

# The Depository Trust Company

# **IMPORTANT**

**B#:** B3792-08

**DATE:** August 6, 2008

**TO:** All Participants

**CATEGORY:** Compliance

**FROM:** General Counsel's Office

**ATTENTION:** Managing Partner/Compliance Officer/General Counsel's Office

**SUBJECT:** DTC Proposed Rule Change SR-DTC-2008-11  
implementing a new service ("Security Holder Tracking Service")

The Depository Trust Company ("DTC") filed a rule change with the Securities and Exchange Commission to implement a new service which will allow issuers, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners for an individual CUSIP (the "Security Holder Tracking Service" or the "SH Tracking Service").

In order to support the settlement and asset servicing of these securities within DTC without exceeding the issuer's limit of beneficial owners, DTC was asked to build a mechanism which would allow issuers to track and limit the number of beneficial owners of its securities ("Tracked Securities").

In order to facilitate the book-entry settlement and asset servicing of Tracked Securities, the SH Tracking Service was developed.

The eligibility process for a Tracked Security to be made and remain DTC-eligible will remain the same. In addition to the traditional process, DTC must be instructed in writing to set up a specific CUSIP for tracking.<sup>1</sup> At the same time, the issuer must instruct DTC as to whom will perform the function of the administrator for the CUSIP within the SH Tracking Service.<sup>2</sup>

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<sup>1</sup> It is anticipated that this instruction will come from the underwriter at the time of the initial distribution at DTC.

<sup>2</sup> It is anticipated that the Administrator will typically be the transfer agent for the issue.

Upon receipt of all of the aforementioned documentation, DTC will make the CUSIP DTC-eligible and will activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC will perform asset servicing for the issue.

The administrator appointed by the issuer (the “Administrator”) will control movements of the particular CUSIP for which it has been appointed. Once the tracking indicator has been activated on the master file and the Administrator has been appointed, no transfer of the securities shall take place in the Tracked Security without the approval of the Administrator through the Inventory Management System (IMS). The Administrator, based on requirements of the issuer, shall be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the Administrator, DTC may perform centralized book-entry settlement.

IMS will only allow an Administrator access to view and approve transactions for CUSIPs for which they have been appointed Administrator as reflected in DTC’s records.

As DTC is relying solely on the instructions of the Administrator in order to effect settlement in Tracked Securities and has no knowledge of the number or character of the underlying beneficial owners, use of the SH Tracking Service by any party will constitute an agreement that DTC shall not be liable for any loss or damages related to the use of the SH Tracking System. Each user of the SH Tracking Service agrees to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the SH Tracking Service.

The Tracked Securities will not be held as part of a Participant’s general free account nor will they be considered eligible collateral in DTC’s settlement system.

Although the SH Tracking Service was developed to address the specific concerns of closely held Rule144A issues, in practice it could be utilized for other types of securities for which the number or character of the beneficial owners requires some level of control by a third party administrator.

### Fees

In an effort to recover the costs of building the SH Tracking Service, the following fees shall be introduced:

- \$25,000 fee per CUSIP for SH Tracking Services
- \$5 per delivery and receive for Tracked Securities
- \$5 per receive and delivery for reclaims of Tracked Securities

The full text of the rule change is available at our website, [www.dtcc.com](http://www.dtcc.com). Questions or inquiries regarding this proposed rule change may be directed to Sheila Candler, Vice President and Senior Counsel at [scandler@dtcc.com](mailto:scandler@dtcc.com), (212) 855-3281 or Daniel Thieke, Product Manager of Security Holder Tracking Service at [dthieke@dtcc.com](mailto:dthieke@dtcc.com), (212) 855-

4162; any such comments will be forwarded to the SEC. Written comments may also be addressed to the Secretary of the Commission, Securities and Exchange Commission, 100 First Street, N.E., Washington, D.C. 20549. We request that you provide DTC with a copy of your comments.