

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63254; File No. SR-DTC-2010-14)

November 5, 2010

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend the Certificate of Organization to Authorize Additional Shares of Preferred Stock and Designate Shares as Series A Preferred Stock

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on October 22, 2010, 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.<sup>3</sup> 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 Certificate of Organization to authorize an additional 1,750,000 shares of preferred stock and to designate such shares as Series A preferred stock.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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/2010-14.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-14.pdf).

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

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

In 1999, DTC's Certificate of Organization was amended ("1999 Amendment") to provide for the authorization and issuance of 1,500,000 shares of preferred stock, par value \$100 per share.<sup>5</sup> The 1999 Amendment also provided that the preferred stock could be issued in one or more classes having such designations, relative rights, preferences, or limitation as fixed by the Board of Directors of DTC at the time of issuance of any such preferred stock. DTC's Certificate of Organization has been amended three times thereafter to provide for the issuance of variable rate, noncumulative, nonvoting shares of Series A preferred stock, par value \$100 per shares, which are preferred over DTC's common stock as to dividends and in the event of liquidation ("Series A Preferred Stock"). The first such amendment (filed in 2000) provided for the issuance of 750,000 shares of the Series A Preferred Stock. The second amendment (filed in 2006) provided for the issuance of an additional 500,000 shares of Series A Preferred Stock. The third amendment (filed in 2009) provided for the issuance of an additional 250,000 shares of Series A Preferred Stock.<sup>6</sup>

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<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> The amendment was the subject of a DTC proposed rule change approved by the Commission. Securities Exchange Act No. 34-41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR-DTC-1999-08]. The amendment was also approved by the New York State Superintendent of Banks.

<sup>6</sup> Securities Exchange Release Nos. 34-43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR-DTC-2000-02]; 34-54775 (November 17, 2006), 71 FR 68662 (November 27, 2006) [SR-DTC-2006-14]; 34-59612 (March 20, 2009), 74 FR 13488 (March 27, 2009) [File No. SR-DTC-2009-06].

DTC participants are required to purchase and own shares of the Series A Preferred Stock in proportion to their use of DTC services. DTC treats the Series A Preferred Stock held by participants substantially the same as it treats the mandatory cash deposits made by participants to the Participants Fund for purposes of collateralizing securities transactions, limiting net debit positions, implementing default procedures, and allocating unrecovered losses.

In order that DTC may further increase its capital,<sup>7</sup> DTC is proposing to amend its Certificate of Organization<sup>8</sup> to authorize an additional 1,750,000 shares of preferred stock at the par value of \$100 per share and to designate such shares as Series A Preferred Stock with such rights, preferences, and limitations as provided in its Certificate of Organization.<sup>9</sup>

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, as well as CPSS/IOSCO Recommendations for Securities Settlement Systems applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

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<sup>7</sup> DTC, as a member institution of the Federal Reserve System, is subject to capital guidelines issued by the Board of Governors of the Federal Reserve System. To be considered "well-capitalized" under these guidelines, DTC must, among other things, maintain a Total Risk-Based Capital Ratio of at least 10%, a Leverage Ratio of at least 5%, and a Tier 1 Risk-Based Capital Ratio of at least 6%. The issuance of the additional Series A preferred stock will enable DTC to continue to meet these requirements.

<sup>8</sup> In order to amend its Certificate of Organization to increase the authorized preferred stock, DTC is also required to seek approval from the New York State Banking Department. DTC has sought such approval concurrently with this rule filing. On October 20, 2010, DTC's sole stockholder, The Depository Trust & Clearing Corporation, authorized DTC to make this amendment, as required by Section 8003 of the Banking Law of the State of New York.

<sup>9</sup> The authorization of an additional 1,750,000 shares will increase the number of authorized shares of Preferred Stock and of Series A Preferred stock to a total of 3,250,000 shares with a par value of \$100 per share and a total value of \$325 million.

(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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2010-14 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-2010-14. 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 Web site 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 Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsc/2010-11.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsc/2010-11.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-2010-14 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).