

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58157; File No. SR-DTC-2007-05)

July 15, 2008

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Harmonizing Fines with the National Securities Clearing Corporation and the Fixed Income Clearing Corporation

I. Introduction

On May 15, 2007, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on December 10, 2007, amended the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ On April 15, 2008, the Commission published notice of the proposed rule change to solicit comments from interested parties.² 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, as amended.

II. Description

This filing will conform DTC’s fine structure relating to participants not providing financial information in a timely manner to similar fine structures of DTC’s clearing agency affiliates, the National Securities Clearing Corporation (“NSCC”) and the Fixed Income Clearing Corporation (“FICC”).³

DTC’s rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57665 (Apr. 15, 2008), 73 FR 21675.

³ Securities Exchange Act Release Nos. 57666 (Apr. 15, 2008), 73 FR 21675 [SR-FICC-2007-05] and 57667 (Apr. 15, 2008) [SR-NSCC-2007-07].

participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit this information. As part of the ongoing effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.⁴

1. Fines For Late Submissions

If the participant's late submission violates the rules of more than one DTC-affiliated clearing agency (which includes DTC, NSCC, and FICC), the fine amount will be divided equally among those clearing agencies.⁵ When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

2. Fines Relating to Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application

⁴ The three clearing agencies do not view the proposed rule changes as fee reductions because they never intended to charge a common member two or three times for a single violation that trips another clearing agency's rules on the same matter.

⁵ For example, assume that Firm A is a participant of DTC, FICC, and NSCC and is required to submit its annual audited financial statement within a certain time frame. If participant A is late in its submission of the statement (and this is Firm A's first violation), Firm A will be fined \$300 total and would owe \$100 to DTC, \$100 to FICC, and \$100 to NSCC.

for DTC participation, signs a letter of representation that outlines the nature of the applicant's business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant letter acknowledges in the letter or representation its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards, then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or continue to act for them on a temporary or other conditional basis.

In order to harmonize the rules of DTC with those of its clearing agency affiliates, DTC will add an additional consequence in this regard whereby a participant will be fined \$1,000 if it fails to notify DTC of its non-compliance with any general continuance standard for DTC participation within two business days.

In addition, DTC will add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change." A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The new provision provides that the

notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both \$1,000 and \$5,000 fines mentioned above, DTC will add an additional provision that if the participant's failure to provide notice of such material change applies to more than one DTC-affiliate clearing agency, the fine amount will be divided equally among the clearing agencies. This is the same approach being adopted above with respect to fines for failure to timely provide requisite financial and other information. When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

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 a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁶ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)⁷ which, among other things, requires that the rules of a clearing agency provide a fair

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(H).

procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes DTC's fines with those of NSCC and FICC, is consistent with those statutory obligations.

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 Act⁸ and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.⁹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2007-05), as amended, be and hereby is approved.

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

Florence E. Harmon
Acting Secretary

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).