## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58055; File No. SR–DTC–2007–12]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to DTC Opening an Omnibus Account at Euroclear Bank

June 27, 2008.

### I. Introduction

On September 12, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2007–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 1, 2007.[2] One comment letter was received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

### II. Description

The proposed rule change allows DTC to open an omnibus account at Euroclear Bank NA/SV (''ECB'') in order to facilitate the repositioning of inventory between European markets and U.S. markets. This would enable more efficient inventory positioning by participants of DTC and ECB as needed in order to settle securities at ECB and at DTC.

The rule change is designed to accommodate dual listing of certain foreign and domestic securities on both U.S. and European trading platforms. One recent example of such a dual listing is the common stock of NYSE Euronext Group. This U.S.-issued security, which resulted from the merger of the NYSE Group and Euronext, is currently registered, listed, and traded in the U.S. on the New York Stock Exchange (''NYSE'') and in Europe on the Euronext platform. It is eligible for settlement at both DTC and ECB. When traded on the NYSE, the security is cleared and settled in the continuous net settlement (''CNS'') system operated by National Securities Clearing Corporation (''NSCC'') with the associated security movements taking place at DTC. When traded on Euronext, the transaction is eligible for clearance through the facilities of LCHClearnet SA and settlement effected by ECB through the local central securities depository (''CSD''). ECB utilizes the services of a U.S. custodian bank as agent to access DTC for position management as it currently does for all other U.S. issues eligible for settlement at ECB. Participants of ECB and DTC have the ability to reposition their inventory of NYSE Euronext common stock between ECB and DTC through this arrangement.

The proposed rule change allows a similar arrangement with ECB for custody and repositioning movements of non-U.S. dually-listed securities held on deposit with ECB to the extent such securities are made eligible for listing and trading on U.S. domestic markets. Under the new rule, ECB would act as DTC's custodian for issues on deposit at ECB-controlled CSDs as well as at other CSDs in ECB's subcustody network. This arrangement would enable DTC participants to settle trades in foreign issues in U.S. dollars executed on a U.S. domestic market through the normal clearance and DTC book-entry settlement processes. Further, DTC/ECB common participants would be able to reposition share balances between their DTC account and their ECB account either directly or through their custodian agent to facilitate settlements of trades in these dually-listed foreign issues executed in either marketplace.

Specifically, the new account would allow for European securities that are listed in the U.S. to be custodied by ECB for DTC. The securities would be credited to an account that is maintained by or on behalf of ECB at a European CSD. The process for creating a position at DTC would be initiated by a participant of the European CSD delivering the securities free to ECB's account or to the account of ECB's agent at the European CSD. ECB would credit DTC's account at ECB, and DTC would then credit the securities to the DTC participant account designated by the delivering participant. The securities would then be available for use at DTC (*e.g.*, to satisfy settlements at DTC). To the extent participants need to move position back to Europe to, for among other reasons, facilitate settlements there, the process would be reversed. Under this arrangement, for a security for which physical certificates have been issued, there would be no need for transporting the physical certificates to or from DTC. Any reregistration of securities from one holder to another that is required due to the market practices of any particular market would be processed by the European registrar for the issue. Any position at DTC would be represented by securities that are registered in the name of the European CSD, ECB or ECB's agent.

ECB would provide subcustody services such as principal and income collection and corporate action processing on securities held in DTC's omnibus account at ECB in accordance with ECB procedures. DTC in turn would provide its participants with principal and income payment and corporate actions services without the need for its participants to interact directly with ECB.

The primary benefits of the rule change are that it should facilitate the expanded dual listing programs of marketplaces operating in the U.S. and Europe and that it should help to reduce the number of transactions that fail on settlement date because of inefficient methods of inventory repositioning. The realization of these benefits would be consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and of reducing risk to DTC participants by immobilizing certificates.

### III. Comments

The Commission received one comment to the proposed rule change.[3] The comment letter was written on behalf of the Operations Committee of the Securities Industry and Financial Markets Association (''SIFMA''). The comment letter strongly supported the proposed rule change and stated that it would facilitate the efficient processing of cross-border securities transactions and reduce the risk and cost of such transactions.

### IV. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[4] The proposed rule change would allow DTC to establish an omnibus account with ECB so that DTC participant can reposition securities that are listed on both U.S. and European securities markets for settlement without physically moving certificates outside of DTC's system. This arrangement should reduce much of the time, expense, costs, and risks associated with physically moving certificates between ECB and DTC.

The Commission also believes that DTC has established the omnibus account with ECB in a manner that is consistent with its safeguarding obligations under the Act. In order to

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

[2] Securities Exchange Act Release No. 56706 (October 26, 2007). 72 FR 61923.

[3] Letter from Noland Cheng, Chairman, Operations Committee, Securities Industry and Financial Markets Association (July 17, 2007).

[4] 15 U.S.C. 78q–1(b)(3)(F).

assure itself that the linking with ECB is safe and prudent, DTC completed an extensive review of such things as: (1) ECB's operational controls, financial strength, technology capabilities, and audit arrangements; (2) Belgian regulation of ECB; and (3) application and effect of Belgian laws as they pertain to the account.

Accordingly, the Commission finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the DTC or for which it is responsible.

## V. 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 Section 17A of the Act and the rules and regulations thereunder.[5]

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2007–12) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Acting Secretary.*

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[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formations. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58066; File No. SR–NYSEArca–2008–32]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change Relating to the Minor Rule Plan and Order Granting Accelerated Approval to the Proposed Rule Change as Modified by Amendment No. 2

June 30, 2008.

## I. Introduction

On March 18, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities, Inc. (''NYSE Arca Equities'') Rule 10.12 (Minor Rule Plan) (''MRP'') and related rules that underlie the MRP. On April 17, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 29, 2008.[3] The Commission received no comments on the proposal. On June 11, 2008, the Exchange filed Amendment No. 2 to the proposed rule change.[4] This notice and order solicits comments from interested persons on Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

## II. Description of the Amended Proposal

The Exchange proposed to amend its Minor Rule Plan and related rules that underlie the MRP, including Rules 5.2(b)(1) (Notification Requirements for Offering of Securities), 6.1 (Adherence to Law), 6.18 (Supervision), 7.38(c) (Odd and Mixed Lots—Prohibitions), and 9.2(c) (Customer Records).

*Rule 5.2(b)(1)—Notification Requirements for Offering of Securities*

The Exchange proposed to correct an error that was inadvertently created when the NYSE Arca Rules were updated to replace the obsolete term ''Member'' with the term ''ETP Holder.'' The Exchange stated that the intended reference in this rule is to all members of a syndicate and proposed, therefore, to reinsert the correct term ''members.''

*Rule 6.1—Adherence to Law and Good Business Practices*

The Exchange designated existing Rule 6.1 as Rule 6.1(a) and substituted the word ''fair'' in the rule's requirement that certain actions of ''any ETP Holder shall at all times comply with fair and equitable principles of trade'' with the word ''just.'' The Exchange also proposed to adopt Rule 6.1(b), which would require all ETP Holders, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business affairs.[5] Violations of Rule 6.1(b) would be eligible for MRP disposition.

*Rule 6.18—Supervision*

The current language of Rule 6.18(b) provides that only ETP Holders for whom the Exchange is the Designated Examining Authority (''DEA'') are subject to its supervisory requirements. The Exchange proposed to amend Rule 6.18 to provide that all ETP Holders, regardless of DEA, are subject to Exchange's supervisory requirements. The Exchange also proposed to make violations of Rule 6.18 eligible for MRP disposition.

*Rule 7.38(c)—Odd and Mixed Lots—Prohibitions*

The Exchange proposed to replace the language in the current paragraph (c) of Rule 7.38 that presently states that all odd-lot violations shall be considered conduct inconsistent with just and equitable principles of trade and to provide instead that it shall be prohibited for ETP Holders, any associated persons thereof, and any other participants to engage in these violations. The Exchange stated that many violations of Exchange odd-lot rules do not necessarily involve the bad faith or unethical conduct.

*Rule 9.2(c)—Customer Records*

The Exchange proposed to change Rule 9.2(c) by adding the word ''current,'' to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also must keep them current.

*Rule 10.12—Minor Rule Plan*

The Exchange proposed several modifications to the MRP, including to:

- Make several trading rules and record keeping rules eligible for MRP disposition;[6]
- Modify the Recommended Fine Schedule in Rule 10.12(i) so that MRP fines are escalated based not on the number of violations but on the number of times the Exchange has imposed one or more MRP fines upon an ETP Holder for the violation of a particular rule;
- Allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures;
- Enable the Exchange to require violators of Rule 2.21 (Employees of ETP Holders Registration) to remit all

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56733 (April 22, 2008), 73 FR 23287 (''Notice'').

[4] *See* partial Amendment dated June 11, 2008 (''Amendment No. 2''). The text of Amendment No. 2 is available on the Commission's Web site (*http://www.sec.gov/rules/sro/nysearca.shtml*), at the Commission's Public Reference Room, at NYSE Arca's principal office, and on NYSE Arca's Web site (*http://www.nyse.com*).

[5] This rule is based on the current NYSE Rule 401(a).

[6] *See* Notice, 73 FR at 23288, for a detailed description of these additions.