

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59612; File No. SR-DTC-2009-06)

March 20, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ 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), and (C) below, of the most significant aspects of these statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

(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.³ 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.⁴

³ 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].

⁴ 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].

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,⁵ DTC is proposing to amend its 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.⁶ 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

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

⁶ 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].

Section 17A of the Act⁷ 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 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. Please include File Number SR-DTC-2009-06 on the subject line.

⁷ 15 U.S.C. 78q-1.

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 10:00 am and 3:00 pm. 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. 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 [insert date 21 days from publication in the Federal Register].

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).⁸ 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,⁹ that the

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR-DTC-2009-06), as amended, be and hereby is approved on an accelerated basis.¹⁰

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

Florence E. Harmon
Deputy Secretary

¹⁰ 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).

¹¹ 17 CFR 200.30-3(a)(12).

