

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63567; File No. SR-DTC-2010-14)

December 16, 2010

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Authorize Additional Shares of Preferred Stock and Designate Shares as Series A Preferred Stock

I. Introduction

On October 22, 2010, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2010-11 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 November 12, 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

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>3</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

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

<sup>2</sup> Securities Exchange Act Release No. 63254 (November 5, 2010), 75 FR 69514 (November 12, 2010).

<sup>3</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.

Certificate of Organization has been amended three times since the 1999 Amendment 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.<sup>4</sup> The second amendment (filed in 2006) provided for the issuance of an additional 500,000 shares of Series A Preferred Stock.<sup>5</sup> The third amendment (filed in 2009) provided for the issuance of an additional 250,000 shares of Series A Preferred Stock.<sup>6</sup>

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.

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<sup>4</sup> Securities Exchange Release No. 43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR-DTC-2000-02].

<sup>5</sup> Securities Exchange Act Release No. 54775 (November 17, 2006), 71 FR 68662 (November 27, 2006) [SR-DTC-2006-14].

<sup>6</sup> Securities Exchange Act Release No. 59612 (March 20, 2009), 74 FR 13488 (March 27, 2009) [File No. SR-DTC-2009-06].

In order to further increase its capital, DTC is amending its Certificate of Organization<sup>7</sup> to authorize an additional 1,750,000 shares of Series A Preferred stock with such rights, preferences, and limitations as currently provided in its Certificate of Organization.<sup>8</sup>

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest.<sup>9</sup> The Commission believes that the rule change is consistent with DTC's obligations under the Exchange Act because the rule change will enable DTC to be "well capitalized" while not adversely affecting its ability to adequately safeguard the securities and funds in its custody or control or for which it is responsible.

### IV. Conclusion

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<sup>7</sup> On October 20, 2010, DTC's sole stockholder, The Depository Trust & Clearing Corporation, authorized DTC to amend its Certificate of Organization to increase the number of shares of authorized preferred stock, as required by Section 8003 of the Banking Law of the State of New York. DTC is also required to seek approval from the New York State Banking Department, which concurrent with the filing of this proposed rule change, it has done.

<sup>8</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 authorization and issuance of this additional 1,750,000 shares will increase the number of shares of Series A Preferred Stock to a total of 3,250,000 shares with a total par value of \$325 million. This will enable DTC to continue to be "well capitalized" under the capital guidelines issued by the Board of Governors of the Federal Reserve System.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

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-2010-14) be and hereby is approved.

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).