

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57406; File No. SR-DTC-2007-06)

February 29, 2008

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Modify the Hearing Procedures Afforded to Interested Persons for Membership and Harmonize Them with Similar Rules of its Affiliates

I. Introduction

On April 30, 2007, the Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2007-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the Federal Register on December 6, 2007.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change (1) modifies DTC’s rules regarding hearing procedures afforded to Interested Persons³ and (2) where practicable or beneficial, harmonizes such rules with similar rules of DTC’s affiliates, the Fixed Income Clearing Corporation (“FICC”) and the National Securities Clearing Corporation (“NSCC”).⁴

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56863 (Nov. 29, 2007), 72 FR 68920.

³ An Interested Person is defined by DTC’s Rules as a Participant, Pledgee, or applicant to become a Participant or Pledgee, or issuer of a Security. Rule 22, Section 1.

⁴ FICC and NSCC have filed similar proposed rule changes. Securities Exchange Act Release No. 56864 (Nov. 29, 2007), 72 FR 68922, Securities Exchange Act Release No. 57405 (Feb. 29, 2008) [SR-FICC-2007-06]. Securities Exchange Act Release No. 56865 (Nov. 29, 2007), 72 FR 68930, Securities Exchange Act Release No. 57404 (Feb. 29, 2008) [SR-NSCC-2007-06].

A. Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act⁵ that allow self-regulatory organizations with Commission approval to adopt plans for the disposition of minor violations of rules.⁶

Currently under DTC's rules, an Interested Person subject to disciplinary action has a right to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are employed by or are partners of DTC's participants. Because some rule violations are not sufficiently serious to merit Board review, DTC is adopting a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) under the Act for those rule violations DTC deems minor. Consistent with Rule 19d-1(c)(2) under the Act, DTC is designating as minor rule violations those rule violations for which a fine may be assessed in an amount not to exceed \$5,000. If an Interested Person disputes a fine imposed by DTC by filing a written request for hearing and a written statement setting forth, among other things, the action or proposed action with respect to which the hearing is being requested and the basis for objection to such action, DTC management would have the authority to waive the fine. DTC management would notify the Board of Directors or a Committee authorized by the Board of Directors of its determination to waive the fine and would provide the reasons for the waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by DTC management. If DTC management were not to waive the fine, the Interested Person could appeal the decision to a panel comprised of DTC officers ("Minor Rule Violation Panel").

⁵ 17 CFR 240.19d-1(c).

⁶ Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

B. Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (1) an alleged violation of a DTC rule for which a fine in an amount of over \$5,000 is assessed, (2) applicants for membership, (3) other disciplinary actions to which the Minor Rule Violation Plan would not apply, or (4) for appeals from a Minor Rule Violation Panel decision adverse to an Interested Person, the Interested Person is entitled to a hearing before a panel selected by the Chairman of the Board from a pool of persons that are employed by or are partners of participants. Members of the pool are appointed by the Board or by the Chairman. Decisions of the panel are final; however, the full Board of Directors retains the right to modify any sanction or reverse any decision of the panel that is adverse to the Interested Person.

Currently with respect to hearings, an Interested Person is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the panel, the associated cost may be charged in whole or part to the Interested Person in the event that the decision is adverse to the Interested Person. The Interested Person is advised of the panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

C. Administrative Changes: Uniformity of Time Frames

The rule changes will implement uniform time periods among DTC, FICC, and NSCC governing actions an Interested Person would be required to take in order to request a hearing.⁷ Under the rule change, an Interested Person has five business days from the date on which DTC first informs it of a sanction or a denial of membership in which to request a hearing.

⁷ Except that FICC and NSCC rules impose an accelerated deadline for a member or applicant to request a hearing in the case of summary action taken against the member or applicant. A summary action is an action taken prior to a hearing to determine the propriety of the action.

Within seven business days, or three business days in the case of a summary action taken against the Interested Person, after filing a request for a hearing with DTC, the Interested Person is required to submit to DTC a clear and concise written statement setting forth the action or proposed action of DTC with respect to which the hearing is requested, the basis for objection to such action, whether the Interested Person intends to attend the hearing, and whether the Interested Person chooses to be represented by counsel at the hearing.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁸ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)⁹ which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which harmonizes DTC's hearing procedure rules with those of FICC and NSCC and which adopts a Minor Rule Violation Plan, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(H).

the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-DTC-2007-06) be, and hereby is, approved.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).