notice, or convert or exchange the securities to the corresponding corporate actions proceeds. Currently, industry participants use faxes and phone calls to communicate Liability Notices. Lack of a formal mechanism to send and receive Liability Notices has proved to be inefficient as the process is paper intensive and subject to transmission error and delays in response time.

To remedy these issues and to support the industry groups with which DTC has worked on this project,[4] DTC developed the Corporate Action Liability Notification Service to automate this labor-intensive process.

The goal of the Corporate Action Liability Notification Service is to provide a central point of access for industry participants to send and to receive Liability Notices, to respond to Liability Notices, and to review status information relating to Liability Notices. In addition, a link to DTC's Reorganization Inquiry for Participants System (''RIPS'') allows some fields to be populated automatically when the corporate action event is in RIPS. The sender of the message, however, remains responsible for the content of the message. By providing a central point of access to all parties, the Corporate Action Liability Notification Service provides interoperability between participants and permits participants to avoid the costs and inefficiencies of each participant building multiple automated bilateral links to its counterparties.

The Corporate Action Liability Notification Service is subject to DTC's general standard of liability for information services (*i.e.,* responsibility for gross negligence and willful misconduct). The service will be available only to DTC participants. If, in the future, DTC decides to make the Corporate Action Liability Notification Service available to non-participants, DTC will file another proposed rule change.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the proposed will promote efficiencies relating to Liability Notices. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in the custody or control of DTC because DTC will be acting as a notification 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 discussed this rule change proposal with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed Corporate Action Liability Notification Service. Written comments relating to the proposed rule change have not yet 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)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because the proposed rule effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which DTC is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such 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.* Please include File Number SR–DTC–2004–11 on the subject line.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 34–50029 (July 15, 2004), 69 FR 43870 (July 22, 2004).

[4] These groups include the Corporate Actions Division of the Securities Industry Association (''SIA'') and the Corporate Actions Liability Working Group, a subcommittee of the SIA's STP Steering Committee.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2004–11. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org.* 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–2004–11 and should be submitted on or before January 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3827 Filed 12–27–04; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50896; File Nos. SR–NYSE–2004–12; SR–NASD–2003–140]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings (''IPOs'')

December 20, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 1 to its proposed rule change (''NYSE Amendment No. 1''), which it originally filed on February 25, 2004.

On August 4, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Commission Amendment No. 2 to its proposed rule change (''NASD Amendment No. 2''), which it originally filed on September 15, 2003, and subsequently amended on December 9, 2003.

NYSE Amendment No. 1 and NASD Amendment No. 2 are described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). The Commission is publishing this notice to solicit comments on the proposed rule changes as amended from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The NYSE is filing with the Commission proposed new NYSE Rule 470 (IPO Allocations and Distributions), governing the allocation and distribution of initial public offerings (''IPOs'').

NASD is proposing new NASD Rule 2712 to further and more specifically prohibit certain abuses in the allocation and distribution of shares in IPOs.

Below is the text of the proposed rule changes. Proposed new language is underlined.

A. NYSE's Proposed Rule Text

Rule 470 IPO Allocations and Distributions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Prohibition on Abusive IPO Allocation Practices

(A) Quid Pro Quo Allocations

No member, member organization, or person associated with a member or member organization may offer or threaten to withhold shares it allocates in an initial public offering (''IPO'') as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member or member organization.

(B) Spinning

No member, member organization, or person associated with a member or member organization may allocate IPO shares to an executive officer or director of a company, including to a person materially supported by such executive officer or director:

(1) if the member or member organization has received compensation from the company for investment banking services in the past 12 months;

(2) if the member or member organization expects to receive or intends to seek investment banking business from the company in the next 6 months; or

(3) on the express or implied condition that such executive officer or director, on behalf of the company, direct future investment banking business to the member or member organization.

For purposes of Rule 470(B)(2), a member or member organization that allocates IPO shares to an executive officer or director of a company, or a person materially supported by such officer or director, from which it subsequently receives investment banking business within the next 6 months, will be presumed to have made the allocation with the expectation or intent to receive such business. A member or member organization, however, may rebut this presumption by demonstrating that the allocation of IPO shares was not made with the expectation or intent to receive investment banking business.

(C) Policies Concerning Flipping

(1) No member, member organization or person associated with a member or member organization may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares in an IPO that are subsequently flipped by a customer unless the managing underwriter has assessed a penalty bid, as defined in Rule 100 of Regulation M under the Securities Exchange Act of 1934 (the ''Exchange Act''), on the entire syndicate.