

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69864; File No. SR-DTC-2013-08)

June 26, 2013

Self-Regulatory Organizations; The Depository Trust Company (“DTC”); Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement a Fee Associated With the Expansion of DTC’s Ability to Collect and Pass Through Fees Owed by Participants to American Depository Receipt Agents

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 2013, DTC filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(2)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purposed of the proposed rule change is to implement a fee associated with the expansion of DTC’s ability to collect and pass through fees owed by DTC participants (“Participants”) to American Depository Receipt Agents.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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.⁵

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

(a) Proposal Overview

On June 12, 2006, the Commission approved a rule filing for the establishment of a mechanism by which DTC could collect and pass through Depository Service Fees (“DSFs”) owed by Participants to American Depositary Receipt (“ADR”) agents for issues that did not pay periodic dividends.⁶ In 2009, DTC expanded the scope and timing by which DTC could collect and pass through fees owed by Participants to ADR agents so that DTC now collects all allowable DSFs, dividend fees, pass-through expenses and other special fees governed by the ADR agreement.⁷ DTC collects such fees at the request of the depository bank. In order to cover the costs incurred in collecting and passing through these fees, DTC retains a collection

⁵ The Commission has modified the text of the summaries prepared by DTC.

⁶ Release No. 34-53970 (June 12, 2006) 71 FR 34974 (June 16, 2006) (SR-DTC-2006-08).

⁷ Release No. 34-59821 (April 24, 2009) 74 FR 20513 (May 4, 2009) (SR-DTC-2009-05).

charge equal to three percent (3%) of the ADR agent fee amount collected from each Participant up to a maximum of \$20,000 per CUSIP.⁸

Based on the experience to date, and with increased challenges due to the rapid growth of unsponsored ADRs, the depositary banks and DTC have held discussions on expanding and refining the current DSF collection process in order to include unsponsored ADR programs. Unsponsored ADR programs differ from sponsored ADR programs in two primary ways. First, multiple depositary banks can file a registration statement in respect of the same foreign private issuer, and, second, there is no contractual relationship between the foreign private issuer and the ADR depositary that establishes an unsponsored ADR program. In the case of an unsponsored ADR program, the terms and conditions are between the depositary bank and the investor and are contained in the form of an ADR receipt, which is filed as an exhibit to a Depositary's Form F-6 registration statement.

In order to streamline the process associated with collecting DSFs on unsponsored ADRs, DTC has agreed to collect and pass through the fees from Participants to ADR agents. In order to make this possible, the ADR depositary banks have agreed that the depositary bank that first files an F-6 registration statement for a particular unsponsored ADR program ("First Filer") will establish the record date and rate at which the DSF will be assessed on all Participants holding depositary receipts.⁹ DTC will require the ADR depositary banks to notify DTC thirty calendar days prior to the "record date" that a DSF is due and payable. In addition, DTC will require the

⁸ See Release No. 34-59821 (March 23, 2009) 74 FR 13490 (March 27, 2009) (SR-DTC-2009-05) which modified the fees from the original filing.

⁹ This process mirrors the process established for the payment of dividends on unsponsored depositary receipts whereby the First Filer establishes a uniform dividend distribution rate paid by each depositary with an outstanding issued ADR position at DTC.

First Filer to submit an attestation that (i) under the terms and conditions of the ADR receipt with the investor, the specific fee is allowable and that (ii) all depositaries have been contacted and have confirmed they are likewise entitled to charge the shareholder the same depositary servicing fee in accordance with the respective terms and conditions applicable to the ADRs issued by them for this unsponsored program.¹⁰ The attestation will be in a form prescribed by DTC, and may be changed periodically to address operational issues. In the event that a Participant asks DTC to substantiate the fee, DTC may require the ADR depositary to provide DTC with a copy of its fee schedule. DTC may, at its discretion, provide copies of the fee schedule to its Participants to substantiate the fee.

DTC states that it has discussed this proposal with the Securities Industry and Financial Markets Association (“SIFMA”) Securities Operation Division (“SOD”). DTC states that SIFMA’s SOD endorses DTC’s plan to collect such fees through its monthly billing process. According to DTC, this process will eliminate invoice and check processing for Participants and the depositary banks and ADR depositaries will no longer have to mail invoices and reminders to Participants holding ADR securities at DTC. Furthermore, according to DTC, Participants will have a transparent view into upcoming ADR fees, and a centralized source for information about the ADR fee and the collection of the fees. DTC expects to begin collecting ADR agent fees as expanded by this proposed rule change filing on August 1, 2013. DTC will charge a service fee

¹⁰ In their ADR terms and conditions applicable to investors some depositaries have decided, for some issues, not to have depositary servicing fees. Since shares held at Cede & Co, DTC’s nominee name, are held in fungible mass, DTC will not collect a DSF fee for an issue if one or more of the ADR depositary banks do not charge a fee or charge different fees.

associated with this expansion, the details of which are contained in Exhibit 5 to this proposed rule change filing.

(b) Statutory Basis

DTC states the proposed rule change is consistent with the provisions of the Act, and the rules and regulations thereunder applicable to DTC and in particular Section 17A(b)(3)(D)¹¹ because it implements a fee associated with the collection of unsponsored ADRs and as such it clarifies and updates DTC's Fee Schedule in order to facilitate a more efficient fee collection process for unsponsored ADRs and provides for an equitable allocation of fees.

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

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

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(2).¹³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule

¹¹ 15 U.S.C. 78q-1(b)(3)(D).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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-2013-08 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-2013-08. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's website at http://www.dtcc.com/downloads/legal/rule_filings/2013/dtc/SR_DTC_2013_08.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-2013-08 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).