

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73643; File No. SR-DTC-2014-11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify That Federal Reserve Banks, Central Counterparties, and Central Securities Depositories Shall Not Be Considered Either “Mandatory Purchaser Participants” or “Voluntary Purchaser Participants”

November 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 2014, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder.⁴ The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 31 of the Rules and Procedures (“Rules”) of DTC in order to clarify that Federal Reserve Banks, central counterparties, and central securities depositories shall not be considered either “Mandatory Purchaser Participants” or “Voluntary Purchaser Participants,” as such terms are defined therein, as more fully described below.

II. Clearing Agency’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 such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Third Amended and Restated Shareholders Agreement, dated as of December 7, 2005 (“Shareholders Agreement”), by and among The Depository Trust & Clearing Corporation (“DTCC”), DTC, National Securities Clearing Corporation (“NSCC”), Fixed Income Clearing Corporation (“FICC”) and the other parties thereto, and DTC Rule 31, Participants (as such term is defined in the Rules⁵) other than (i) non-U.S. based central securities depositories, or (ii) Limited Participants (as such term is defined in the Rules) are required to be “Mandatory Purchaser Participants” (as such term is defined in Rule 31) and be parties to the Shareholders Agreement. Limited Participants are not permitted to purchase and own shares of DTCC common stock (“Common Shares”) or be parties to the Shareholders Agreement.

DTC is proposing to amend Rule 31, as marked on Exhibit 5 hereto, in order to make clear Federal Reserve Banks, central counterparties, and central securities depositories shall not be considered either Mandatory Purchaser Participants or Voluntary Purchaser Participants (as such term is defined in Rule 31). DTC has interpreted Rule 31 to exclude from its provisions: (1) Federal Reserve Banks, because it was never intended that such governmental authorities should be required to own shares in DTCC, notwithstanding that they may use certain services of DTC; and (2) central counterparties and central securities depositories, because link arrangements between DTC and these entities are for the purpose of extending clearing agency services across borders or among closely related activities and products, but not for ownership purposes.

2. Statutory Basis

The proposed rule change is consistent with the Act, and the rules and regulations thereunder, in particular Section 17A(b)(3)(C) which requires that the rules of DTC “assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs . . . [and the Commission] may determine that the representation of participants is fair

if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.”⁶ DTC implements and meets this requirement through DTC Rule 31, which afford DTC’s participants a reasonable opportunity to acquire voting stock indirectly in the clearing agency in reasonable proportion to their use of the clearing agency.⁷ The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of this existing rule.

(B) Clearing Agency’s Statement on Burden on Competition

The proposed rule change will not have any impact, or impose any burden, on competition.

(C) Clearing Agency’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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

⁶ 15 U.S.C. 78q-1(b)(3)(C).

⁷ See Commission orders approving NSCC and DTC’s rule filings which implemented the current stock ownership structure that satisfies the fair representation requirements. Securities Exchange Act Release No. 41800 (August 27, 1999), 64 FR 48694 (September 7, 1999) (SR-NSCC-1999-10); and Securities Exchange Act Release No. 41786 (August 24, 1999), 64 FR 47882 (September 1, 1999) (SR-DTC-1999-17).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ DTC’s Rules are available at <http://dtcc.com/legal/rules-and-procedures.aspx>.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2014-11 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-2014-11. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at <http://dtcc.com/legal/sec-rule-filings.aspx>. 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-2014-11 and should be submitted on or before December 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73649; File No. S7-04-09]

Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations From Requirements of Rule 17g-5 Under the Securities Exchange Act of 1934 and Request for Comment

November 19, 2014.

I. Introduction

On May 19, 2010, the Securities and Exchange Commission ("Commission") conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations ("NRSROs") from certain requirements in Rule 17g-5(a)(3)¹ under the Securities Exchange Act of 1934 ("Exchange Act"), which had a compliance date of June 2, 2010.² Pursuant to the Order, an NRSRO is not required to comply with Rule 17g-5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) The issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. ("covered transactions").³ On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011.⁴ On November 16, 2011, the Commission extended the conditional temporary exemption until December 2, 2012.⁵ On November 26, 2012, the Commission extended the conditional temporary exemption until December 2, 2013.⁶ On November 22, 2013, the Commission extended the conditional temporary exemption until December 2, 2014.⁷ The Commission is

¹ See 17 CFR 240.17g-5(a)(3).

² See Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) ("Order").

³ See *id.* at 28827-28 (setting forth conditions of relief).

⁴ See Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) ("First Extension Order").

⁵ See Exchange Act Release No. 65765 (Nov. 16, 2011), 76 FR 72227 (Nov. 22, 2011) ("Second Extension Order").

⁶ See Exchange Act Release No. 34-68286 (Nov. 26, 2012), 77 FR 71201 (Nov. 29, 2012) ("Third Extension Order").

⁷ See Exchange Act Release No. 34-70919 (Nov. 22, 2013), 78 FR 70984 (Nov. 27, 2013) ("Fourth Extension Order").

extending the temporary conditional exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2015.

II. Background

Rule 17g-5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.⁸ Paragraph (a) of Rule 17g-5⁹ prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g-5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (*i.e.*, disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act¹⁰ and Rule 17g-1¹¹ and paragraph (a)(2) (*i.e.*, established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act).¹² Paragraph (c) of Rule 17g-5 specifically prohibits seven types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In December 2009, the Commission adopted subparagraph (a)(3) to Rule 17g-5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating—and subsequently monitor that credit rating—for the structured finance product.¹³ In particular, under Rule 17g-5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g-5 (*i.e.*, being hired by an arranger to determine a credit rating for a structured finance product)¹⁴ unless it has taken the steps

⁸ 17 CFR 240.17g-5(b) and (c).

⁹ 17 CFR 240.17g-5(a).

¹⁰ 15 U.S.C. 78o-7(a)(1)(B)(vi).

¹¹ 17 CFR 240.17g-1.

¹² 15 U.S.C. 78o-7(h).

¹³ See 17 CFR 240.17g-5(a)(3); *see also* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) ("Adopting Release") at 63844-45.

¹⁴ Paragraph (b)(9) of Rule 17g-5 identifies the following conflict of interest: issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities

Continued

¹⁰ 17 CFR 200.30-3(a)(12).