

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59199; File No. SR-DTC-2008-14)

January 6, 2009

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Existing Operational Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 21, 2008, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) 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 purpose of the proposed rule change is to modify DTC’s existing Operational Arrangements (“OA”) necessary for a securities issue to become and remain eligible for the services of DTC.

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

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

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 these statements.<sup>2</sup>

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

DTC's OA was first published in June 1987.<sup>3</sup> It was then updated in June 1988, in February 1992, in December 1994, in January 1998, and most recently in May 2002.<sup>4</sup> DTC's OA is designed to maximize the number of issues that can be made eligible while ensuring orderly processing and timely payments to its participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements, those requirements can be met almost without exception. The purpose of this rule change is not substantive in nature in that it is merely an update to the OA in an attempt to assemble relevant requirements, including requirements resulting from Commission approval of prior DTC rule changes, in one place. Additionally, some clerical changes, reorganization, and clarification of language have been made in order to provide a concise and coherent version of the OA.

The primary differences between the attached modified OA and the OA filed with the Commission in 2002 are as follows:

1. In an effort to update the OA and make it more comprehensive, DTC has included a description of the following, all of which have been previously approved by the Commission:

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<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 (August 24, 1987) (File No. SR-DTC-87-10).

<sup>4</sup> Securities Exchange Act Release Nos. 25948 (July 27, 1988), 53 FR 29294 (August 3, 1988) (File No. SR-DTC-88-13); 30625 (April 30, 1992), 57 FR 18534 (April 30, 1992) (File No. SR-DTC-92-06); 35342 (February 8, 1995), 60 FR 8434 (February 14, 1995) (File No. SR-DTC-94-19); 39894 (April 21, 1998), 63 FR 23310 (April 28, 1998) (SR-DTC-97-23); and 45994 (May 29, 2002), 68 FR 35037 (June 11, 2003) (File No. SR-DTC-2002-02).

- (a) In 1988, the Commission approved a DTC rule filing related to certificates of deposit.<sup>5</sup> The OA has been updated to include a section describing procedures unique to retail certificates of deposit.
- (b) In 1994, the Commission approved a DTC rule filing which consisted of enhancements to the reorganization and deposit services of DTC. The OA has been updated accordingly to specify that issuers' agents are required to provide timely notification to DTC for conversions with variable rate (cash and share) entitlements.<sup>6</sup>
- (c) In 1995, the Commission approved a DTC rule filing in which DTC was designated as the "appropriate qualified registered securities depository" to receive notices of transfer agent changes pursuant to Rule 17Ad-16 of the Act.<sup>7</sup> The OA has been updated to reflect the procedures for notifying DTC of transfer agency changes.<sup>8</sup>
- (d) In 1996, the Commission approved a DTC rule filing which established procedures for the Direct Registration System ("DRS").<sup>9</sup> DRS permits an investor to hold a security as the registered owner of the security in electronic form on the books of the issuer rather than (i) indirectly through a financial intermediary that holds the security in street name; or (ii) in the form of a certificate. The OA has been updated to include a description of DRS.
- (e) In 1997, the Commission approved a rule filing amending DTC's Return-of-Funds Policy.<sup>10</sup> The rule change amended DTC's charge back and return of funds policies to shorten from ten business days to one business day after the payable date the period within which a paying agent can request that DTC return principal and income payments that have been allocated to participants. The rule change also amended the procedure so if a paying agent requests the return of a

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<sup>5</sup> Securities Exchange Act Release No. 25870 (May 7, 1988), 53 FR 25870 (May 12, 1988) (File No. SR-DTC-88-3).

<sup>6</sup> Securities Exchange Act Release No. 34189 (June 9, 1994), 59 FR 30818 (June 15, 1994) (File No. SR-DTC-94-06).

<sup>7</sup> 15 U.S.C. 78 et seq.

<sup>8</sup> Securities Exchange Act Release Act No. 35378 (February 15, 1995), 60 FR 9875 (February 22, 1995) (File No. SR-DTC-95-02).

<sup>9</sup> Securities Exchange Act Release Act No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) (File No. SR-DTC-96-15).

<sup>10</sup> Securities Exchange Act Release Act No. 38564 (April 30, 1997), 62 FR 25008 (May 7, 1997) (File No. SR-DTC-96-22).

principal and income payment more than one business day after a payable date, DTC will work with the paying agent and participants to resolve the matter, but DTC will not return the allocated payments without each participant's consent. The OA has been updated to describe DTC's Return-of-Funds Policy.

- (f) In 2005, DTC filed a rule change with the Commission in order to establish a fine for participants that are required to conduct connectivity testing for business continuity purposes and who fail to do so.<sup>11</sup> The OA has been updated to reflect a description of DTC's business continuity procedure and to reflect its right to impose a fine for noncompliance.
- (g) In 2005, the Commission approved a DTC filing which described Security Position Report type information, known as "call lottery results" for auction rate securities.<sup>12</sup> The OA has been updated to include the description of auction rate securities.
- (h) In 2006, the Commission approved a DTC rule change in which DTC proposed to revise its Deposit Service, Custody Service, and Withdrawals-by-Transfer Service procedures based upon guidance from the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") to DTC.<sup>13</sup> The OA has been updated to reflect a description of DTC's OFAC procedures.
- (i) In 2007, the Commission approved a DTC rule change which consisted of new Rule 30, Canadian-Link Service. Rule 30 describes the operation of a service that DTC offers to participants, through the facilities of DTC and The CDS Clearing and Depository Services Inc. ("CDS").<sup>14</sup> Rule 30 permits participants using the service ("Canadian-Link Participants") to: (i) clear and settle valued securities transactions with participants of CDS ("CDS Participants") and other Canadian-Link Participants in Canadian dollars and (ii) transfer Canadian dollars to or receive Canadian dollars from CDS Participants and other Canadian-Link Participants without any corresponding delivery or

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<sup>11</sup> Securities Exchange Act Release No. 52446 (September 15, 2005), 70 FR 55435 (September 21, 2005) (File No. SR-DTC-2005-04).

<sup>12</sup> Securities Exchange Act Release No. 52393 (September 8, 2005), 70 FR 54598 (September 15, 2005) (File No. SR-DTC-2005-12).

<sup>13</sup> Securities Exchange Act Release No. 54120 (July 10, 2006), 71 FR 40562 (July 17, 2006) (File No. SR-DTC-2005-14).

<sup>14</sup> Formerly known as "The Canadian Depository for Securities Limited."

receipt of securities.<sup>15</sup> The OA has been updated to describe this service.

- (j) In 2007, the Commission approved a rule filing intended to provide greater efficiency by making available more automated functions to be utilized for a broader range of voluntary reorganization events (e.g., DTC's Automated Tender Offer Program ("ATOP")).<sup>16</sup> The OA has been updated to include a description of these procedures.
- (k) In 2007, DTC filed a rule change with the Commission in order to amend DTC's OA as it applies to structured securities.<sup>17</sup> That rule filing: (i) extended the deadline by which paying agents of such securities must submit periodic payment rate information to DTC to preferably five business days but no less than one business day prior to the payable date; (ii) extended the processing deadline for payment rate files from 7:00 pm Eastern Standard Time ("EST") to 11:30 pm EST; (iii) established two classes of structured securities, "conforming" and "non-conforming;" (iv) imposed an exception processing fee which applies to certain structured securities whose features prevent paying agents from complying with the extended deadline; and (v) provided that DTC track and make publicly available reports on paying agent performance as it relates to timeliness and accuracy of structured securities payment rate information submitted to DTC. DTC has extended the deadlines by which paying agents of such structured securities must submit periodic payment rate information to DTC to no later than 3:00 am EST on the payable date and has extended the processing deadline for payment rate files to 3:00 am EST on the payable date. The OA has been updated to include this product and to reflect these extensions.
- (l) In 2007, the Commission approved a DTC rule filing which provided that DTC's foreign currency payment option may be used: (i) in relation to securities denominated in U.S. dollars and (ii) regardless of whether the terms of the issue originally contemplated the option of payment in one or more currencies.<sup>18</sup> The OA has been updated to reflect this change.

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<sup>15</sup> Securities Exchange Act Release Act No. 55239 (February 5, 2007), 72 FR 6797 (February 13, 2007) (File No. SR-DTC 2006-15).

<sup>16</sup> Securities Exchange Act Release No. 56538 (September 26, 2007), 72 FR 56409 (October 3, 2007) (File No. SR-DTC-2007-09).

<sup>17</sup> Securities Exchange Act Release No. 57542 (March 20, 2008), 73 FR 16403 (March 27, 2008) (File No. SR-DTC-2007-11).

<sup>18</sup> Securities Exchange Act Release No. 57298 (February 8, 2008), 73 FR 8921 (February 15, 2008) (File No. SR-DTC-2007-13).

- (m) In 2007, the Commission approved a DTC rule change which added a new Policy Statement on the Eligibility of Foreign Securities to DTC's rules.<sup>19</sup> The purpose of the policy statement is to set forth in a single place and in an accessible manner the criteria and procedures for making the securities of foreign issuers eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933<sup>20</sup> and the rules and regulations of the SEC thereunder. A description of the policy statement has been added to the OA.
- (n) In 2008, the Commission approved a DTC rule filing to implement the New Issue Information Dissemination System ("NIIDS") for municipal securities. NIIDS is an automated system developed by DTC at the request of the Securities Industry and Financial Markets Association ("SIFMA") in order to improve the mechanism for disseminating new issue information regarding municipal securities.<sup>21</sup> DTC has mandated the use of NIIDS in connection with eligibility processing of municipal securities issuances in order to assist underwriters in meeting the reporting standards set forth by the Municipal Securities Rule Making Board ("MSRB"). The OA has been updated to include a description of NIIDS.
2. DTC has updated the OA to describe the modification in cutoff time for Fast Automated Securities Transfer ("FAST") Agents to approve or reject a deposit or withdrawal instruction submitted by a participant. This adjustment was implemented on October 2, 2001.<sup>22</sup>
3. Additionally, DTC has updated the OA to indicate that voluntary unit separations<sup>23</sup> are now processed under the FAST program. The volume of

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<sup>19</sup> Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (File No. SR-DTC-2007-04).

<sup>20</sup> 15 U.S.C. 77 et seq.

<sup>21</sup> Securities Exchange Act Release No. 57513 (March 17, 2008), 73 FR 15548 (March 24, 2008) (File No. SR-DTC-2007-10).

<sup>22</sup> The modification explains that the cutoff time has been changed to 5:30 pm EST from 6:30 pm EST. For more information regarding this change, see, DTC Important Notice B#2358-01 available at [http://www.dtcc.com/downloads/legal/imp\\_notices/2001/dtc/exe/exe\\_2358.pdf](http://www.dtcc.com/downloads/legal/imp_notices/2001/dtc/exe/exe_2358.pdf).

<sup>23</sup> A unit is a security comprised of more than one class of securities such as common stock and warrants ("components"). In a voluntary unit separation, the separation and recombination between the security component and the security is done by the Participant and transfer agent using DTC's Deposit/Withdrawal At Custodian ("DWAC") system.

voluntary unit separations has declined significantly throughout the years (to one or two per year) thereby reducing the need for a separate program to process such transactions. Voluntary units have been processed under the Fast program since the late 1990s.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>24</sup> and the rules and regulations thereunder applicable to DTC because the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by expediting the process of making securities eligible for DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on 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

No written comments relating to the proposed rule change have 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>25</sup> and Rule 19b-4(f)(4)<sup>26</sup> thereunder because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing

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<sup>24</sup> 15 U.S.C. 78q-1.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(4).

agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2008-14 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-DTC-2008-14. 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/legal/rule\\_filings/ficc/2008.php](http://www.dtcc.com/legal/rule_filings/ficc/2008.php). 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-2008-14 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>27</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).