

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57298; File No. SR-DTC-2007-13)

February 8, 2007

Self-Regulatory Organizations; The Depository Trust Company; Order Granting
Approval of a Proposed Rule Change Relating to the Foreign Currency Payment Option

I. Introduction

On September 26, 2007, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2007-13 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 3, 2007.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change provides that DTC’s Foreign Currency Payment Option (“FCP Option”) may be used (1) in relation to securities denominated in U.S. dollars and (2) regardless of whether the terms of the issue originally contemplated the option of payment in one or more currencies. Currently, DTC offers the FCP Option in order for participants to elect to receive dividend, interest, principal, redemption, or maturity payments either in foreign currency outside of DTC or in U.S. dollars within DTC with respect to a foreign denominated issue when the foreign currency option is included in the initial offering terms of the DTC-eligible issue.

U.S. Denominated Securities

The rule change clarifies that the FCP Option will be made available for U.S.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56840 (November 27, 2007), 72 FR 67987.

denominated securities as well as foreign denominated securities. When DTC initially filed to implement the FCP Option, the issues providing for multiple currencies payments were foreign denominated.³ The wording of the filing inadvertently put participants holding U.S. denominated securities at a disadvantage with respect to the FCP Option. This rule change remedies this unintentional result by allowing the FCP Option to be used with respect to U.S. denominated securities.

Designation of Payment Option After Initial Issuance

The rule change allows for the use of the FCP Option for DTC-eligible securities that were not initially issued with the option of payment in multiple currencies. Additionally, DTC is amending its rules to allow an issuer or its agent to use the FCP Option to add an additional currency to the payment options originally offered in relation to a DTC-eligible security.⁴ In such a case, the issuer or its agent would instruct DTC within prescribed time frames and in a form satisfactory to DTC to send out a notice to participants holding positions in the subject security to inform them of the payment options for a particular payment event. Such a notice would contain all necessary information for a participant to be able to elect a particular currency option. The method of payment (U.S. dollars within DTC or foreign currency outside of DTC) and the election process would remain the same.

III. Discussion

³ Securities Exchange Act Release Nos. 33597 (February 8, 1994), 59 FR 7272 (February 15, 1994) (File No. SR-DTC-93-10) and 29144 (April 30, 1991), 56 FR 21182 (May 7, 1991) (File No. SR-DTC-90-09).

⁴ For example, payment in a different currency than that offered when a security was initially issued might be desirable in the event of a change in tax withholding legislation subsequent to the initial issuance which might make it more attractive for investors from a particular country to hold position in a security. It would in turn be helpful for such investors to have the ability to receive payments in relation to the subject security in their home country currency.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. In the 1994 order approving DTC's original rule allowing the foreign currency payment option, the Commission found that the FCP Option facilitates the immobilization of certificates at DTC and therefore reduces the costs to secondary market participants by increasing the use of book-entry settlement.⁵ Similarly, we find that the proposed rule change by extending the FCP Option to U.S. denominated securities and to securities not originally issued with the option of receiving payments in multiple currencies should achieve the same result. As a result of the proposed rule change, DTC participants holding these securities will no longer have to withdraw their shares from DTC in order to receive payments in foreign currencies offered by an issuer or its agent. The proposed rule change should, therefore, provide cost savings and should expand the efficiencies related to book-entry transfer for DTC participants. For these reasons we find that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions consistent with DTC obligations under Section 17A(b)(3)(F).

IV. 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 Section 17A of the Act and the rules and regulations thereunder.⁶

⁵ Securities Exchange Act Release No. 29144 (April 30, 1991), 56 FR 21182 (May 7, 1991) (File No. SR-DTC-90-09).

⁶ 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).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2007-13) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).