

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64360; File No. SR-DTC-2011-05)

April 28, 2011

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend Rules Relating to the Memo Segregation Function

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on April 15, 2011, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The purpose of this proposed rule change is to amend DTC’s rules relating to its Memo Segregation Service to no longer permit stock loan or stock loan return-related turnaround deliveries for a security when there is a deficit in the Memo Segregation account.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The text of the proposed rule change is attached as Exhibit 5 to DTC’s filing, which is available at www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2011-05.pdf.

below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

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

Rule 15c3-3 (“Customer Protection Rule”), which was implemented by the Commission under the Act, requires, among other things, that broker-dealers maintain possession or control of fully-paid or excess margin securities they hold for the account of customers.⁵ DTC’s Memo Segregation Service (“MSEG”) is an optional service which offers a mechanism for broker-dealer participants to protect fully-paid or excess margin securities by allowing the participant to shield from unintended delivery a designated quantity of securities that are in the participant’s DTC free account or that may be received during the daily processing cycle. In this regard, the participant may set a “counter” for a specified minimum quantity of each security to be held in its account as a threshold to any redelivery intraday. When the counter for a security is greater than the inventory of the participant, MSEG will prevent the delivery of any quantity of the affected security out of the participant’s account unless: (1) the delivery is a permitted delivery (e.g., a free of value ACATS delivery or a “turnaround” as described below) or (2) the participant provides DTC with new instructions to reduce the MSEG counter.

The MSEG procedures currently support two optional “turnaround” MSEG indicators which enable participants to make deliveries for certain transaction types (including, but not limited to, stock loans and stock loan returns) from certain positions received intraday regardless of any MSEG-related deficit. Recently, DTC was advised by the Regulatory and Clearance Committee of the Securities Operations Section of SIFMA that several broker-dealer participants

⁴ The Commission has modified the text of the summaries prepared by DTC.

⁵ 17 CFR 204.15c3-3.

had expressed concern that their practices for turnaround of stock loans and stock loan returns (i.e., MSEG overrides) may be deemed by FINRA to be contrary to the Customer Protection Rule. DTC also communicated directly with participants affected through their use of this functionality, and they expressed similar concerns. In order to accommodate its participants in this regard, DTC is therefore proposing to revise its procedures so that MSEG would no longer permit stock loan or stock loan return-related turnaround deliveries for a security when there is an MSEG deficit in the account.

In order to effect the proposed change described above, DTC will amend its Settlement Service Guide (“Service Guide”), which is incorporated into DTC’s procedures, to make existing indicators that allow for the turnaround of stock loans and stock loan returns more restrictive. As a result, the procedures will no longer permit deliveries for stock loans (designated in the Service Guide as Reason Code 10), stock loan returns (Reason Code 20), The Options Clearing Corporation (“OCC”) stock loans (reason code 260), OCC stock loan returns (reason code 270), American Depository Receipt (“ADR”) stock loans (reason code 280), and ADR stock loan returns (reason code 290) to be completed from turnaround shares when an MSEG deficit exists.⁶

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, (“Act”) and the rules and regulations thereunder applicable to DTC because it modifies a service of DTC so that it enables participants to better protect customer fully-paid and excess margin securities which are held at DTC and in general, protects investors and the public interest.

⁶ The proposed change will also eliminate references in the Settlement Service Guide that MSEG-related functions are processed through the Participant Terminal System (PTS), as participants may currently use various platforms to communicate with DTC.

In addition, the proposed rule change is consistent with the CPSS-IOSCO Recommendations for securities settlement systems (“Recommendations”). Recommendation 12, “Protection of Customers’ Securities,” states, in relevant part: “Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customer’s securities.” Section 3.61 of this Recommendation includes the statement that “one way that a customer can be protected in the event of a custodian’s insolvency is through segregation (identification) of customer securities on the books of the custodian (and of all subcustodians, and ultimately, the CSD [Central Securities Depository]).” The term “custodian” in this context would refer to the participant and not to DTC as we, DTC, understand the Recommendations. DTC neither takes direct responsibility, as the CSD, for the designation of assets as customer assets nor is it required to do so by law or regulation. However, DTC accommodates the needs of its participants to segregate (identify) customer securities by identifying mechanisms such as MSEG. The MSEG proposal is, accordingly, consistent with this Recommendation to the extent it applies to DTC. The change will reduce the risk of unintended delivery by broker-dealer participants of customer securities, which might otherwise be deemed to be contrary to the Customer Protection Rule.

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

DTC does not believe that the proposed rule change would 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 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

Within forty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-DTC-2011-05 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 submission should refer to File Number SR-DTC-2011-05. 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 website (<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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's website at http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/2011-05.pdf. 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-2011-05 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.⁷

Cathy H. Ahn
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).