

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57665; File No. SR-DTC-2007-05)

April 15, 2008

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Restructure its Rules Relating to Fines and to Harmonize Them with Similar Rules of its Affiliates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on May 15, 2007, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on December 10, 2007, amended the proposed rule change as 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, as amended, from interested parties.

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

The proposed rule change seeks to amend DTC’s fine structure relating to participants not providing financial information and notice of significant corporate changes to DTC in a timely manner and to harmonize DTC’s rules with similar rules of DTC’s affiliates, the National Securities Clearing Corporation (“NSCC”) and the Fixed Income Clearing Corporation (“FICC”). NSCC and FICC have filed similar proposed rule changes.<sup>2</sup> DTC’s proposed fine schedule is set forth in Exhibit 5 to its proposed rule change.

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

<sup>2</sup> Securities Exchange Act Release No. 57667 (April 15, 2008) [SR-NSCC-2007-07].  
Securities Exchange Act Release No. 57666 (April 15, 2008), [SR-FICC-2007-05].

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. 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>3</sup>

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

(1) Fines Scheduled for Failure to Submit Financial and Other Information

DTC's rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit such information. As part of the ongoing effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.<sup>4</sup> Pursuant to its filing, participants would be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial and other related information. The determination of the fine amount for the fourth and any subsequent occurrence of a late submission offense within a twelve month rolling period would be made by management of DTC with the concurrence of the Board of Directors or a committee appointed by the Board.

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<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> NSCC has also proposed to adopt FICC's schedule. See File No. NSCC-2007-07.

Often a member that is fined is a common member of DTC and FICC, DTC and NSCC, or DTC, FICC, and NSCC, (collectively the “Clearing Agencies”) which would cause the member to incur multiple penalties for the same offense. DTC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.<sup>5</sup>

(2) General Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant’s demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation that outlines the nature of the applicant’s business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant acknowledges its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards, then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular

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<sup>5</sup> For example, if a firm that is a member of DTC and FICC did not submit its annual audited financial statements within the required time frame, and this was the firm’s first failure to meet the deadline, the \$200 fine will be split equally between DTC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or to continue to act for them on a temporary or other conditional basis.

In the interest of harmonizing this provision with a similar FICC provision, DTC is proposing to: (a) require a member to notify DTC of a member's non-compliance with general member continuance standards within two business days; (b) require the member to notify DTC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subject the member to a \$1,000 fine for failure to timely notify DTC.

In addition, DTC proposes to add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change" to its business. A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The proposed provision would provide that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both fines, DTC is proposing that when a common member's failure to timely notify relates to the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.<sup>6</sup>

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<sup>6</sup> Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder. The proposed rules and fine provisions are intended to protect DTC and its participants from undue risk. DTC further states that the proposed changes will assist DTC and its participants in interpreting and understanding its fines. As a result, DTC will be better able to assure the safeguarding of securities in DTC's possession or control or for which it is responsible.

**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 not solicited or received written comments relating to the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety 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 such proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>7</sup> 15 U.S.C. 78q-1.

#### 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 No. DTC-2007-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2007-05. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-05.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05.pdf) and

[http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-05-amendment.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05-amendment.pdf). 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-DTC-2007-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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