

December 19, 2007

Ms. Nancy M. Morris; Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Securities Exchange Act Release No. 34-56795; File Number SR-DTC-2007-11;
Proposed Rule Change Relating to Amendment by The Depository Trust Company
of its Operational Arrangements that Apply to Structured Securities.**

Dear Ms. Morris:

The Operations Committee, Dividend Division, and MBS and Securitized Products Division Executive Committee of the Securities Industry and Financial Markets Association ("SIFMA")¹ appreciate the opportunity to comment on the above-referenced proposed rule change by The Depository Trust Company ("DTC"). In its filing, DTC proposes to amend its Operational Arrangements (a contract between DTC, issuers, and paying agents that sets forth requirements for an issue to become and remain DTC-eligible) as they apply to structured securities, such as asset backed securities and collateralized mortgage obligations. The filing includes a proposal to charge underwriters of certain of such issues exception processing fees that would, based on DTC's most recent figures, aggregate over \$15 million in 2008. Fee proceeds would then be distributed to DTC Participants holding positions in structured securities.

We concur that it is important to address the industry's payment allocation processing problems related to structured securities. Consequently, we generally support the DTC proposal. Its approval can be expected to improve servicing of structured securities issues, to the ultimate benefit of investors. We also have a few questions and comments, which are reflected below.

1. Deadline Extension. We are pleased that DTC is extending the deadline by which rate information must be submitted to DTC. That will afford paying agents additional time to collect, calculate, and disseminate rates. We expect that this will in turn lead to more timely and accurate allocations of structured securities payments by paying agents to DTC, and ultimately benefit investors. This should particularly aid paying agents located in the Midwest and on the West coast, as well as paying agents that depend on data from others who are in turn located in those times zones.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, DC, and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

2. Categorization; Conforming and Non-Conforming CUSIPs. The rule filing proposes categorizing DTC-eligible structured securities into two classes: Conforming and Non-Conforming. Conforming issues would be those whose structures permit their paying agents to meet DTC's rate reporting deadline. Non-Conforming issues would be those "for which the issuer and paying agent have concluded that the security has features that will likely preclude the paying agent from submitting rate information to DTC in conformity with the requirements of the Operational Arrangements." It is contemplated by the rule filing that a written attestation as to the Non-Conforming nature of the Non-Conforming structured security CUSIP would be made by the issuer and the paying agent, generally at the time that the issue is made eligible at DTC. DTC would then make a list of Non-Conforming issues available to the public. Based on DTC's most recent figures, DTC anticipates that 7.5% (or roughly 3,600) of all structured securities issues made eligible per annum may be deemed Non-Conforming.

We are in favor of this categorization, as it will highlight those CUSIPs whose paying agents will most likely not make rate information available to DTC in a timely manner. This distinction will assist firms in their financing and cash flow analysis on payment dates.

Timing. We understand, from conversations with DTC, that this determination will not be required to be submitted to DTC until 10 days after the date of DTC-eligibility. This is helpful, inasmuch as requiring such documentation prior to DTC-eligibility might otherwise unduly delay the closing of new issues.

Guidance as to criteria. It would be helpful if DTC were to provide greater guidance as to what DTC's specific criteria are for a determination, and representation to DTC, that an issue is Non-Conforming. In the rule filing, DTC uses the term "likely," the meaning of which is ambiguous. Such guidance might, for example, include DTC listing specific issue "features" which DTC believes lead to a finding that an issue is "likely" to be Non-Conforming. Alternatively, DTC might issue a simple statement that the criteria consists of a general good faith expectation, based on information available at the time, as to whether it is anticipated that DTC's deadlines for submission of rate information will be met.²

Underwriter; Reliance on paying agent attestation. While the filing does not require that the underwriter sign the attestation (only the issuer and paying agent are mentioned), we understand from DTC that it is in fact DTC's intention to require that the managing underwriter execute the document. A number of SIFMA firms believe that it would be inappropriate for the underwriter to be required to sign such an attestation. They question, however, whether the issue is even ripe for comment, given that the requirement is not mentioned in the rule filing that was filed by DTC and published for comment in the Federal Register. At a minimum, we would hope that such a requirement would not be imposed by DTC until the issue has been discussed

² It is unclear from the filing whether DTC will allow for changes in issue certification during the life of an issue from Non-Conforming to Conforming (if – through structural changes or a change in paying agent – a Non-Conforming issue that is held by DTC becomes a Conforming issue). We suggest consideration as to whether it might be appropriate to allow for such changes, and partial fee reimbursement, as these would incent the type of behavior that DTC is seeking to promote. We also question whether, to keep an even playing field, those issues that have been designated Conforming, but as to which the paying agent consistently fails to submit rate information to DTC timely, should be re-categorized and treated as Non-Conforming issues.

with underwriters, and underwriters have had an opportunity to work with the depository to determine whether it is appropriate for DTC to require underwriters to sign the attestation.

If such a requirement is in fact imposed on underwriters, it would be helpful if DTC were to clarify that the underwriter can rely for these purposes in turn upon the paying agent's attestation. Otherwise, the proposal would raise a question as to whether the underwriter is being asked to attest to something that is not within its knowledge or control.

3. Report Card. We understand that DTC will distribute a new "Paying Agent Report Card," which will track paying agent performance, timeliness, and payment accuracy. The report card will not reflect the timeliness of Non-Conforming issues. It will, however, include both Conforming and Non-Conforming issues for the purposes of rate accuracy reporting.

We support this, as we believe that publication of the agent report cards will raise awareness of paying agent performance and structured securities processing issues. Through this awareness, we anticipate that as new deals come to market they will be analyzed with these issues in mind, and structured to best serve the investor.³

4. Exception Processing Fee of \$4,200-per-CUSIP. Processing inefficiencies lead to firms incurring additional costs, in reprocessing of late and inaccurate rates, late payments to beneficial owners, and post-payable-date adjustments. The rule filing proposes the imposition by DTC of an exception processing fee of approximately \$4,200 per Non-Conforming CUSIP on the managing underwriter as the issue is made DTC-eligible, to cover these extraordinary processing costs. DTC will then, after subtracting DTC's cost for administering this program,⁴ make an annual disbursement of the net proceeds from these exception processing fees to DTC Participants that were recipients of payment allocations in all structured securities. The disbursement will be *pro rata*, based on the Participant's number of allocations in structured securities. This is intended to defray a portion of the extraordinary cost that Participants bear to support these issue types.

We agree that assessing a fee would provide incentives for deals to be structured in a manner that increases the likelihood of compliance with DTC deadlines. We also agree that the disbursement of the fee proceeds, net DTC's deduction for its added administrative costs, would be helpful and appropriate to the extent that it would reimburse firms for their extraordinary costs that are caused by structures that lead to expensive exception processing.

We have the following additional thoughts and questions with regard to the fee proposal.

³ We would stress as well the importance of the report card reflecting levels of the aging history of late payments and late notices, so that it can be determined which paying agents are late for extended periods of time.

⁴ DTC will net out its costs in administering this program. We understand, from conversations with DTC, that DTC anticipates that DTC's cost will be that of one full-time employee, and *de minimus* costs relative to training paying agents and underwriters (which cost will also be deducted by DTC as part of the cost to administer the program). We believe that this is reasonable, in light of the size of the program.

Is the correct party being charged the fee? Some SIFMA members have questioned whether it is appropriate for this fee to be charged to underwriters. It is the issuers and paying agents who are party to the Operational Arrangements. Also, we understand that DTC anticipates that underwriters would pass these fees along to the issuers. Given that, it may well be most appropriate for the issuer or paying agent to be charged the exception fee, rather than the underwriter.

Fee amount. To put the fee in perspective, we note that the aggregate fee for 2008 would, based on DTC's most recent numbers, be over \$15 million.⁵

The filing suggests charging the additional cost created by all late submissions and all erroneous submissions (relative to **both** Conforming **and** Non-Conforming issues) to **only** the underwriters of Non-Conforming issues. We question whether this is equitable. On the one hand, we understand the charge-back of the appropriate "increased costs" fee amount to issuers of structurally impaired Non-Conforming issues. We question, however, the appropriateness of also charging them with the cost of other issues for which they do not serve as underwriter: those that are classified as being Conforming Issues, but which nevertheless fail to submit correct rate information on time, due to errors in the servicing chain.

We understand, from discussions with DTC, that DTC will review this aspect of its program towards the end of 2008, with an eye towards addressing this issue. We appreciate and strongly support DTC's doing so, as we believe that it will lead to a more equitable result.

Allocations to Participants. The filing indicates that allocations to Participants of collected fee monies will be based *pro rata* on the number of transactions of each Participant in Structured Securities.

Instead of directing the collected fee monies to those Participants who had position in the structurally impaired 7.5% of structured securities issues, which would reimburse those Participants who incurred greater costs as a result of the structural deficiencies of those issues (which we understand is DTC's goal), this would give only a fraction of the monies to those Participants. It would allocate the bulk of the \$15 million to other Participants, who may or may not have held position in those issues.

We understand, from discussions with DTC, that DTC will review this aspect of its program towards the end of 2008, with an eye towards addressing this issue by adjusting its allocation process to direct these monies to those Participants who held position in the Non-Conforming issues, and therefore actually incurred the additional processing expenses. We greatly appreciate and strongly support DTC's doing so, as we believe that it will lead to a more equitable result.

If you have any questions or would like to discuss our comments further, please contact Christopher Killian, SIFMA Director, at 212-313-1126, or CKillian@sifma.org.

⁵ We note as well that DTC already charges Participants special additional fees to make eligible structured securities issues, because of the special processing that these issues require. These consist of a \$415 complex eligibility fee, and a \$150-per-CUSIP CMO fee (after the first 5 CUSIPs).

Ms. Nancy M. Morris
Secretary
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Very truly yours,

Norman Eaker
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