

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 21, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 21, 2008 will be:

Formal orders of investigation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: August 14, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58345; File No. SR-DTC-2007-16]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Admission of Foreign Entities as Direct Depository Participants

August 12, 2008.

#### I. Introduction

On November 16, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 5, 2008, amended proposed rule change SR-DTC-2007-13 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 March 7, 2008.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment No. 1.

#### II. Description

The proposed rule change amends DTC's policy statement regarding the admission of participants to permit entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") to become eligible to become direct DTC participants ("Foreign Entity Policy Statement").<sup>3</sup>

In 1990, DTC adopted a Policy Statement on the Admission of Participants ("1990 Policy Statement") to make clear that in determining whether to grant access to its services, DTC regards as a critical factor that an applicant is subject to comprehensive U.S. federal or state regulation relating to, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct.<sup>4</sup> Generally under the 1990 Policy Statement, unless an applicant is subject to U.S. federal or state regulatory agency oversight, the

applicant would not be eligible to become a DTC participant.<sup>5</sup> Since 1990, DTC has admitted a small number of foreign entities where their obligations to DTC have been guaranteed by creditworthy DTC participants.

The purpose of the proposed Foreign Entity Policy Statement is to establish admissions criteria that will permit well-qualified foreign entities to become participants of DTC and to obtain direct access to DTC's services while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.<sup>6</sup>

The admission of foreign entities as participants raises a number of unique risks and issues, including that (1) the entity is not subject to U.S. federal or state regulation, (2) that the operation of the laws of the entity's home country and time zone differences<sup>7</sup> may impede the successful exercise of DTC's rights and remedies particularly in the event of the entity's failure to settle, and (3) financial information about the foreign entity made available to DTC for monitoring purposes may be less adequate than the financial information about U.S.-based entities.

The Foreign Entity Policy Statement requires that in addition to executing the standard DTC Participation Agreement the foreign entity enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that DTC is provided with audited financial information that is acceptable to DTC.<sup>8</sup> The proposed policy statement would also require that the foreign entity (1) be subject to regulation in its home country and (2) be in good

<sup>5</sup> DTC recognized, however, that any person designated by the Commission pursuant to Section 17A(b)(3)(B)(vi) of the Act, even if not subject to such regulatory oversight, would be eligible for admission. The 1990 Policy Statement was approved by the Commission on January 8, 1991.

<sup>6</sup> DTC's proposed "Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants" is attached as Exhibit 5 to its filing, which can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-16.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-16.pdf).

<sup>7</sup> Time zone differences may complicate communications between a foreign participant and its U.S. Settling Bank with respect to the timely payment of the participant's net debit to DTC including intraday demands for payment. These differences may also delay DTC's receipt of information available in the foreign participant's home country to others including its other creditors about the foreign participant's financial condition on the basis of which DTC would have taken steps to protect the interests of DTC and its participants.

<sup>8</sup> In the Foreign Entity Policy Statement, DTC has reserved the right to waive certain of these criteria where such criteria are inappropriate to a particular applicant or class of applicants (e.g., a foreign government or international or national central securities depositories).

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

<sup>2</sup> Securities Exchange Act Release No. 57392 (February 27, 2008), 73 FR 12485.

<sup>3</sup> The National Securities Clearing Corporation ("NSCC") filed and the Commission has approved a similar proposed rule change that would permit NSCC to adopt a similar policy statement with respect to the admission of foreign entities as members. Securities Exchange Act Release No. 58344 (August 12, 2008) (File No. SR-NSCC-2007-15).

<sup>4</sup> Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (January 15, 1991) (File No. SR-DTC-90-01).