

The Depository Trust Company

IMPORTANT

B#: 3790-08

DATE: August 6, 2008

TO: DTC Participants

CATEGORY: Compliance

FROM: General Counsel's Office

ATTENTION: Managing Partner/Compliance Officer/General Counsel's Office

SUBJECT: **Approval of DTC Rule Filing SR-DTC-2007-05**

The Securities and Exchange Commission ("SEC") has approved The Depository Trust Company ("DTC") rule filing SR-DTC-2007-05 which modifies DTC's Rules with respect to fines. The approved changes will create more uniformity with respect of the fine provisions between DTC and DTC's affiliates, the National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC"), where beneficial and/or practicable. **These changes will become effective on Monday, September 8, 2008.**

A summary of key changes is provided below. Please refer to the rule filing, which is available on DTCC's website (www.dtcc.com), for the full text of the rule changes.

(i) Fine Schedule for Failure to Submit Financial and Other Information

DTC's Rules require Participants to submit certain financial, regulatory and other information by publicized time frames and provide DTC with general authority to impose fines against Participants for rules violations; however the Rules do not contain specified fine amounts with respect to failure to submit this information. As part of the ongoing effort to harmonize its Rules with those of its affiliates, DTC is will adopt the schedule utilized by FICC for this purpose¹. (See Exhibit A attached hereto for the complete schedule).

Oftentimes, a Participant that would be fined pursuant to the above-mentioned schedule is a common Participant of FICC and/or NSCC as well, which would cause the Participant to incur multiple penalties for the same offense. Therefore, the fine schedule will provide that a common Participant of DTC, NSCC, and FICC (each a "Clearing Agency" and, collectively, the "Clearing Agencies") that is late in providing the same information to more than one Clearing Agency would be subject to an equal portion of

¹ NSCC filed a separate rule filing (which has also received SEC approval) in order to adopt the schedule DTC will adopt for this purpose.

the applicable fine amount at each Clearing Agency.² Where the member is a Participant of DTC and is a common member of one or both of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among other Clearing Agencies as appropriate. If the member is not a DTC Participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

(ii) Fines relating to Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants. The Rule states that the admission of a Participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires all DTC Participants to demonstrate to DTC that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation, which outlines the nature of the applicant's business, its DTC settlement projections and the applicant's financial condition at the time of approval, acknowledging that this representation is accurate and that they will promptly notify DTC whenever there is any anticipated change in the representation given.

Under Rule 10, if the Participant fails to continue to demonstrate these standards, then based on its judgment, DTC may at any time cease to act for a Participant with respect to a particular transaction or transactions, a program or transactions generally, or terminate a Participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit Participants, or continue to act for them, on a temporary or other conditional basis.

In order to harmonize the Rules of DTC with those of its affiliates, DTC will add an additional consequence in this regard whereby a Participant will be fined \$1,000 if it fails to notify DTC of its (the Participant's) non-compliance with any general continuance standards for DTC participation within 2 business days.

In addition, DTC will add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if an applicable Participant fails to notify DTC about a "material" change. A "material" change would include events such as a merger or acquisition involving the Participant, a change in corporate form, a name change, a material change in ownership, control or management and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the Participant's financial condition or ability to conduct its business. The provision will provide that the notification must be provided 90 calendar days prior to the effective date of such event unless the Participant demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both \$1,000 and \$5,000 fines mentioned above, a provision will be added such that a common Participant of the Clearing Agencies that is late in providing the same requisite notification to more than one Clearing Agency would be subject to an equal portion of the applicable fine amount at each Clearing Agency (this would be consistent with the approach being mentioned above with respect to fines for failure to timely provide requisite financial and other information).

² For example, assume that Firm A is a member of DTC, FICC and NSCC and is required to submit its annual audited financial statements within a certain timeframe. If Firm A is late in its submission of the statements and the appropriate fine amount is \$300, Firm A will be fined \$300 total (\$100 for DTC, \$100 for FICC and \$100 for NSCC).

Where the member is a Participant of DTC and is a common member of one or both of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among other Clearing Agencies as appropriate. If the member is not a DTC Participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

Questions regarding the rule filing may be directed to John Petrofsky at (212) 855-7634 or your Relationship Manager.

Exhibit A

Failure to Timely Provide Financial and Related Information

Fine Schedule

Request for information*	First Occasion	Second Occasion	Third Occasion	Fourth Occasion
Reports/Information**	\$300	\$600	\$1,500	***

*Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

**For purposes of this Fine Schedule, “Reports/Information” shall mean the financial, regulatory and other information required to be submitted within a specified deadline to the Corporation pursuant to the Procedures.

***Fourth or more occasion fines will be determined by the Corporation with the concurrence of the Board of Directors or a Committee appointed by the Board of Directors.

If the Participant’s late submission applies to more than one DTCC clearing agency subsidiary (which includes the Corporation, National Securities Clearing Corporation, and Fixed Income Clearing Corporation), the fine amount will be divided equally among those clearing agencies. Where the member is a Participant of DTC and is a common member of one or both of the other clearing agencies, the fine would be collected by DTC and allocated equally among the other clearing agencies, as appropriate. If the member is not a DTC Participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.