

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59821; File No. SR-DTC-2009-05)

April 24, 2009

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Expanding the Scope and Timing to Collect and Pass-Through Fees Owed by Participants to American Depository Receipt Agents

I. Introduction

On February 25, 2009, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> On March 16, 2009, the Commission published notice of the proposed rule change in the Federal Register to solicit comments from interested persons.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Prior to this rule change, DTC collected custody fees, called Depository Service Fees (“DSF”), from participants once a year per CUSIP. DTC collected DSFs at the request of the depository bank and only for issues that have not paid a dividend in the last 12 months. In addition to collecting the DSF, DTC charged its participants three percent (3%) of the ADR agent fee, which includes all fees under the ADR agreement, up to a maximum of \$10,000 per CUSIP (“collection charge”) in order to cover costs incurred in collecting and passing through DSFs.<sup>3</sup>

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

<sup>2</sup> Securities Exchange Act Release No. 59540 (Mar. 9, 2009), 74 FR 11146.

<sup>3</sup> See Securities Exchange Release Act No. 55306 (Feb. 15, 2007) 72 FR 8217 (Feb. 23, 2007) (File No. SR-DTC-2006-21) (modifying the fees from the original filing).

With this rule filing, DTC will collect all allowable DSFs, dividend fees,<sup>4</sup> pass-through expenses, or other special fees as governed by the ADR agreement.<sup>5</sup> Additionally, DTC will increase the maximum collection charge to \$20,000 per CUSIP. In order to collect the ADR agent fees, the ADR depository banks will be required to notify DTC thirty calendar days prior to the record date that a DSF or other fee is due and payable.<sup>6</sup> Moreover, DTC will require that the ADR depository bank submit an attestation that the specific fee(s) is (are) allowable under the ADR agreement with the issuer. The attestation will be in a form prescribed by DTC and may be changed periodically to address operational issues. If a participant asks DTC to substantiate the fee, DTC may require the ADR depository to provide DTC with a copy of the ADR agreement with the issuer and highlight the fee schedule. DTC may at its discretion provide copies of the agreement to its participants to substantiate the fee.

As a result of this rule filing, the fee schedule for assessing ADR agent fees will be revised. First, ADR agent fees will apply to all fees permitted under the ADR agreement; the reference to “issues not paying periodic dividends” would be deleted. Second, as discussed above, the maximum ADR agent fee that DTC would collect would be increased to \$20,000 from \$10,000.

DTC expects to begin collecting ADR agent fees as expanded by this rule filing in the first full month following the approval of this filing.

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<sup>4</sup> Dividend fees will continue to be collected through the current rate adjustment process. The dividend fee is incorporated into the final rate paid on the dividend by the agent on payment date and covers their cost for servicing the dividend payment.

<sup>5</sup> ADR agreements are filed with the Commission and are usually posted on the depository bank’s web site.

<sup>6</sup> Fees may be collected multiple times in any given calendar year depending on the terms of the ADR agreement.

### 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 DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,<sup>7</sup> which requires that the rules of a registered clearing agency are designed to, among other things, remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For example, further automating and centralizing information to effect DTC's ADR agent fee collection process should eliminate invoice and check processing for DTC participants and depository banks because ADR depositories will no longer have to mail invoices and reminders to participants holding ADR securities at DTC. In addition, DTC participants will have a more transparent view into upcoming ADR agent fees and a centralized source for information about the ADR agent fee and the collection process. These refinements to the ADR fee collection process should therefore remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

### 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<sup>8</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR-DTC-2009-05) be and hereby is approved.<sup>10</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 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).

<sup>11</sup> 17 CFR 200.30-3(a)(12).