

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59286; File No. SR-DTC-2009-01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Relating to the Deposits Service Guide

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on January 5, 2009, 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 prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ so that the proposal was 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

The proposed rule change will amend DTC’s Deposits Service Guide.

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 such statements.

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

Under this rule change, DTC will amend its Deposits Service Guide by eliminating the Legal Guidance System (“LGS”) and by making other minor clarifications.

LGS is a Participant Terminal Service function that enables DTC participants to obtain comprehensive information on state and local regulations that must be followed when making a legal deposit. This function has been superseded by the Securities Transfer Association (“STA”) Guidelines that are consistent with DTC’s processing and is now obsolete. All DTC participants have access to the STA guidelines through the public STA Web site (<http://www.stai.org>).

Additionally, DTC is making some minor corrections and clarifications to the Deposits Service Guide. Specifically, an inadvertent reference to “restricted” deposit in the legal deposits section of the Deposit Service Guide is removed; clarifying language to the time it takes for appropriate payments and exchange of shares to be made through DTC’s settlement area is being added,⁴ and detailed narrative describing custody services is being removed from the Deposits Service Guide since such narrative is contained in the Custody Service Guide.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will facilitate the prompt and accurate clearance and settlement of securities transactions by enhancing the utilization of DTC’s existing services.

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

DTC has not solicited or received written comments relating to the

⁴ The language explains that “if the effective date of the corporate action is three years or less, allocation occurs one day after the deposit. If the effective date is over three years, allocation of new stock entitlement will not occur until DTC has received the security from the agent. Allocations for cash will not occur on any reorg deposit until DTC receives the funds from the agent, regardless of the effective date of the corporate action.”

proposed rule change. DTC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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-comment@sec.gov. Please include File No. SR-DTC-2009-01 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 No. SR-DTC-2009-01. 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

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <<http://www.dtc.org/impNtc/mor/index.html>>. 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 No. DTC-2009-01 and should be submitted on or before February 23, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59274; File No. SR-FINRA-2009-001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exemptive Criteria in FINRA Rule 7470

January 22, 2009.

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 January 7, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule

change pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. On January 16, 2009, FINRA submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

FINRA is proposing to amend FINRA Rule 7470 to revise the criteria necessary to qualify for an exemption from the order recording and data transmission requirements in the Order Audit Trail System ("OATS") Rules for manual orders.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's public reading room.

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

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, permitted FINRA to grant exemptive relief from the OATS reporting requirements for manual orders.⁵ The exemptive authority was broadened in 2006 to give FINRA the authority to exempt members from the OATS recording requirements, in addition to the reporting requirements.⁶ At a

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

⁶ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As

minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.

In addition to the amendments to the exemptive provision in the OATS Rules in 2006, the SEC separately approved amendments to the OATS Rules to require members to record and report to OATS order information relating to OTC equity securities.⁷ The extension of the OATS requirements to OTC equity securities became effective on February 4, 2008.⁸

When the Commission approved the exemptive provision in the OATS Rules and the amendment extending FINRA's authority under that provision in 2006, the OATS Rules applied only to equity securities listed on the Nasdaq Stock Market. Consequently, at that time, one of the minimum criteria for a member to request an exemption from the OATS requirements, specifically the requirement that the member not conduct any market making activities, was limited to Nasdaq Stock Market equity securities. This requirement, similar to the other exemptive criteria such as the prohibition on principal transactions with customers and conducting clearing or carrying activities for other firms, reflects FINRA's conclusion that exemptive relief should only be available to members that conduct very limited types of trading activities.

When the OATS recording and reporting requirements were extended to OTC equity securities, the exemptive provision was not similarly extended to account for market-making activities in OTC equity securities. The proposed rule change would amend the minimum

of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

⁷ See Securities Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006).

⁸ See Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.