

prospectus and will note this prospectus delivery requirement in the Notice to Participants.

This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that the Exchange's rules imposing trading restrictions and information barriers on Specialist Participants in GLD are reasonable and consistent with the Act. These rules generally require a Specialist Participant to report to the Exchange a list of all accounts for trading gold or gold derivatives over which the Specialist Participant exercises investment discretion or has an interest. Furthermore, Specialist Participants and their affiliated persons will be required to make available to the Exchange, upon request, their books and records pertaining to transactions in gold and gold derivatives.

The Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of GLD on NYSE is consistent with the Act.<sup>35</sup> The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit that earlier finding or preclude the trading of GLD on the Exchange pursuant to UTP. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for GLD.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-CHX-2004-41) as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>37</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-936 Filed 3-7-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51290; File No. SR-DTC-2005-02]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Establish a Set Up Fee for Open-Ended Mutual Funds

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 16, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

#### 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 establish a set up fee for open-ended mutual funds.

#### 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 such 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 establish a set up fee for open-ended mutual funds deposited at DTC. The \$10,000 fee, payable by the family of funds,<sup>3</sup> will be for the first CUSIP in the family of funds to become eligible for deposit at DTC.<sup>4</sup> The fee

must be paid before the first CUSIP becomes eligible for deposit at DTC. DTC will not charge the set up fee for additional CUSIPs issued by the same family of funds. Limiting the DTC services available to an open-ended mutual fund involves manual processing at the time of making it eligible, which leads to significant processing costs for DTC.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change allows for Open-Ended Funds to be deposited at DTC assuring the safeguarding of securities and funds which are in the custody or control of DTC because DTC will safeguard Open-Ended Funds in a manner consistent with the manner it safeguards other securities.

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

DTC does not believe that the proposed rule change will have an impact on or impose a 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 Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).<sup>5</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the approval of DTC's rule change is consistent with this section because it will allow DTC to provide this service whereby those pledging and those taking pledges of open-ended mutual funds will be able to benefit from an automated service with uniform procedures.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after

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

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

<sup>3</sup> A family of funds is a group of mutual funds that is managed by the same fund company.

<sup>4</sup> Open-Ended Funds will have limited use of DTC's services.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>35</sup> See *supra* note 3.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to establish a set up fee for open-ended mutual funds deposited at DTC at the same time it makes open-ended mutual funds depository eligible.<sup>6</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-2005-02 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 Number SR-DTC-2005-02. 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-2005-02 and should be submitted on or before March 29, 2005.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-DTC-2005-02) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-971 Filed 3-7-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51289; File No. SR-DTC-2005-01]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Open-Ended Funds Depository Eligible

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 16, 2005, 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.

#### 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 make open-ended funds depository eligible.

#### 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

Due to processing problems that DTC has experienced with open-ended funds in the past, open-ended funds are not eligible for deposit at DTC. The proposed rule change allows DTC to accept open-ended funds for deposit but will not make the full range of DTC services available for these funds. Participants will be able to hold open-ended funds in their accounts at DTC and will be able to pledge open-ended funds to other DTC participants using DTC's system. Other than holding and pledging, no other services (*i.e.*, redemption services, reorganization services, dividend payments, or valued transactions) will be available to participants for open-ended funds. Dividends paid on open-ended funds will not be paid to DTC but will be paid to participants outside of DTC's system pursuant to instructions the open-ended fund's issuer or its agent receives from participants. Participants will deposit shares in open-ended funds into their DTC accounts and will withdraw shares in open-ended funds from their DTC accounts through the Deposit or Withdrawal at Custodian ("DWAC") service.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder applicable to DTC because it assures the safeguarding of securities and funds which are in the custody or control of DTC because DTC will safeguard open-ended funds in a manner consistent with the manner it safeguards other securities. It will also promote efficiencies related to pledges of open-ended funds.

#### (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

<sup>6</sup> Securities Exchange Act Release No. 51289 (March 2, 2005) [File No. SR-DTC-2005-01].

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78q-1.