

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62384; File No. SR-DTC-2010-09)

June 25, 2010

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Revise its Procedures Regarding Securities Delivered to or from Participant Accounts Through the Automated Customer Account Transfer Service of National Securities Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on June 4, 2010, The Depository Trust Company (“DTC”) 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 substantially prepared by DTC. 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 the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to revise DTC’s Procedures regarding securities delivered to or from Participant accounts through the Automated Customer Account Transfer Service (“ACATS”) of National Securities Clearing Corporation (“NSCC”).

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), and (C) below, of the most

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

<sup>2</sup> 17 CFR 240.19b-4.

significant aspects of these statements.

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

DTC proposes modifying certain provisions of its Settlement Services Guide ("Guide") in connection with concurrent rule changes proposed by NSCC concerning ACATS transfers through NSCC's Continuous Net Settlement ("CNS") system.<sup>3</sup>

NSCC's ACATS enables members to effect automated transfers of customer accounts among themselves.<sup>4</sup> For ACATS transfers processed through NSCC's Continuous Net Settlement ("CNS") system,<sup>5</sup> long and short positions are passed against Members' positions at The Depository Trust Company ("DTC"). Available securities are delivered from short Members' accounts at DTC and allocated to long Members' accounts by book-entry.

An NSCC Member to which a customer's securities account is to be transferred through ACATS ("Receiving Member") may initiate the transfer process by submitting a Transfer Initiation Request ("TIF") to NSCC. For the transfer to be processed, the TIF must be accepted

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<sup>3</sup> NSCC is proposing these concurrent changes in filing SR-NSCC-2010-05 with the Commission.

<sup>4</sup> ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

<sup>5</sup> CNS is an ongoing accounting system which nets today's Settling Trades with yesterday's Closing Positions to produce a net short or long position for a particular security for a particular Member. NSCC is the contra party for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

by the NSCC Member from which the customer's securities account is being transferred ("Delivering Member"). After a Delivering Member accepts a customer account transfer and all other preconditions of NSCC's rules for processing ACATS transfer are met, all CNS-eligible items in the account will be entered into NSCC's CNS accounting operation on the day before settlement date unless the Receiving Member notifies NSCC that certain items should be withheld.<sup>6</sup>

DTC proposes modifying the Guide in several ways to clarify that securities moving through NSCC's ACATS system are not subject to a lien by DTC when they are debited from a delivering Participant's DTC account or when they are credited to a receiving Participant's DTC account.<sup>7</sup> DTC believes its proposed clarifications would help NSCC Members and DTC Participants meet their legal obligations to maintain securities possession or control of certain customer securities<sup>8</sup> and would concurrently protect the interests of NSCC and DTC.

DTC proposes modifying the CNS section of the Guide to clarify that when a Participant holds securities in its DTC account in a no-lien location<sup>9</sup> and those securities are part of an

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<sup>6</sup> NSCC Rule 50 (Automated Customer Account Transfer Service).

<sup>7</sup> As part of NSCC's companion rule filing, NSCC proposes amending its Rules to provide that any deliveries and receives in a particular security processed through CNS would be designated by NSCC to satisfy a Member's ACATS receive or deliver obligation prior to satisfaction of other CNS-related obligations for that Member in the same security. This would allow NSCC to track the completion status of CNS ACATS deliveries and would facilitate NSCC's ability to notify DTC of which CNS deliveries are ACATS transfers.

<sup>8</sup> Commission Rule 15c3-3 provides that a broker dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities, in each case, carried by a broker or dealer for the account of customers.

<sup>9</sup> For example, when the securities are designated as "Minimum Amount Securities" and not as Net Additions.

ACATS transfer through CNS, then DTC would not have any lien on such securities to satisfy the Participant's CNS ACATS delivery obligation. DTC also proposes clarifying within the Guide that ACAT deliveries from CNS would be deemed to be designated by the receiving Participant as "Minimum Amount Securities" when they are credited to the receiving Participant's account.<sup>10</sup> Minimum Amount Securities are not considered collateral under DTC's rules.<sup>11</sup> Additional clarification would be included to explain that an ACATS transfer would be deemed null and void and the underlying securities could be used to satisfy settlement obligations to NSCC if NSCC determines that a Delivering Member and a Receiving Member defaulted on their settlement obligations to NSCC and the Delivering Member also fails to meet its ACATS delivery obligation.

DTC proposes implementing the proposed changes in this filing during the third quarter of 2010 and advising Members of the specific implementation date through issuance of DTC Important Notices.

DTC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder because the proposed changes would

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<sup>10</sup> As "Minimum Amount Securities", DTC would not have any lien on such securities transferred through ACATS and received from CNS. Such securities would not constitute collateral to which DTC could assert a claim, and accordingly they would not be counted as part of the Participant's Collateral Monitor unless the receiving Participant designates such securities as "Net Additions" in accordance with DTC Rules and Procedures.

<sup>11</sup> DTC Rule 1 and DTC Rule 4(A) respectively for the definition of Minimum Amount Securities and for the implications of this designation in protecting such securities from any lien or other claim of DTC.

<sup>12</sup> 15 U.S.C. 78q-1.

facilitate DTC's prompt and accurate clearance and settlement of securities transactions by clarifying when securities involved in ACATS transfers through CNS are subject to a lien by DTC.

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

DTC does not believe that the proposed rule change would 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 of any written comments received by DTC.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Commissions 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-2010-09 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-2010-09. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of the DTC and on DTC's Web site at

[http://www.dtcc.com/downloads/legal/rule\\_filings/2010/dtc/2010-09.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-09.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-2010-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

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

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).