

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59035; File No. SR-DTC-2007-07]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Amend the Applicant Disqualification Criteria Contained in Its Rules

December 1, 2008.

I. Introduction

On April 30, 2007, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 7, 2008, and March 18, 2008, amended proposed rule change SR-DTC-2007-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change was published for comment in the **Federal Register** on July 16, 2008.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change amends the applicant disqualification criteria contained in DTC's rules in order to harmonize them with similar rules of DTC's affiliates, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC").

A. Statutory Disqualification

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants and defines certain criteria that may disqualify an applicant from participation. While the factors that may disqualify an applicant are generally consistent among DTC, FICC, and NSCC rules, DTC's rules do not specifically reference an order of statutory disqualification as defined in Section 3(a)(39) of the Act³ among its disqualification criteria.⁴ To promote uniformity among the rules of DTC and

its affiliates, DTC is adding such a provision to its rules.

B. Associated Persons

DTC rules include applicant disqualification criteria for persons and/or entities "associated" with an applicant. Because it is not easily ascertainable as to what entities or individuals are "associated" with a particular entity, DTC is amending these provisions in its rules so that they are consistent with internal surveillance procedures. DTC is changing references to persons "associated" with the applicant to references to "controlling management," which shall be defined to mean the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or their equivalents. These are the officers that are currently screened by DTC's risk management pursuant to internal procedures. DTC is also adding language to its rules that would require applicants to inform DTC as to any member of its controlling management that is or becomes subject to statutory disqualification.

C. Amendment to Willful Violation

DTC rules currently include as a disqualification criterion the applicant's or an associated person's "willful" violation of the Securities Act of 1933,⁵ the Act, the Investment Company Act of 1940,⁶ the Investment Advisors Act of 1940,⁷ or any rule or regulation promulgated thereunder. DTC is removing the word "willful" from this provision because DTC believes that any violation of these provisions should be a disqualification criterion.

Changes similar to those outlined in Sections A, B, and C above will be made to DTC Rule 10, "Discretionary Termination."

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁸ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section

17A(b)(3)(H)⁹ which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which amends DTC's applicant disqualification criteria contained within its rules, is consistent with those statutory obligations.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-DTC-2007-07) be, and hereby is, approved.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59043; File No. SR-NASDAQ-2008-089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the Nasdaq Options Market

December 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 2008, the NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has filed

¹ 15 U.S.C. 78q-1(b)(3)(H).

² 15 U.S.C. 78q-1.

³ 15 U.S.C. 78s(b)(2).

¹² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58122 (Jul. 9, 2008), 73 FR 40888.

³ 15 U.S.C. 78c(a)(39).

⁴ As a clearing agency registered under the Act, DTC must evaluate its participants subject to an order of statutory disqualification.

⁵ 15 U.S.C. 77a et seq.

⁶ 15 U.S.C. 80a-1 et seq.

⁷ 15 U.S.C. 80b-1 et seq.

⁸ 15 U.S.C. 78q-1(b)(3)(F).