

notes that it approved the original listing and trading of the Units on Amex.<sup>26</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>27</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information regarding the Units will be disseminated through the facilities of the CTA and Consolidated Quote High Speed Lines. The daily settlement prices for the Futures Contracts are publicly available on various Web sites, and market data vendors and news publications publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. Amex will disseminate through the facilities of the CTA an updated Indicative Partnership Value on a per-Unit basis at least every 15 seconds during regular Amex trading hours. Amex intends to disseminate for each Partnership on a daily basis information with respect to the Indicative Partnership Value, the NAV, the number of Units outstanding, the Basket Amount, and daily trading volumes and closing prices of the Units. Finally, USHO's and USG's total portfolio composition will be disclosed, each business day that the Amex is open for trading, on their respective Web sites.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Units when transparency is impaired. If the listing market halts trading when the Indicative Fund Value is not being calculated or disseminated, the Exchange would halt trading in the

Units. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

The Commission notes that, if the Units should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Units pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units, including risks inherent with trading the Units during the Opening and Late Trading Sessions when the updated Indicative Partnership Value is not calculated and disseminated, and of suitability recommendation requirements.

3. The Information Bulletin also would discuss the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction.

4. Trading in the Units will be subject to NYSE Arca Equities Rule 8.300(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance.

This approval order is based on these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Units on Amex is consistent with the Act.<sup>29</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Units on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Units.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NYSEArca-

2007-78) thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57298; File No. SR-DTC-2007-13]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Foreign Currency Payment Option

February 8, 2007.

#### I. Introduction

On September 26, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2007-13 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 3, 2007.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change provides that DTC's Foreign Currency Payment Option ("FCP Option") may be used (1) in relation to securities denominated in U.S. dollars and (2) regardless of whether the terms of the issue originally contemplated the option of payment in one or more currencies. Currently, DTC offers the FCP Option in order for participants to elect to receive dividend, interest, principal, redemption, or maturity payments either in foreign currency outside of DTC or in U.S. dollars within DTC with respect to a foreign denominated issue when the foreign currency option is included in the initial offering terms of the DTC-eligible issue.

#### *U.S. Denominated Securities*

The rule change clarifies that the FCP Option will be made available for U.S. denominated securities as well as foreign denominated securities. When

listed and registered on the exchange even though it is not so listed and registered.

<sup>26</sup> See *supra* note 3.

<sup>27</sup> 17 CFR 240.12f-5.

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>29</sup> See *supra* note 3.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 56840 (November 27, 2007), 72 FR 67987.

DTC initially filed to implement the FCP Option, the issues providing for multiple currencies payments were foreign denominated.<sup>3</sup> The wording of the filing inadvertently put participants holding U.S. denominated securities at a disadvantage with respect to the FCP Option. This rule change remedies this unintentional result by allowing the FCP Option to be used with respect to U.S. denominated securities.

#### *Designation of Payment Option After Initial Issuance*

The rule change allows for the use of the FCP Option for DTC-eligible securities that were not initially issued with the option of payment in multiple currencies. Additionally, DTC is amending its rules to allow an issuer or its agent to use the FCP Option to add an additional currency to the payment options originally offered in relation to a DTC-eligible security.<sup>4</sup> In such a case, the issuer or its agent would instruct DTC within prescribed time frames and in a form satisfactory to DTC to send out a notice to participants holding positions in the subject security to inform them of the payment options for a particular payment event. Such a notice would contain all necessary information for a participant to be able to elect a particular currency option. The method of payment (U.S. dollars within DTC or foreign currency outside of DTC) and the election process would remain the same.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. In the 1994 order approving DTC's original rule allowing the foreign currency payment option, the Commission found that the FCP Option facilitates the immobilization of certificates at DTC and therefore reduces the costs to secondary market participants by increasing the use of book-entry

settlement.<sup>5</sup> Similarly, we find that the proposed rule change by extending the FCP Option to U.S. denominated securities and to securities not originally issued with the option of receiving payments in multiple currencies should achieve the same result. As a result of the proposed rule change, DTC participants holding these securities will no longer have to withdraw their shares from DTC in order to receive payments in foreign currencies offered by an issuer or its agent. The proposed rule change should, therefore, provide cost savings and should expand the efficiencies related to book-entry transfer for DTC participants. For these reasons we find that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions consistent with DTC obligations under section 17A(b)(3)(F).

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.<sup>6</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2007-13) be and hereby is approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57308; File No. S7-03-08]

### Notice of Solicitation of Public Views Regarding Practices Being Developed To Deal With the Increasing Number of Senior Investors

On February 8, 2008, the Commission issued Press Release No. 2008-16 announcing that the Commission staff, in coordination with FINRA and NASAA, would be seeking information from all interested parties (including investors, broker-dealers and investment

advisers) concerning the particular practices that have been developed and are being developed to responsibly deal with the increasing number of senior investors. The goal of the project is to identify industry practices in dealing with senior investors that appear to be effective in ensuring that the firms deal fairly with senior investors, and to provide information about these practices publicly. It is anticipated that the staff will prepare a report summarizing the project and practices identified.

The Commission asks all parties to share effective practices in the following areas:

- Marketing and advertising to seniors (including information such as procedures to review this material);
- Account opening (including information such as any additional disclosures provided to seniors, any review conducted on account opening documents; and information obtained about the customer);
- Product and account review (including information such as whether the firm has any specific guidelines for selling particular products to senior investors, additional or enhanced reviews of purchases);
- Ongoing review of the relationship and appropriateness of products (including information such as who conducts review, frequency of review, any guidelines for appropriateness of products and procedures);
- Discerning and meeting the changing needs of customers as they age (including information such as procedures for handling customer accounts if the customer becomes unable to make their own investment decisions, required documentation, and any review of customer accounts as the customer ages to ensure customers investment objectives are being met);
- Surveillance and compliance reviews (including information such as exception reports; description of the types of reviews conducted, and procedures or guidance given to the reviewer); and
- Training for firm employees (including information such as who is required to attend the training, when was training implemented, and any written procedures).

If you wish to send us your views, please submit them by hard copy or e-mail, but not by both methods on or before April 1, 2008. We strongly encourage electronic submissions. You may submit your written views electronically at the following electronic mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). We do not edit personal identifying information, such as names or electronic

<sup>3</sup> Securities Exchange Act Release Nos. 33597 (February 8, 1994), 59 FR 7272 (February 15, 1994) (File No. SR-DTC-93-10) and 29144 (April 30, 1991), 56 FR 21182 (May 7, 1991) (File No. SR-DTC-90-09).

<sup>4</sup> For example, payment in a different currency than that offered when a security was initially issued might be desirable in the event of a change in tax withholding legislation subsequent to the initial issuance which might make it more attractive for investors from a particular country to hold position in a security. It would in turn be helpful for such investors to have the ability to receive payments in relation to the subject security in their home country currency.

<sup>5</sup> Securities Exchange Act Release No. 29144 (April 30, 1991), 56 FR 21182 (May 7, 1991) (File No. SR-DTC-90-09).

<sup>6</sup> 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).

<sup>7</sup> 17 CFR 200.30-3(a)(12).