

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58757A; File No. SR-DTC-2008-12]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change as Amended To Increase Liquidity Resources

October 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on August 26, 2008, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on September 9, 2008 and on September 30, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested parties.

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

DTC is seeking to increase its liquidity resources to ensure that it has sufficient liquidity to cover the failure of a family of financially affiliated DTC participants.

#### 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.<sup>2</sup>

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

The proposed rule change seeks to increase the liquidity resources of DTC to ensure it has sufficient liquidity to cover the failure of a financial family of affiliated DTC Participants (“Affiliated Family”).<sup>3</sup> An Affiliated Family means a Participant that controls another Participant or other Participants and each Participant that is under the control of the controlling Participant. For purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities or other voting interests of any entity.<sup>4</sup>

To ensure that DTC is able to complete its settlement obligations each day in the event of a Participant’s inability to settle with DTC, DTC currently maintains liquidity resources of \$2.5 billion composed of a \$600 million all-cash Participants Fund and a committed line of credit in the amount of \$1.9 billion with a consortium of banks. DTC’s committed line of credit was recently increased from \$1.4 billion. Given that financial firms have become increasingly interdependent, DTC recognizes that there is a possibility of “contagion” among several related Participants. Financial problems at one Participant may impact the stability of another related Participant, potentially causing both to fail simultaneously. Because of concerns about this potential, DTC and its regulators have agreed that DTC should increase its available liquidity resources so that DTC would be able to withstand the failure of a financial family of affiliated DTC Participants.<sup>5</sup> In order to address these concerns, DTC is proposing to (i) increase by \$700 million the total cash deposits to DTC’s all-cash Participants Fund, so that the aggregate amount of the required cash deposits to DTC’s Participant Fund and the required preferred stock investments of Participants would be increased to \$1.3 billion from \$600 million and (ii) limit

<sup>3</sup> DTC currently has 332 Participants, most of which are broker-dealers or banks with one Participant account. Large integrated organizations, however, typically have several “legal entities” that each are DTC Participants (e.g., a bank custodian entity and a separate securities firm entity).

<sup>4</sup> Under this definition, DTC currently has 47 Affiliated Families.

<sup>5</sup> The Commission is the primary federal regulator of DTC as a clearing agency. DTC is also a limited purpose trust company established under New York Banking Law and a state member bank of the Federal Reserve System. As such, the The Federal Reserve Bank of New York (FRBNY) and the New York State Department of Banking have regulatory authority over DTC.

the aggregate maximum net debit cap<sup>6</sup> for any Affiliated Family to \$3 billion.

The following variables are currently used in the determination of each Participant’s required Fund deposit:

- (1) The six largest intra-day net debit peaks for a Participant over a rolling 60-business day period.
- (2) Minimum Fund Deposit: \$10,000.
- (3) Fund Size: \$600 Million.

DTC will continue to employ these variables to calculate the first \$600 million of the required \$1.3 billion Fund. The remaining \$700 million will be allocated proportionately among the Affiliated Families whose aggregate net debit caps per family exceed \$2.3 billion.<sup>7</sup> An Affiliated Family whose net debit cap exceeds \$2.3 billion would be required to contribute a portion of the remaining \$700 million calculated by dividing the amount by which the Affiliated Family’s net debit cap exceeds \$2.3 billion by the sum of the amount by which each Affiliated Family’s net debit cap exceeds \$2.3 billion.<sup>8</sup> Once an Affiliated Family’s additional Participant’s Fund requirement has been established, DTC will allocate this sum among the Participants comprising the Affiliated Family in proportion to each Participant’s adjusted net debit cap.<sup>9</sup> This algorithm will be systematically used to calculate the allocations for the Participants of Affiliated Families, unless each of the Participants that comprise an Affiliated Family provides DTC with written instructions to allocate the aggregate net debit cap differently. While the Participants of an

<sup>6</sup> DTC ensures that timely settlement can be completed in the event of an inability to settle by a Participant with the largest settlement obligation, by setting limits (called net debit caps) for each Participant. A Participant’s net debit is limited throughout the processing day to a net debit cap that is the lesser of four amounts: (1) An amount based on the average of the three largest net debits that the Participant incurred over a rolling 70 business day period, (2) an amount, if any, determined by the Participant’s settling bank, (3) an amount, if any, determined by DTC, or (4) \$1.8 billion.

<sup>7</sup> In accordance with its current practice, DTC would continue to maintain a liquidity cushion of \$200 million between its largest net debit cap and its liquidity resources (i.e., DTC’s current liquidity of \$2.5 billion minus the \$200 liquidity cushion it maintains).

<sup>8</sup> DTC will adjust the net debit caps of the Participants that comprise the Affiliated Families so that the aggregate affiliated net debit cap does not exceed \$3 billion. Currently 18 Affiliate Families consisting of 57 DTC Participants would be subject to these Affiliated Family provisions. Thirteen Affiliated Families would be required to reduce their overall Net debit cap.

<sup>9</sup> The proposed DTC Affiliated Family Algorithm can be viewed on the Commission’s Web site at <http://www.sec.gov/rules/sro/dtc/2008/34-58757.pdf> and at DTC’s Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2008/dtc/2008-12.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008-12.pdf).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

Affiliated Family may give instructions to reapportion their net debit caps among themselves, they cannot reallocate to any one Participant a debit cap that is greater than the DTC system calculated net debit cap for that Participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to DTC because it should assure the safeguarding of securities and funds in DTC's custody or control or for which it is responsible by increasing DTC's liquidity resources to enable it to complete settlement in the event of a failure of a financial family of affiliated Participants.

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

DTC believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The risk mitigation effects of the proposed change do not impose any unreasonable or inappropriate burden on competition. The revised net debit cap limits and increased Participant Fund are allocated among those entities whose interdependencies have raised concern.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The proposed rule change has been discussed with several Participants. Written comments relating to the proposed rule change have been received by DTC and are addressed by the proposed rule change. DTC will notify the Commission if it receives additional comments.

**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 such 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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2008-12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2008-12. 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 a.m and 3 p.m. 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/2008/dtc/2008-12.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008-12.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-2008-12 and should be submitted on or before November 12, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58770; File No. SR-NYSEArca-2008-103]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services That Apply to the Primary Order Plus Order**

October 10, 2008.

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 September 29, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Substance of the Proposed Rule Change**

NYSE Arca proposes to add new fees to the Schedule of Fees and Charges for Exchange Services (the "Schedule") that apply to the new Primary Only Plus ("PO+") Order type. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and <http://www.nyse.com>.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>10</sup> 15 U.S.C. 78q-1.