

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59033; File No. SR-DTC-2008-08)

December 1, 2008

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Eliminate the Ability to Obtain a Physical Certificate from DTC for Issues That are Eligible and Participating in the Direct Registration System

I. Introduction

On July 9, 2008, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2008-08 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 September 2, 2008.² The Commission received two comment letters.³ For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Currently, DTC participants (i.e., broker-dealers and banks) use the Withdrawal-by-Transfer (“WT”) service to instruct DTC to have securities assets held in the participant’s DTC account reregistered in the name of an individual investor, a firm, or a third party. The reregistered assets can be issued in certificated form or as a DRS position.⁴ On receipt of a WT instruction from a participant, DTC either (i) sends a certificate the issuer’s transfer agent for reregistration in the name of the person or entity identified in the WT instruction or (ii) instructs

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58404 (August 21, 2008), 73 FR 51326.

³ Letters from Daniel Raider (September 30, 2008) and Candice D. Fordin, Associate Counsel, The Depository Trust Company (October 13, 2008).

⁴ Issues that participate in the DRS program allow investors to hold their assets in DRS book-entry form on the books of the issuer.

the issuer's transfer agent to debit DTC's position and issue securities in the name of the person or entity identified in the WT instruction.

In an effort to further reduce the industry's dependency on physical certificates, DTC is eliminating the issuance of physical certificates through its WT service for issues that participate in DRS. DTC believes this modification of its WT service reaffirms its goals of reducing the costs and risk associated with processing physical certificates.

Pursuant to the rule change, beginning January 1, 2009, DTC will no longer provide for the issuance of a certificate through the WT service if the issue is participating in DRS. Instead, DTC will instruct the issuer's transfer agent to establish a DRS position and to provide a DRS statement in lieu of a physical certificate. An investor will still be able to obtain a physical certificate to the person or entity identified in the WT instruction by taking the investor's DRS statement directly to the issuer's transfer agent for conversion to a certificate or by using DTC's Deposit and Withdrawal at Custodian ("DWAC") process.⁵

The rule change will also eliminate a participant's ability to obtain a physical certificate through the WT service for issues eligible but not participating in DRS on or after July 1, 2009 ("elimination date"). For the small number of issues anticipated not to have become eligible to participate in DRS by the elimination date, WT instructions requesting a physical certificate may continue to be processed through DWAC or Rush WT processes.

⁵ DWAC is a method of electronically transferring shares between participants and the transfer agent. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) [File No. SR-DTC-91-16] (order granting approval of the DWAC service).

Additionally, the rule change will eliminate DTC's Direct Mail by Depository ("DMD") service for all issues in the fourth quarter of 2009. As a result, DTC will no longer mail certificates to investors. Participants will still be able to use the Direct Mail by Agent ("DMA") service through which DTC instructs the transfer agent to provide DRS statements or physical certificates to investors or their appointed third parties. Physical certificates could also be obtained through DTC's Central Delivery processes through which DTC mails certificates to the participant or allows the participant to pick up the certificate.

II. Comment Letters

The Commission received two comment letters, one from an individual investor and the other from DTC.⁶ The individual investor opposed the proposed rule change because he contends it is inconsistent with the purposes of the Exchange Act and would undermine the ability of beneficial shareholders to become registered shareholders, particularly with respect to issues that are not DRS eligible. The commenter believes that registered shareholders can be assured of receiving information directly from the company, receiving dividends promptly, and obtaining certain rights afforded under state law.

To address the concerns raised by the commenter, DTC responded with a comment letter. DTC stated that the commenter's understanding of DRS is inaccurate because investors holding positions in DRS are actually registered directly on the records of the issuer in book-entry form and therefore are registered shareholders. Furthermore, DTC contended that DRS provides benefits such as reducing the risk of holding securities certificates and allowing the assets to be accurately and quickly moved from DRS to street name position for despositing, thereby

⁶ Supra note 3.

assisting in the prompt and accurate clearance and settlement of securities transactions. DTC also noted that because investors holding DRS positions are registered shareholders, they will receive all communications and disbursements directly from the issuer and may request a certificate directly from the issuer's transfer agent.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.⁷ Broker-dealers currently use DTC's services to obtain securities certificates on behalf of themselves or their customers. Discontinuing those services at DTC should decrease the use of securities certificates. DTC's rule change should make processing securities transactions more safe and efficient by discouraging the use of securities certificates, which increase the risks and costs associated with processing securities transactions.

Contrary to the commenter's statements that DTC's proposed rule change would undermine the investor's ability to become a registered shareholder or eliminate the investor's ability to obtain a certificate, DTC's proposed rule change does neither. Only the issuer can decide whether to make securities eligible for DRS or make securities certificates available.

⁷ 15 U.S.C. 78q(b)(3)(F).

DTC's proposed rule will simply eliminate the issuance of securities certificates through DTC's WT service for issues that are participating in DRS. Furthermore, as DTC noted, investor's holding their securities in DRS are registered shareholders and thereby eligible to all the same rights and obligations as are eligible to investors holding securities certificates.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with DTC's obligation under Section 17A of the Act.

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-2008-08) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Acting Secretary

⁸ 17 CFR 200.30-3(a)(12).