

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58404; File No. SR-DTC-2008-08)

August 21, 2008

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Eliminate the Ability to Obtain a Physical Certificate from DTC for Issues That are Eligible and Participating in the Direct Registration System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on July 9, 2008, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change No. SR-DTC-2008-08. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the DTC.<sup>2</sup>

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

DTC is proposing to amend its Withdrawal-by-Transfer (“WT”) service to eliminate the ability of participants to receive physical certificates for securities positions withdrawn from participants’ accounts at DTC when the issue of such securities is eligible and participating in the Direct Registration System.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

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

<sup>2</sup> The exact text of the DTC’s proposed rule change can be found at [http://www.dtcc.com/legal/rule\\_filings/dtc/2008](http://www.dtcc.com/legal/rule_filings/dtc/2008).

DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

1. Purpose

Over the last four decades, securities ownership has evolved from investors holding physical certificates to evidence their ownership to investors having book-entry positions. The Direct Registration System ("DRS") was implemented in support of an industry initiative to eliminate physical certificates in equity securities, paralleling the evolution of book-entry form of ownership in other investment instruments, such as mutual funds, treasury and government agency securities, municipal bonds, and options. DRS permits an investor to hold a securities position in book-entry form on the books of the issuer rather than in certificated form or indirectly through a financial intermediary in street name. DRS allows an investor to transfer at any time his or her DRS position from the issuer to a financial intermediary or vice versa through the facilities of DTC. Additionally, an investor holding a DRS position may obtain a physical certificate if the issuer provides for the issuance of certificates.<sup>4</sup>

In 2003, the Securities Industry and Financial Markets Association ("SIFMA"), which was formerly the Securities Industry Association, took the lead in lobbying state legislatures, particularly Delaware, to eliminate the requirement for companies to issue certificates and to allow companies the option of issuing securities in book-entry form. As a result of this industry

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<sup>3</sup> The Commission has modified portions of the text of the summaries prepared by the DTC.

<sup>4</sup> For more information on DRS, see Securities Exchange Act Release No. 37931 (November 7, 1996) 61 FR 58600 (November 15, 1996) (File No. SR-DTC-96-15).

initiative, all states now allow for equity ownership in book-entry form.<sup>5</sup> U.S. exchanges have also adopted new listing rules that require all exchange-listed securities to be eligible to participate in DRS.<sup>6</sup> Today there are over 7,500 issues eligible to participate in DRS with more than 375 issues no longer offering investors the option of receiving a physical certificate. Industry representatives estimate that investors hold approximately forty million<sup>7</sup> book-entry accounts on the records of the issuers or their transfer agents.

Currently, DTC participants (i.e., broker-dealers and banks) use the Withdrawal-by-Transfer (“WT”) service to instruct DTC to reregister securities assets in the participant’s account in the name of an individual investor, a firm, or a third party name. The reregistered assets can be issued in certificate form or in a DRS position. On receipt of a WT instruction from a participant, DTC either (i) sends a certificate to the issuer or the issuer's transfer agent for reregistration in the name of the person or entity identified in the WT instruction or (ii) instructs the issuer or the issuer’s transfer agent to debit DTC’s position and issue securities in the name of the person or entity identified in the WT instruction.

WT volumes at DTC have decreased from 27,000 daily transactions in 1980 to approximately 1,200 daily transactions to date in 2008. Eighty-eight percent (88%) of all WTs submitted by participants involve DRS eligible issues. Due primarily to participants’ voluntary change in their firm policies of “defaulting to DRS” (i.e., requesting a DRS statement rather than

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<sup>5</sup> Puerto Rico is currently the only jurisdiction requiring equity securities to be certificated.

<sup>6</sup> Securities Exchange Act Release Nos. 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR-Amex-2006-40]; 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR-NYSE-2006-29]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR-NASDAQ-2006-008]; and 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR-NYSEArca-2006-31].

<sup>7</sup> Based on a SIFMA webinar held on June 24, 2008.

a physical certificate for their customers), approximately forty-one percent (41%) of all WTs submitted in May 2008 were processed as DRS positions, rather than as physical certificates. This trend away from certificate issuance is expected to continue throughout 2008.

As part of DTC's response to the financial services industry's initiative to achieve "straight-through processing" of securities transactions, which is based in part on the elimination of physical certificates in the U.S. market,<sup>8</sup> DTC began a program of steadily increasing its fees for WTs as a disincentive to use of physical certificates.<sup>9</sup>

In an effort to further reduce the industry's dependency on physical certificates, DTC is proposing to eliminate the issuance of physical certificates through its WT service for issues that are participating in DRS. DTC believes the modification of its WT service reaffirms its goals of reducing the costs and risk associated with processing physical certificates.

Pursuant to the proposed rule change, beginning January 1, 2009, DTC would no longer permit participants to request the issuance of a certificate on a WT instruction if the issue is participating in DRS. Instead, DTC would instruct the issuer or its transfer agent to establish a DRS position and provide a DRS statement in lieu of a physical certificate for all issues that are participating in DRS.<sup>10</sup> An investor or the investor's custodian will still be able to obtain a physical certificate by taking the investor's DRS statement directly to the issuer or its transfer

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<sup>8</sup> For more information on straight through processing and dematerialization initiatives, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004) [File No. S7-13-04].

<sup>9</sup> DTC charges approximately \$125.00 per transaction for a WT instruction requesting a physical certificate for an issue participating in DRS and \$6.00 per transaction for a WT instruction requesting a DRS position.

<sup>10</sup> Issues that participate in the DRS program allow investors to hold their assets in DRS book-entry form on the books of the issuer.

agent for conversion to a certificate or by using DTC's Deposit and Withdrawal at Custodian ("DWAC") process.<sup>11</sup>

The rule change also proposes on or after July 1, 2009, to eliminate a participant's ability to obtain a physical certificate through the WT service for issues eligible but not participating in DRS on or after July 1, 2009 ("elimination date"). For the small number of issues that have not become eligible to participate in DRS by the elimination date, WT instructions requesting a physical certificate may continue to be processed through DWAC or Rush WT processes.

Additionally, the rule change is proposing to eliminate DTC's Direct Mail by the Depository ("DMD") service for all issues in the fourth quarter of 2009. As a result, DTC would no longer mail certificates to investors or their third parties. Participants would still be able to use the Direct Mail by Agent ("DMA") service, in which transfer agents provide DRS statements or physical certificates to investors or their appointed third parties. Physical certificates could also be obtained through DTC's Central Delivery processes in which DTC mails the physical certificates in bulk to the participant or allows the participant to pick up the certificate.

## 2. Statutory Basis

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,<sup>12</sup> and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities

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<sup>11</sup> DWAC is a method of electronically transferring shares between participants and the transfer agent as custodian. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) [File No. SR-DTC-91-16] (order granting approval of the DWAC service).

<sup>12</sup> 15 U.S.C. 78q-1.

transactions by modifying a DTC service in order to reduce the inherent risks associated with physical certificates.

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

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has neither solicited nor received written comments on the proposed rule change.

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

Within thirty-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 such 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2008-08 in 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-2008-08. 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 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the DTC and on the DTC's Web site, [www.dtcc.com](http://www.dtcc.com). 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-2008-08 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.<sup>13</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).