

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62727; File No. SR-DTC-2010-09)

August 16, 2010

Self-Regulatory Organizations; The Depository Trust Company; Order Approving 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

I. Introduction

On June 4, 2010, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2010-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the Federal Register on July 2, 2010.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

DTC is modifying certain provisions of its Settlement Services Guide (“Guide”) in connection with concurrent rule changes being made by the National Securities Clearing Corporation (“NSCC”) concerning Automated Customer Account Transfer Service (“ACATS”) transfers processed through the Continuous Net Settlement (“CNS”) system.³

NSCC’s ACATS system enables members to effect automated transfers of customer

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).

³ SR-NSCC-2010-05. Securities Exchange Act Release Nos. 62385 (June 25, 2010), 75 FR 38579 (July 2, 2010) and 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).

accounts among themselves.⁴ For ACATS transfers processed through NSCC's CNS system,⁵ long and short positions are passed against Members' positions at DTC. Available securities are delivered from short Members' DTC accounts and allocated to long Members' DTC accounts by book-entry transfer.

An NSCC Member to which a customer's securities account is to be transferred through ACATS ("Receiving Member") initiates the transfer process by submitting a request to NSCC. For the transfer to be processed, the request must be accepted by the NSCC Member from which the customer's securities are being transferred ("Delivering Member"). After a Delivering Member accepts a customer account transfer request and all other preconditions of NSCC's rules for processing ACATS transfer are met, all CNS-eligible securities in the customer's account, except securities that the Receiving Member notifies NSCC should not be transferred, are entered into NSCC's CNS accounting operation on the day before settlement date.⁶

DTC is modifying its 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

⁴ 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.

⁵ 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 transfer. 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.

⁶ NSCC Rule 50 (Automated Customer Account Transfer Service).

delivering Participant's DTC account or when they are credited to a receiving Participant's DTC account.⁷ DTC believes its clarifications will help NSCC Members and DTC Participants meet their legal obligations to maintain possession or control of certain customer securities and will concurrently protect the interests of NSCC and DTC.⁸

DTC is modifying the CNS section of the Guide to clarify that when a Participant holds securities in its account in a no-lien location⁹ and those securities are part of an ACATS transfer through CNS, DTC does not have any lien on such securities to satisfy the Participant's CNS ACATS delivery obligation. DTC is also clarifying within the Guide that ACATS deliveries from CNS are deemed to be designated by the receiving Participant as "Minimum Amount Securities", and therefore not subject to any lien by DTC, when they are credited to the receiving Participant's account.¹⁰ Additional clarification will be

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

⁸ 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-dealer for the account of customers.

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

¹⁰ DTC Rules 1 and Rule 4(A) respectively define "Minimum Amount Securities" and explain the implications of this designation in protecting such securities from any lien or other claim of DTC.

Because Minimum Amount Securities are not subject to any lien or other claim by DTC, such securities are not counted as part of the Participant's Collateral Monitor. A receiving Participant can designate such securities as "Net Additions".

made to explain that an ACATS transfer is deemed null and void and the underlying securities may 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 failed to meet its ACATS delivery obligation.

DTC intends to implement these changes during the third quarter of 2010 and will advise Participants of the specific implementation date through DTC Important Notices.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act¹¹ and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes that the amendments DTC is making to its Guide regarding securities delivered to or from Participant accounts through ACATS are consistent with DTC's obligations under Section 17A(b)(3)(F),¹² which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹³ and the rules and regulations thereunder.

¹¹ 15 U.S.C. 78q-1.

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-DTC-2010-09) be, and hereby is, approved.¹⁵

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).