

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested the Commission to waive the 30-day operative delay, as well as the 5-day pre-filing requirement, so that the proposed rule change may become effective and operative upon filing. The Commission believes that waiving the 30-day operative delay and the 5-day pre-filing requirement is consistent with the protection of investors and the public interest. The Exchange, as a trading center, is required under Regulation SHO to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of sell short orders of covered securities subject to the short sale price test restriction at or below the current national best bid. Because the rule amendment is designed to address this requirement under Rule 201, the Commission agrees to waive the operative delay and pre-filing requirement. Accordingly, the Commission grants the Exchange's request and designates the proposal effective upon filing.<sup>13</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-13 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-NSX-2013-13. This file number should be included in the subject line if email is used. To help the Commission process and review 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 Web site 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 a.m. and 3 p.m. eastern time. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. 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-NSX-2013-13 and should be submitted on or before July 24, 2013.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69864; File No. SR-DTC-2013-08]

### 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 Depositary Receipt Agents

June 26, 2013.

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 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)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> 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 Depositary Receipt Agents.

#### 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>5</sup>

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes of only waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>14</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>5</sup> The Commission has modified the text of the summaries prepared by DTC.

*(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 Depositary Service Fees ("DSFs") owed by Participants to American Depositary Receipt ("ADR") agents for issues that did not pay periodic dividends.<sup>6</sup> 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.<sup>7</sup> DTC collects such fees at the request of the depositary bank. In order to cover the costs incurred in collecting and passing through these fees, DTC retains a collection 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.<sup>8</sup>

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.<sup>9</sup> 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 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.<sup>10</sup> 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 associated with this expansion, the details of which are contained in

<sup>9</sup> 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.

<sup>10</sup> 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.

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)<sup>11</sup> 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)<sup>12</sup> of the Act and Rule 19b-4(f)(2).<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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

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

<sup>8</sup> 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.

• Send an email to [rule-comments@sec.gov](mailto: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 email 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 Web site 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 Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2013/dtc/SR\\_DTC\\_2013\\_08.pdf](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 July 24, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69869; File No. SR-NYSE-2013-32]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Proposing an Amendment to the Bylaws of Its Wholly-Owned Subsidiary, NYSE Regulation, Inc. ("NYSE Regulation"), To Eliminate a Requirement That Not Less Than Two Members of the Board of Directors of NYSE Regulation Must Qualify as "Fair Representation Candidates"

June 27, 2013.

#### I. Introduction

On May 8, 2013, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. ("NYSE Regulation") to eliminate a requirement that not less than two members of the board of directors of NYSE Regulation ("NYSE Regulation Board" or "Board") must qualify as "fair representation candidates" (as that term is defined in those bylaws). A requirement that such directors constitute a minimum of 20% of the NYSE Regulation Board would remain in place. The proposed rule change was published for comment in the **Federal Register** on May 22, 2013.<sup>3</sup> The Commission received no comments on the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend the Fourth Amended and Restated Bylaws of NYSE Regulation ("NYSE Regulation Bylaws") to eliminate the requirement that not less than two members of the NYSE Regulation Board must be "fair representation candidates" (as defined in the NYSE Regulation Bylaws). However, the current requirement that such directors constitute a minimum of 20% of the Board would continue to apply. Furthermore, under the proposal, if the number that is equal to 20% of the entire Board is not a whole number, such number would be rounded up to the next whole number, and a provision

so stating would be added to the NYSE Regulation Bylaws.

As defined in the NYSE Regulation Bylaws, the fair representation candidates are Board members who are determined by member organizations of the Exchange through a specified petition process ("Petition Candidates") or, in the absence of a sufficient number of Petition Candidates, candidates would be recommended by the Director Candidate Recommendation Committee ("DCRC") of NYSE Regulation. In addition, fair representation candidates for the NYSE Regulation Board must qualify as "non-affiliated directors" (as such term is defined in the NYSE Regulation Bylaws), *i.e.*, such persons must be U.S. Persons who are not members of the board of directors of NYSE Euronext and qualify as independent under the director independence policy of NYSE Regulation.<sup>4</sup> Finally, like all members of the NYSE Regulation Board except for the Chief Executive Officer, the fair representation candidates must qualify as independent under the director independence policy of NYSE Regulation.<sup>5</sup> The Exchange stated that it is not proposing to change the NYSE Regulation independence requirements.<sup>6</sup>

The NYSE Regulation Bylaws provide that the Board shall consist of not less than three persons and that the number of directors shall be fixed from time to time by the Exchange, as sole equity member of NYSE Regulation. The size of the NYSE Regulation Board is currently fixed at five members, of which four positions are currently filled and one position is open.<sup>7</sup> The Exchange represented that both the Exchange and NYSE Regulation believe that a board

<sup>4</sup> See Securities Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17) (approving a new director independence policy for NYSE, NYSE Regulation, NYSE Market, Inc., and NYSE MKT LLC).

<sup>5</sup> The NYSE Regulation Bylaws require that a majority of the NYSE Regulation Board must consist of non-affiliated directors. The remaining directors are comprised of the Chief Executive Officer of NYSE Regulation and members of the board of directors of NYSE Euronext that qualify as independent under the NYSE Euronext independence policy. The NYSE Regulation Bylaws do not require any affiliated directors other than the Chief Executive Officer of NYSE Regulation.

<sup>6</sup> See Notice, 78 FR at 30379.

<sup>7</sup> The Exchange noted that the number of directors on the NYSE Regulation Board was reduced from ten to five in early 2013 in connection with the Financial Industry Regulatory Authority's ("FINRA") completion of specified milestones in the regulatory services agreement by and among FINRA, NYSE Group, Inc., NYSE, NYSE Regulation, NYSE Arca, Inc., and NYSE MKT LLC pursuant to which FINRA assumed responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation. See Notice, 78 FR at 30379 n.6.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 69590 (May 16, 2013), 78 FR 30378 ("Notice").

<sup>14</sup> 17 CFR 200.30-3(a)(12).