

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58122; File No. SR-DTC-2007-07)

July 9, 2008

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend the Applicant Disqualification Criteria Contained in its Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on April 30, 2007, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”), and on February 7, 2008 and March 18, 2008 amended, 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 proposed rule change seeks to amend the applicant disqualification criteria contained in DTC’s rules in an effort to harmonize them with similar rules of DTC’s affiliates, National Securities Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC”).

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

(1) Statutory Disqualification

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants and defines certain criteria that may disqualify an applicant from participation. While the factors that may disqualify an applicant are generally consistent among DTC, FICC, and NSCC rules, DTC’s rules do not specifically reference an order of statutory disqualification as defined in Section 3(a)(39) of the Act<sup>4</sup> among its disqualification criteria.<sup>5</sup> To promote uniformity among the rules of DTC and its affiliates, DTC is proposing to add such a provision to its rules.

(2) Associated Persons

DTC rules include applicant disqualification criteria for persons and/or entities “associated” with the applicant firm. Because it is not easily ascertainable as to what entities or individuals are “associated” with a particular entity, DTC is proposing to amend these provisions in its rules so that they are consistent with internal surveillance procedures. DTC proposes to change references to persons “associated” with the applicant to references to “controlling management,” which shall be defined to mean the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or their equivalents. These are the officers that are currently screened by DTC’s risk management pursuant to internal procedures. Finally, DTC

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

<sup>4</sup> 15 U.S.C. 78c(a)(39)

<sup>5</sup> As a clearing agency registered under the Act, DTC must evaluate those members subject to an order of statutory disqualification as defined in the Act.

proposes to add language to its rules that would require applicants to inform DTC as to any member of its controlling management that is or becomes subject to statutory disqualification.

(3) Amendment to Willful Violation

DTC rules currently include as a disqualification criterion the applicant's or an associated person's "willful" violation of the Securities Act of 1933,<sup>6</sup> the Act, the Investment Company Act of 1940,<sup>7</sup> the Investment Advisors Act of 1940,<sup>8</sup> or any rule or regulation promulgated thereunder. DTC proposes to remove the word "willful" from this provision because DTC believes that any violation of these provisions should be a disqualification criterion.

Changes similar to those outlined in sections (1), (2), and (3) above will be made to DTC Rule 10, "Discretionary Termination."

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder because the proposed changes provide transparency with respect to the applicant and member disqualification criteria in DTC rules and uniformity with NSCC and FICC rules and thereby promote the prompt and accurate clearance and settlement of securities transactions.

(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

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<sup>6</sup> 15 U.S.C. 77a et seq.

<sup>7</sup> 15 U.S.C. 80a-1 et seq.

<sup>8</sup> 15 U.S.C. 80b-1 et seq.

<sup>9</sup> 15 U.S.C. 78q-1.

Written comments relating to the proposed rule change have not 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

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.

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-2007-07 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-DTC-2007-07. 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, 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-07.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-07.pdf), [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-07-amendment.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-07-amendment.pdf), and [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-07-amendment2.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-07-amendment2.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 Number SR-DTC-2007-07 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>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).