

The Depository Trust Company

IMPORTANT

B#: 0910-07

DATE: January 26, 2007

TO: DTC Participants

CATEGORY: Operations

FROM: Product Marketing and Development

ATTENTION: Operations Manager, Cashiering, Securities Lending

SUBJECT: SMART/Track for Corporate Action Liability Notifications:
NYSE Rule Change

On January 19, 2006, the U.S. Securities and Exchange Commission ("SEC") approved changes to NYSE Rule 180 (see pages following the Access Coordinator form at the end of this Notice for a copy of SEC approval of Release No. 34-55132: File No. SR-NYSE-2006-57). The amended rule, among other things, requires that NYSE members use the automated liability notification system of a registered clearing agency when issuing liability notifications in connection with certain securities transactions. Currently, DTC is the only registered clearing agency operating an automated liability notification service, SMART/Track for Corporate Action Liability Notification Service. Accordingly, DTC participants that are also members of the NYSE need to register for DTC's SMART/Track for Corporate Action Liability Notification Service to be in compliance with the amended Rule 180. The effective date of the amended NYSE Rule 180 is January 19, 2007.

Instructions for registering for SMART for Corporate Action Liability Notification Service are listed on the next page.

Registering for SMART/Track for Corporate Action Liability Notifications

To register for SMART/Track for Corporate Action Liability Notification Service, each participant firm must complete an Access Coordinator form (see attached copy). Participants can obtain a copy of the Access Coordinator form from their account executive within DTCC's Relationship Services or by calling Relationship Services at 1-800-422-0582. The steps for registering for SMART Track are as follows:

Step One: Access Coordinator Form

1. Request an Access Coordinator form (see attached as a sample) from your DTCC Account Executive.
2. Fill in the names, telephone numbers, e-mails and street addresses of the people at your firm to be designated as Access Coordinator (at least two).
3. Obtain the signature of an authorizing officer. The authorized signature cannot be provided by any of the designated Access Coordinators.
4. Affix the medallion guarantee stamp.
5. Send the completed and signed form to your Account Executive at DTCC.

Step Two: Registration Link

1. DTCC will e-mail Access Coordinators with a copy of the Access Coordinator Guide and a link to the SMART/Track for Corporate Action Liability Notifications registration site.
2. Click on the SMART/Track for Corporate Action Liability Notifications link
3. Complete the online registration form.

Step Three: E-Mail Confirmation

1. DTCC will e-mail Access Coordinators to confirm their e-mail addresses.
2. Click on the link provided to confirm the e-mail address and complete the registration process.

Step Four: Account Approval

1. DTCC will send two e-mails once the account is approved.
2. The first e-mail contains your DTCC Web Products ID
3. The second e-mail contains a user ID (password).

If you have any questions regarding this notice or SMART/Track for Corporate Action Liability Notifications, contact your DTCC Account Executive or Relationship Services at the number above or e-mail mkoontz@dtcc.com.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55132; File No. SR-NYSE-2006-57)

January 19, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Rule 180 to Require Member Organizations to Use the Automated Liability Notification System of a Registered Clearing Agency

I. Introduction

On August 3, 2006, the New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) and on November 15, 2006, amended proposed rule change SR-NYSE-2006-57 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on December 7, 2006.² One comment letter was received.³ For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Prior to the rule change, NYSE’s Rule 180 provided that if securities were not delivered within the required time frame, the party who failed to deliver was liable for any resulting damages. Rule 180 also required that claims for damages had to be made promptly. It is industry practice when one party is owed and has not received securities that are the subject of a voluntary corporate action for the owed party to send to the failing counterparty a notice of the

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54818 (November 27, 2006), 71 FR 71010 (December 7, 2006) [File No. SR-NYSE-2006-57].

³ Letter from John J. Wagner, Past President, 2003-2005, Corporate Actions Division, Inc., SIFMA, to Nancy M. Morris, Secretary, Commission (January 11, 2007).

liability that will be attendant with the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

It is also customary in the industry for the failing counterparty that receives a liability notification either to reject the notice, to deliver the securities that are the subject of the liability notification, or to convert or exchange the securities to the corresponding corporate actions proceeds and deliver the proceeds. Liability notifications are usually sent by fax directly to the responsible failing counterparty or to its designees.

Failing counterparties are subjected to potential liability by their failure to respond to liability notifications. Failure to respond typically occurs because of processing errors, such as overlooking the faxed liability notification or not receiving it all, and because of the overall lack of uniformity in the process. There is currently no uniform method of notifying and confirming the transmission and receipt of liability notifications.

In response to a need for a reliable and uniform method of transmitting liability notifications, The Depository Trust Company (“DTC”) developed the SMART/Track for Corporate Action Liability Notification Service (SMART/Track”), a web-based system for the communication of liability notifications that is currently available to all DTC participants. SMART/Track allows DTC participants to easily create, send, process, and track corporate action liability notifications. Email notifications are automatically generated when liability notifications or replies to liability notifications are sent.

In response to an industry request that NYSE adopt a rule that would mandate the use of a system that would make uniform the method by which liability notifications are sent and received, NYSE is amending Rule 180. As amended, Rule 180 clarifies that if securities that

were to be delivered pursuant to the rules of a registered clearing agency are not so delivered, the contract may be closed as provided by the rules of that clearing agency. If the contracts are not so closed or if there is a failure to deliver securities which are to be delivered pursuant to NYSE Rule 176 or 177 and in the absence of any notice or agreement, the contract shall continue without interest until the following business day. However, in every such case of non-delivery, the party not delivering the securities shall be liable for any damages which accrue thereby.

Rule 180 is also being amended to require that when the parties to a failed contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency's automated liability notification system.⁴

III. Comment Letters

The Commission received one comment letter, which supported the rule as proposed.⁵ The commenter stated, "The Corporate Actions Division of the Securities Industry and Financial Markets Association is 100% in favor of this rule change."

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

⁴ Currently DTC is the only registered clearing agency operating an automated liability notification service. At present, approximately 155 DTC participants are voluntarily using SMART/Track.

⁵ Supra note 3.

principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments 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.⁶ Requiring the use of an automated liability notification system of a registered clearing agency should help reduce risk, costs, and delays resulting from processing errors and missing or inaccurate information that often occurs with manually processed liability notifications. Such an automated system should also provide broker-dealers with more timely receipt and distribution of such notices, immediate identification of the security affected by the notice, and a centralized system to manage and control all liability notifications. These benefits should, in turn, facilitate more efficient and cost-effective clearance and settlement of securities transactions.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with NYSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. IT IS THEREFORE ORDERED,

⁶ 15 U.S.C. 78f(b)(5).

pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2006-57) be and hereby is approved.⁷

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

Florence E. Harmon
Deputy Secretary

⁷ In approving the proposed rule change, the Commission considered the proposal's impact on the efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 17 CFR 200.30-3(a)(12).

**Access Coordinator Authorization Form
for DTCC Systems & Applications**



This Form reflects _____'s ("Customer") acknowledgement of its responsibilities, and of the roles and responsibilities of Customer's Access Coordinators designated below, related to use of DTCC systems and applications.

References to DTCC in this Form refer, as the circumstances dictate, either to: (a) The Depository Trust & Clearing Corporation; and/or (b) the applicable DTCC subsidiary or other DTCC affiliate (including, without limitation, DTC, NSCC, FICC, EMCC, GAS, and Omgeo).

Customer and its Access Coordinators are responsible for:

- **Authorizing access** by workers of our organization to DTCC systems;
- Administering (including without limitation establishing, protecting maintaining, and revoking) the **credentials** (e.g., user IDs, passwords, digital certificates, and SecurIDs) issued to workers of our organization that may be required by DTCC for authentication purposes;
- Administering (including without limitation establishing, protecting maintaining, and revoking) the associated **entitlements** (i.e., function eligibility) in connection with the workers' communications with DTCC relating to use of DTCC products and services;
- **Monitoring** and reviewing credentials, entitlements, security breaches, access violations, and inactive accounts to ensure accuracy, and taking any appropriate follow-up action (e.g., notifying DTCC's Corporate Information Security Office and Relationship Management if potential security exposures are identified);
- **Overseeing** our organization's workers' **use of DTCC's systems**, and ensuring that each worker appropriately protects his/her access privileges (e.g., by safeguarding his/her credentials) and provides up-to-date accurate information to DTCC that can be used to verify his/her identity (e.g., in the event that a password must be reset);
- **Informing all workers of changes**, such as modifications to password syntax rules, that affect access or that may impact their ability to access DTCC systems;
- Immediately **modifying or disabling/revoking access privileges** where appropriate (e.g., for any worker who leaves our organization or changes responsibilities), and initiating the deletion and/or deactivation of associated credentials, and promptly notifying DTCC's Corporate Information Security Office and Relationship Management of the same; and
- Providing DTCC with up-to-date **information about themselves** (e.g., name, mail & email addresses, telephone number).

Customer will have at least two designated Access Coordinators at all times. A submitted Form purporting to be signed by an authorized officer of Customer will be conclusively presumed to have been signed by an authorized officer of Customer. If an Access Coordinator leaves Customer or changes responsibilities, our organization will notify DTCC immediately and will promptly designate a replacement Access Coordinator by either: 1. delivering to DTCC an Access Coordinator Authorization Form signed by an authorized officer of Customer; or 2. having the remaining Access Coordinator designate an additional Access Coordinator. Customer recognizes that access to DTCC systems and applications is further subject to the terms and conditions of the applicable DTCC rules and procedures, and DTCC agreements with Customer, and could be suspended or revoked at any time. **In no event shall DTCC be liable for: (1) any loss resulting directly or indirectly from mistakes, errors or omissions, other than those caused directly by DTCC's gross negligence or willful misconduct; and (2) any special, consequential, exemplary incidental or punitive damages.**

**Access Coordinator Authorization Form for
DTCC Systems & Applications**



This fully completed and signed form must be delivered to DTCC endorsed with an original Medallion Guarantee stamp. By signing this document and endorsing it with a Medallion Guarantee Stamp, Customer represents and warrants to DTCC that the signatory to this document is vested with actual authority to sign this document on behalf of Customer.

Designated Access Coordinators: <i>(Must be a minimum of 2; If access is to be limited, [e.g., to a specific DTCC subsidiary or function], please indicate below.)</i>	Telephone Number:	E-Mail Address:	Street Address:

DTCC may rely on this document, which we are providing to DTCC so that DTCC will afford our organization the contemplated systems and applications access. **If an Access Coordinator or our organization fails to fulfill any of the above responsibilities, DTCC shall not have any liability or other responsibility for any related losses, costs, or causes of action that may arise.**

The signer of this Form is an authorized officer, and is not an Access Coordinator.

AGREED: Organization Name: _____

Organization's DTCC Account Number(s): _____

AFFIX

By (signature) _____ Date _____

Medallion Stamp

Print Signing Authorized Officer's Name: _____

HERE

Signer's Street Address: _____

Phone Number: _____ E-mail Address: _____