

have been transitioned to the new system.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>15</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles in that it seeks to price the execution of all odd-lot orders pursuant to one pricing methodology now that the Exchange systemic impediments to the implementation of one pricing methodology are removed.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3)<sup>16</sup> and Rule 19b-4(f)(5).<sup>17</sup> This proposed rule change effects a change in an existing order entry or trading system of a self-regulatory organization that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system. The proposed filing does not in any way limit access to the Exchange's odd-lot system; rather, the changes are the result of technological advancements which remove the systemic impediments that previously restricted the Exchange's ability to execute all odd-lots pursuant to a the same pricing methodology. In so far as, the proposal ensures that all odd-lot orders are priced in the same manner, it promotes the protection of investors

and serves the public interest without imposing a significant burden on competition.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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-NYSE-2009-27 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 submissions should refer to File Number SR-NYSE-2009-27. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2009-27 and should be submitted on or before April 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6828 Filed 3-26-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59612; File No. SR-DTC-2009-06]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Certificate of Incorporation To Increase Preferred Shares Issuance

March 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 27, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on March 10, 2009, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change and to grant accelerated approval of the proposal.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to amend its Certificate of Incorporation to provide for the issuance of an additional 250,000 shares of DTC 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 below. DTC has prepared summaries, set forth in sections (A), (B),

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(5).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

and (C) below, of the most significant aspects of these statements.<sup>2</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 (the "1999 Amendment") to provide for the 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 Organization Certificate has been amended twice thereafter to provide for the issuance of variable rate noncumulative nonvoting shares of Series A Preferred Stock, par value \$100 per shares, preferred over DTC's common stock as to dividends and in the event of liquidation (the "Series A Preferred Stock"). In each case, mandatory cash deposits to the Participants Fund were reduced and the proceeds of the reductions of the mandatory cash deposits were used to pay the purchase price of the shares. The first such amendment, filed in 2000, provided for the issuance of 750,000 shares of Series A Preferred Stock, and the second amendment, filed in 2006, provided for the issuance of an additional 500,000 shares of Series A Preferred Stock.<sup>4</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 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 to further increase capital,<sup>5</sup> DTC is proposing to amend its

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> This amendment was approved by the New York State Superintendent of Banks and was also the subject of a DTC rule filing approved by the Commission. Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR-DTC-99-08].

<sup>4</sup> Securities Exchange Release Nos. 43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR-DTC-00-02] and 54775 (November 17, 2006), 71 FR 68662 (November 27, 2006) [File No. SR-DTC-2006-14].

<sup>5</sup> DTC, as a depository institution, is subject to risk-based capital guidelines issued by the Board of

Certificate of Organization to provide for the issuance of an additional 250,000 shares of Series A Preferred Stock, at the par value of \$100 per share, and to further reduce mandatory cash deposits by a corresponding amount.<sup>6</sup> The proceeds of the reductions of the mandatory cash deposits will be used to pay the purchase price of the shares, and all reductions and payments will be settled through the facilities of DTC with no action required on the part of any Participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder applicable to DTC because it will not affect the safeguarding of funds or securities in DTC's custody or control or for which it is responsible as it is merely a reallocation of the Participants Fund in order for DTC to increase its capital base while maintaining the same level of assets for use in the event of a Participant default. The proposed allocation will not impose any additional financial burden on DTC Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would have any impact or 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 if it receives additional comments.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

Governors of the Federal Reserve. To be considered "well capitalized" under these guidelines, DTC must maintain a Tier I Leverage Ratio of at least 3% and Tier I Risk Based Capital Ratio of at least 8%. The issuance of the additional Series A Preferred Stock will enable DTC to continue to meet these requirements.

<sup>6</sup> The issuance of an additional 250,000 shares will increase the outstanding amount of Series A Preferred Stock to \$150 million and reduce the mandatory cash portion of the Participants Fund deposit to \$450 million, maintaining the total mandatory amount at \$600 million. At the end of the first quarter of 2009, the total mandatory Participants Fund deposits will be increased to \$1.3 billion, as recently approved by the Commission. Securities Exchange Release No. 59148 (December 23, 2008), 73 FR 62578 (October 14, 2008) [File No. SR-DTC-2008-12].

<sup>7</sup> 15 U.S.C. 78q-1.

change, as amended, 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-2009-06 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 submissions should refer to File Number SR-DTC-2009-06. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will 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/2009/dtc/2009-06.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2009-06.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-2009-06 and should be submitted on or before April 17, 2009.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of

Section 17A(b)(3)(F).<sup>8</sup> The Commission finds that the approval of DTC's rule change is consistent with this section because it will not affect the safeguarding of funds or securities in DTC's custody or control or for which it is responsible.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to make the systems changes necessary to allocate to Participants these additional shares, along with the currently outstanding shares of Series A Preferred Stock, at the beginning of the second quarter of 2009 in accordance with DTC's Rule 4 (Participants Fund and Participants Investment).

**V. Conclusion**

On the basis of the foregoing, the Commission finds the proposed rule change is consistent with the requirements of the Act, in particular Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-DTC-2009-06), as amended, be and hereby is approved on an accelerated basis.<sup>10</sup>

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-6827 Filed 3-26-09; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59618; File No. SR-DTC-2009-04]

**Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Implement and Revise Fees Related to Non-Participant Services**

March 23, 2009.

**I. Introduction**

On January 16, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-04 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 February 19, 2009.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description**

DTC is revising its fee schedule for Security Position Reports ("SPRs"). An SPR is a report prepared by DTC showing for an issuer whose securities are eligible for DTC's book entry services (1) the identity of each DTC participant having that issuer's securities credited to its participant account (*i.e.*, "security position") as of a selected date and (2) the quantity of securities so credited. DTC also provides SPR information to trustees and other authorized third-party agents. These entities typically need SPR information in order to properly conduct proxy, record date, and voting rights-related functions.

Several types of SPRs are available: (1) Weekly reports that show daily closing positions during that week; (2) monthly reports that show closing positions on the last business day of the month; (3) quarterly dividend record date reports that show closing positions on the dividend record date; and (4) special requests that show closing positions for the date specified. Weekly, monthly, and quarterly record date reports are available by annual subscription only.

DTC charges a fee for each SPR and offers discounts for high volume SPR service users.

Currently, the fees charged to issuers or trustees for SPRs are as follows:

| Report/item   | Fee  |
|---|--|
| Weekly Report (one-year minimum subscription required)                | \$1950 per year for the first security issue.<br>\$575.00 per year for each additional security for the same issuer.   |
| Monthly Report (one-year minimum subscription required)               | \$450.00 per year for the first security issue.<br>\$225.00 per year for each additional security for the same issuer. |
| Dividend Record Date Report (one-year minimum subscription required). | \$150 per year.  |
| Special Requests .....  | \$120.00 per report, per date request.   |
| Fax .....   | \$25.00 additional per report charge when fax service is specifically requested.                                       |
| Spreadsheet .....   | \$25.00 additional per report charge when spreadsheet is specifically requested.                                       |
| Extra Copy .....  | \$25.00 additional fee for the reproduction of previously compiled SPR information.                                    |

Fax, spreadsheet and extra copy charges are currently billed in addition to subscription and special request charges. DTC has proposed to improve processing efficiencies by eliminating the separate billing of fax, spreadsheet,

and extra copy charges for weekly reports, monthly reports, and for dividend record date reports and by incorporating the cost of delivering those "additional" services into the subscription charge for the particular

report ordered. Fees for special requests, including fax, spreadsheet, and extra copy charges will remain unchanged.

The revised SPR fees being adopted by DTC are as follows:

| Report/item  | Fee   |
|--|---|
| Weekly Report (one-year minimum subscription required) | \$1950 per year for the first security issue, plus a one time charge of \$1400 per additional copy/recipient for that security issue. |

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 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).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 59387 (February 11, 2009), 74 FR 7716.