

**Extension:**

Rule 15g-6; OMB Control No. 3235-0395;  
SEC File No. 270-349.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in the following rule: Rule 15g-6—Account statements for penny stock customers (17 CFR 240.15g-6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 15g-6 requires brokers and dealers that sell penny stocks to provide their customers monthly account statements containing information with regard to the penny stocks held in customer accounts. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 240 broker-dealers will spend an average of 90 hours annually to comply with this rule. Thus, the total compliance burden is approximately 21,600 burden-hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 60 days of this notice.

Dated: February 13, 2009.

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59384; File No. SR-DTC-2008-13]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Eliminating the SRO Requirement as a Condition of DTC-Eligibility for Securities That Are Eligible for Resale Under Rule 144A Under the Securities Act of 1933

February 11, 2009.

#### I. Introduction

On October 9, 2008, 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 December 17, 2008, 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, Rule 144A securities,<sup>3</sup> other than Investment Grade Securities, were eligible for DTC's deposit, book-entry delivery, and other depository services provided, in part, that such securities were included in an "SRO Rule 144A System" (frequently referred to as the "SRO Requirement"), such as the NASD's PORTAL Market System.<sup>4</sup>

Under this rule change, DTC will eliminate the SRO Requirement thereby resulting in a uniform procedure for making all Rule 144A Securities DTC-eligible. Issuers and participants will continue to be responsible for

determining that their deposit of Rule 144A Securities at DTC and their transactions in Rule 144A Securities through DTC's facilities are in compliance with existing DTC rules and the federal securities laws,<sup>5</sup> such as:

(i) *Rule 2, Section 8, of DTC's rules:*

"In connection with their use of the Corporation's [DTC's] services, Participants and Pledges must comply with all applicable laws, including all applicable laws relating to securities, taxation and money laundering."

(ii) *DTC's "Operational Arrangements (Necessary for an Issue to Become and Remain Eligible for DTC Services)" relating to BEO issues being made eligible for DTC services:* "Issuer recognizes that DTC does not in any way undertake to, and shall not have any responsibility to, monitor or ascertain the compliance of any transactions in the Securities with the following, as amended from time to time: (1) Any exemptions from registration under the Securities Act of 1933; (2) the Investment Company Act of 1940; (3) the Employee Retirement Income Security Act of 1974; (4) the Internal Revenue Code of 1986; (5) any rules of any self-regulatory organizations (as defined under the Securities Exchange Act of 1934); or (6) any other local, state, federal, or foreign laws or regulations there under." This and other representations made by issuers to DTC pursuant to the DTC Operational Arrangements are mirrored in the Letter of Representations that DTC receives from issuers in connection with their deposits of BEO issues with DTC.

(iii) When a Rule 144A Security is made DTC eligible, the issuer will continue to be required to execute a copy of the rider to the Letter of Representation in the form it appeared prior to this rule change except that the reference to the SRO Requirement will be deleted.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

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

<sup>2</sup> Securities Exchange Act Release No. 59088 (Dec. 11, 2008), 73 FR 76688.

<sup>3</sup> Rule 144A, 17 CFR 230.144A, provides a safe-harbor from the registration requirements of the Securities Act for resales to qualified institutional buyers ("QIBs") of certain restricted securities that when issued were not of the same class as securities listed on a national securities exchange registered under the Act. Rule 144A(d)(2), 17 CFR 230.144A(d)(2), requires that the seller and any person acting on its behalf take reasonable steps to ensure that the purchaser is aware that the seller may rely on the safe-harbor provided by Rule 144A.

<sup>4</sup> Securities Exchange Release No. 33327 (Dec. 13, 1993), 58 FR 67878 (Dec. 22, 1993) [File No. SR-DTC-90-06]. "Investment Grade Securities" are defined in that Commission order as nonconvertible debt securities and nonconvertible preferred stock which are in one of the top four categories by a nationally recognized statistical rating organization.

<sup>5</sup> In 1994, in an order clarifying certain language in the Rule 144A Approval Order, the Commission concurred in the position taken by DTC that "Rule 5 [of DTC's rules] does not require DTC to determine whether securities, when deposited at DTC, may be transferred lawfully by book-entry in light of the Federal securities law." Order Approving Proposed Rule Change Relating to a Clarification of Rule 5, Securities Exchange Act Release No. 33672, 56 SEC Docket 315 (Feb. 23, 1994) ("Rule 5 Clarification Order"). DTC Rule 5 was amended to delete any implication that DTC was under any statutory or contractual obligation to determine whether securities deposited with DTC could be legally transferred by book-entry.

applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,<sup>6</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.

When DTC established the SRO Requirement as a condition of eligibility for Rule 144A Securities, DTC and the Commission envisioned that an SRO Rule 144A System would provide comprehensive safeguards to facilitate the SRO's ability to monitor compliance with Rule 144A. However, the only SRO Rule 144A System that was developed was the NASD's PORTAL Market System ("PORTAL"). Additionally, PORTAL neither developed as anticipated nor included the safeguards contemplated by the DTC requirement.<sup>7</sup> Thus, the Commission agrees with DTC that the SRO Requirement is no longer necessary or practical to achieve the purpose for which it was added to DTC's rules. In addition, the requirement appears to deter the development of alternative markets for Rule 144A Securities that could avail traders in 144A Securities of DTC's automated clearance, settlement, and risk management services.<sup>8</sup> Accordingly, DTC's removal of the SRO Requirement should expand the number of restricted securities that can become eligible for DTC's clearance and settlement services thus helping to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, which is consistent with Section 17A(b)(3)(F) of the Act.

#### 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>9</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-

DTC-2008-13) be and hereby is approved.<sup>11</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59409; File No. SR-DTC-2009-03]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Its Fee Schedule

February 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 13, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 13, 2009, 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 and order to solicit comments on the rule change from interested parties and to grant accelerated approval of the proposal.

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

The purpose of the rule change is to revise fees for certain DTC services.

#### 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

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

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

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

DTC is proposing to revise fees for certain services. The revisions include: (i) Decreases of Settlement Services fees to realign fees with costs incurred in providing the services; (ii) decreases of Custody and Dividend service fees to realign fees with costs scaled to reflect processing complexity creating fee simplification and transparency; (iii) increases of Reorganization services fees to realign fees with costs incurred due to low volume tender offers which are subject to extensive monitoring; and (iv) increases of Custody and Deposits fees to realign fees with costs associated with intensive photocopy and research requests.

In addition, DTC will increase certain disincentive fees to discourage activities that increase industry inefficiencies. These revisions include: fee increases for underwriters who have incomplete, inaccurate, or untimely submission of information in connection with DTC's Underwriting services and fee increases for Withdrawals by Transfer and Deposits (in connection with DTC's continuing efforts to discourage continued traffic in physical securities and to discourage erroneous requests).

The proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, discourage manual and exception processing, and encourage immobilization and dematerialization of securities. Except as otherwise noted above, the effective date for these fee adjustments is January 2, 2009.

The proposed rule change is consistent with Section 17A of the Act,<sup>3</sup> as amended, because it clarifies and updates DTC's fee schedule. As such, it provides for the equitable allocation of fees among its participants.

#### (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

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> Securities Exchange Release No. 56172 (Jul. 31, 2007), 72 FR 44196 (Aug. 7, 2007) [File No. SR-NASDAQ-2006-65].

<sup>8</sup> In a 2007 order approving Nasdaq's reestablishment of its PORTAL market, the Commission acknowledged comments suggesting such and encouraged DTC to review its SRO Requirement. *Supra* note 7.

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).