## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64191; File No. SR–DTC–2010–15]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Amend Rules Relating to the Requirement To Maintain a Balance Certificate in the Fast Automated Securities Transfer Program

April 5, 2011.

### I. Introduction

On November 5, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2010–15 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 23, 2010.[2] The Commission received two comment letters.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

### II. Description

Under DTC's FAST program, transfer agents participating in FAST ("FAST transfer agents") hold DTC securities in the form of balance certificates.[4] The balance certificates are registered in the name of DTC's nominee, Cede & Co., and evidence the record ownership by Cede & Co. of each issue for which the FAST transfer agent acts as transfer agent. The Balance Certificate Agreement is executed by each FAST transfer agent and DTC and sets forth the rights and obligations of FAST transfer agents and DTC. As additional securities are deposited or withdrawn from DTC, the appropriate FAST transfer agent adjusts the denomination of the balance certificate and electronically confirms theses changes with DTC.

Because transfer agents electronically confirm with DTC the adjustments to the denomination of the balance certificates and balances with DTC on a daily basis the number of shares represented by the balance certificate, some FAST transfer agents requested that DTC remove the requirement that they custody a balance certificate. As a result, DTC has proposed to remove the requirement that FAST transfer agents maintain a balance certificate for only those securities whose issuers are "participating" in the direct registration system ("DRS").[5]

Accordingly, pursuant to the rule change being approved by this Order, DTC will remove the requirement that FAST transfer agents maintain a balance certificate for those exchange listed issues that are DRS eligible and that are participating in DRS. However, DTC will continue to reserve its rights to draw down from the FAST balance and to receive in lieu of a DRS position a certificate registered in DTC's nominee name of Cede & Co. and reflecting any number of shares up to and including the total amount of shares due DTC from the FAST transfer agents.

### III. Comment Letters

The Commission received two comment letters, one from the Securities Transfer Association ("STA") raising several concerns about the filing and the other from DTC responding to the STA's comments.[6] While the STA strongly supports DTC's proposed rule to eliminate the requirement for FAST agents to maintain a balance certificate for issues participating in DRS, the STA believes the requirement to maintain a balance certificate should also be eliminated for those issues eligible for DRS but not participating. The STA reasons that DRS eligible issues can be electronically reflected on the transfer agent's records and can still be moved electronically through a Deposit Withdrawal at Custodian transaction ("DWAC").[7] The STA also noted that the proposed requirement that reserves the right for DTC to request a certificate may be problematic for those issuers that do not issue certificates.

DTC's comment letter responded to both concerns raised by the STA. First, DTC contended that companies that have issued securities that are fully eligible and participating in DRS have authorized the use of a statement to evidence ownership. Without this authorization by the issuer, DTC argues, there is no ability to get an electronic statement from the issuer's transfer agent and therefore no inherent approval of statement form as a valid evidence of ownership.[8]

Second, with regards to the provision of DTC's proposal reserving the right for DTC to request a certificate, DTC maintained that currently all issuers eligible and participating in DRS are required to maintain and provide DTC upon request a FAST balance certificate. DTC stated that it cannot anticipate every situation that may arise where it is in DTC's best interest to certificate the FAST balance but there are times when obtaining a certificate is necessary, such as when the issuer's transfer agent or the issuer itself no longer meets the criteria to be in the FAST program.

### IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[9] The Commission finds that DTC's proposed rule change is consistent with its obligations under the Exchange Act because it should allow DTC to reduce the costs and risks associated with the creation, storage, transfer, and

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

[2] Securities Exchange Act Release No. 63320 (November 16, 2010), 75 FR 71473 (November 23, 2010).

[3] Letters from Charles V. Rossi, President, Securities Transfer Association (December 14, 2010) and Candice Fordin, Associate Counsel, The Depository Trust & Clearing Corporation (February 22, 2011).

[4] FAST reduces the movement of certificates between DTC and transfer agents, thereby reducing the costs and risks associated with the creation, movement, and storing of certificates. For a description of DTC's current rules relating to FAST, see Securities Exchange Act Release Nos. 34–13342 (March 8, 1977) (File No. SR–DTC–76–3); 34–14997 (July 26, 1978) (File No. Sr–DTC–78–11); 34–21401 (October 16, 1984) (File No. SR DTC–84–8); 34–31941 (March 3, 1993) (SR–DTC–92–15); and 34–46956 (December 2, 2002) (File No. SR–DTC 2002–15). In addition, see Securities Exchange Act Release No. 34–60196 (June 30, 2009) 74 FR 33496 (File No. SR–DTC–2006–16).

[5] DRS allows registered owners to hold their assets on the records of the transfer agent in book-entry form rather than in certificated form and provides investors with an alternate approach to holding their securities either in certificated form or in "street" name. Securities on deposit at DTC are considered "DRS eligible" if the issuer's by-laws permit the issuance of book entry shares and the CUSIP number has been designated as FAST eligible by DTC. "Participating in DRS" means that the issuer and its transfer agent have complied with DTC's requirements to participate in the DRS program and actually allow investors to hold shares in DRS. Issuers that participate in DRS have acknowledged that the use of electronic registration of securities is a valid method to evidence ownership of their issued securities.

[6] *Supra* note 3.

[7] Through DTC's DWAC service, participants are permitted to make deposits and withdrawals directly with a transfer agent for an issue evidenced by a balance certificate registered in the name of Cede & Co. and held for DTC by a transfer agent. Issues eligible under DTC's Fast Automated Securities Transfer ("FAST") are eligible for DTC's DWAC service. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) (SR–DTC–91–16).

[8] In addition to the requirement that an issue be eligible and participating in DRS, DTC's proposed rule change also requires that issue be exchange traded. The STA did not raise any concerns in its comment letter regarding this aspect of the proposal. Nonetheless, DTC stated in its comment letter that by waiving the requirement to maintain a balance certificate for only those issues that are listed on an exchange, DTC is able to rely on the due diligence of the exchange to provide a level of issuer transparency that DTC might not otherwise be able to attain.

[9] 15 U.S.C. 78q–1(b)(3)(F).

replacement of physical certificates, specifically in this case the balance certificates, which should in turn allow DTC to better safeguard the securities which are in its custody or control or for which it is responsible.

While the Commission understands the STA would like to further promote dematerialization by eliminating the need for FAST agents acting for issues that are eligible but not participating in DRS to maintain a balance certificate, we agree with DTC that at this time allowing only those issues where the issuer has expressly provided that statements are evidence of ownership to eliminate maintaining the balance certificate better safeguards the securities being custodied by the FAST agent on DTC's behalf. Furthermore, the proposed rule change may encourage those issuers that have made their securities eligible but are not participating in DRS to participate in DRS, which would further facilitate the STA's goal of reducing the use of physical certificates.

With regards to the STA's concern that requiring issuers or their transfer agents to provide a balance certificate upon request, the proposed rule change does not change DTC's current requirements relating to certificating FAST balance positions and therefore should not present any new issues for issuers or FAST transfer agents. DTC was simply making clear in the proposed rule change that it is continuing to reserve the right to request such a certificate.

Accordingly, for the reasons stated above the Commission believes that the proposed rule change is consistent with DTC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.[10]

## IV. 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 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–2010–15) be and hereby is approved.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64193; File No. SR–ISE–2011–17]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2102 To Extend the Pilot Program

April 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 2102 (Hours of Business) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend ISE Rule 2102 to extend the expiration of the pilot rule. Initial amendments to ISE Rule 2102 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause were approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was then extended to expire on April 11, 2011.[4] On September 10, 2010, ISE Rule 2102 was amended again to expand the pilot rule to apply to the Russell 1000® Index and other specified exchange traded products.[5] The Exchange now proposes to extend the date by which this pilot rule will expire to the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–ISE–2010–48).

[4] *See* Securities Exchange Act Release No. 63506 (December 9, 2010), 75 FR 78301 (December 15, 2010) (SR–ISE–2010–117).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–ISE–2010–66).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).