SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59540; File No. SR-DTC-2009-05)

March 9, 2009

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Expanding the Scope and Timing to Collect and Pass-Through Fees Owed by Participants to American Depositary Receipt Agents

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 25, 2009, 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 primarily by DTC. 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 Substance of the Proposed Rule Change

DTC proposes to expand the scope and timing that DTC can collect and pass-through fees owed by participants to American Depositary Receipt ("ADR") agents.

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 such statements.

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

[1] 15 U.S.C. 78s(b)(1).

On June 12, 2006, the Commission approved a rule filing for DTC to establish a mechanism for DTC to collect and pass through custody fees owed by DTC participants to ADR agents for issues that do not pay periodic dividends.[2] Currently, DTC collects custody fees, called Depository Service Fees ("DSF"), from participants once a year per CUSIP. DTC collects DSFs at the request of the depositary bank and only for issues that have not paid a dividend in the last 12 months. In addition to collecting the DSF, DTC charges its participants three percent (3%) of the ADR agent fee up to a maximum of $10,000 per CUSIP ("collection charge") in order to cover costs incurred in collecting and passing through DSFs.[3]

Based on the experience to date and with increased challenges due to the rapid growth of unsponsored ADRs, the depositary banks and DTC have discussed expanding and refining the current DSF collection process. With this rule filing, DTC proposes to collect all allowable DSFs, dividend fees,[4] pass-through expenses, or other special fees as governed by the ADR agreement.[5] Additionally, DTC is proposing to increase the maximum collection charge to $20,000 per CUSIP. In order to collect the ADR agent fees, the ADR depositary banks will be required to notify DTC thirty calendar days prior to the record date that a DSF or other fee is due

[2] Securities Exchange Release Act No. 53970 (June 12, 2006), 71 FR 34974 (June 16, 2006) (File No. SR-DTC-2006-08).

[3] See Securities Exchange Release Act No. 55306 (Feb. 15, 2007) 72 FR 8217 (Feb. 23, 2007) (File No. SR-DTC-2006-21) (modifying the fees from the original filing).

[4] Dividend fees will continue to be collected through the current rate adjustment process. The dividend fee is incorporated into the final rate paid on the dividend by the agent on payment date and covers their cost for servicing the dividend payment.

[5] ADR agreements are filed with the Commission and are usually posted on the depositary bank's web site. All fees discussed herein are collectively termed "ADR agent fees."

and payable.[6] Moreover, DTC will require that the ADR depositary bank submit an attestation that the specific fee(s) is allowable under the ADR agreement with the issuer. The attestation will be in a form prescribed by DTC and may be changed periodically to address operational issues. If a participant asks DTC to substantiate the fee, DTC may require the ADR depositary to provide DTC with a copy of the ADR agreement with the issuer and highlight the fee schedule. DTC may at its discretion provide copies of the agreement to its participants to substantiate the fee.

As a result of this rule filing, the fee schedule for assessing ADR agent fees will be revised. First, ADR agent fees will apply to all fees permitted under the ADR agreement; the reference to "issues not paying periodic dividends" would be deleted. Second, as discussed above, the maximum ADR agent fee would be increased to $20,000 from $10,000.

DTC has discussed this proposal with The Securities Industry and Financial Markets Association's ("SIFMA") Operations Committee and Dividend Division and with various participants. The SIFMA Operations Committee endorsed DTC's plan to collect ADR agent fees, and the Dividend Division and DTC participants did not object to DTC moving forward. DTC states that the proposed ADR agent fee collection process will eliminate invoice and check processing for DTC participants and the depositary banks because ADR depositaries will no longer have to mail invoices and reminders to participants holding ADR securities at DTC. Participants will also have a more transparent view into upcoming ADR agent fees and a centralized source for information about the ADR agent fee and the collection process. DTC expects to begin collecting ADR agent fees as expanded by this rule filing in the first full month following the approval of this filing.

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[6] Fees may be collected multiple times in any given calendar year depending on the terms of the ADR agreement.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it updates DTC's fee schedule and 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

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

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

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[7] 15 U.S.C. 78q-1.

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-comment@sec.gov. Please include File No. SR-DTC-2009-05 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 submissions should refer to File No. SR-DTC-2009-05. 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 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. to 3:00 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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 No. SR-DTC-2009-05 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.[8]

Florence E. Harmon
Deputy Secretary

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[8] 17 CFR 200.30-3(a)(12).