

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 61800; File No. SR-DTC-2010-03)

March 30, 2010

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Eliminate the Option to Receive a Physical Certificate from DTC for Unsponsored American Depositary Receipts that are Part of the Fast Automated Transfer Program

I. Introduction

On January 19, 2010, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2010-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposal was published in the Federal Register on February 22, 2010.<sup>2</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

An ADR is a security that trades in the United States but represents a specified number of shares in a foreign corporation. ADRs are issued in the U.S. by depository banks. An ADR issuance is “unsponsored” when there is no formal agreement between the depository bank(s) issuing the ADR and the foreign company whose underlying shares are the basis for the ADR. Because in unsponsored programs there is no agreement between the issuer and a specific depository, more than one depository can be involved in the issuance and cancellation of ADR programs. Unsponsored ADRs trade in the over-the-counter market.

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

<sup>2</sup> Securities Exchange Act Release No. 61507 (February 5, 2010), 75 FR 7641 (February 22, 2010).

Currently, in order to deposit an unsponsored ADR at DTC, a depository bank that is also a DTC participant will have its transfer agent create a certificate for the new issue ADR, which is then deposited at DTC by the depository bank. In an effort to eliminate some of the risks and costs related to the processing of securities certificates,<sup>3</sup> DTC recently made unsponsored ADRs eligible for DTC's Fast Automated Securities Transfer Program ("FAST").<sup>4</sup>

DTC's withdrawal-by-transfer ("WT") service allows a participant to instruct DTC to have securities assets that are held in the participant's DTC account reregistered in the name of the participant, an investor, or a third party. Upon receipt of a WT instruction from a participant, DTC either sends a certificate to the transfer agent for reregistration in the name of the person or entity identified in the WT instruction or instructs the transfer agent to debit DTC's FAST position and to issue securities in the name of the person or entity identified in the WT instruction.

As part of DTC's response to an industry effort to reduce the number of securities certificates in the U.S. market (sometimes referred to as "dematerialization"),<sup>5</sup> DTC initiated a

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<sup>3</sup> The costs and risks associated with physical certificates include, among other things, those associated with safekeeping, transfer, shipping and insurance costs.

<sup>4</sup> FAST was designed to eliminate some of the risks and costs related to the creation, movement, processing, and storage of securities certificates. Under the FAST program, FAST transfer agents hold FAST eligible securities in the name of Cede & Co. in custody and for the benefit of DTC. As additional securities are deposited or withdrawn from DTC, the FAST transfer agents adjust the size of DTC's position as appropriate and electronically confirm these changes with DTC. For more information relating to FAST, see Securities Exchange Act Release Nos. 13342 (March 8, 1977) [File No. SR-DTC-76-3]; 14997 (July 26, 1978) [File No. SR-DTC-78-11]; 21401 (October 16, 1984) [File No. SR-DTC-84-8]; 31941 (March 3, 1993) [SR-DTC-92-15]; and 46956 (December 6, 2002) [File No. SR-DTC-2002-15].

<sup>5</sup> For more information on dematerialization, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), (File No. S7-13-04).

program of steadily increasing its fees for WTs and other withdrawals to create strong disincentives for the use of physical certificates. Consistent with that program, DTC is now eliminating participants' ability to use the WT service to have physical certificates issued for unsponsored ADRs that are a part of the FAST Program. DTC believes that this modification of its WT service reaffirms its goals of reducing the number of securities certificates in the U.S. markets. DTC participants will continue to have the ability to request a physical certificate directly from the transfer agent by using the DWAC process.<sup>6</sup>

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.<sup>7</sup> The rule change modifies a DTC service by discontinuing the WT services for unsponsored ADRs that are part of the FAST program, which should in turn decrease the use of securities certificates. As a result, DTC's rule change, as approved, should make processing

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<sup>6</sup> For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) (SR-DTC-91-16) (order granting approval of the DWAC service).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

securities transactions more safe and efficient by discouraging the use of securities certificates, which increase the risks and costs associated with processing securities transactions.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with DTC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.

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 with the requirements of Section 17A of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2010-03) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).