

IMPORTANT NOTICE

The Depository Trust Company



#: B4105-08
Date: October 9, 2008
To: All Participants
Category: Compliance
From: General Counsel's Office
Attention: Managing Partner/Officer/Cashier
Subject: SR-DTC-2008-13 –
Elimination of the SRO Requirement for certain Rule 144A Securities

The Depository Trust Company today filed with the SEC SR-DTC-2008-13 proposing the elimination of the SRO Requirement (as defined below) as a condition of DTC-eligibility for securities which are eligible for resale under Rule 144A (“Rule 144A Securities”) under the Securities Act of 1933 (the “Securities Act”)¹. Currently the SRO Requirement is in place for all Rule 144A Securities other than Investment Grade Securities².

Background. In April of 1990, the Securities and Exchange Commission (the “SEC”) adopted Rule 144A under the Securities Act. This Rule provides a safe-harbor from the registration requirements of the Securities Act for resales to qualified institutional buyers (“QIBS”) of certain restricted securities that, when issued, were not of the same class as securities listed on a national securities exchange, registered under the Securities Exchange Act of 1934 (the “Exchange Act”). Rule 144A(d)(2) requires that the seller or any person acting on its behalf take reasonable steps to ensure that the purchaser is aware that the seller may rely on the safe-harbor provided by Rule 144A.

Shortly after the adoption of Rule 144A, DTC filed a rule change, which was subsequently amended, to make Rule 144A securities eligible for deposit, book-entry delivery and other depository services (the “DTC Rule 144A Filing”)³. In 1993, the SEC approved the DTC Rule 144A Filing which provides in part that DTC is required to “condition the eligibility of the Rule 144A Securities (other than

¹ 17 CFR 230.144A.

² “Investment Grade Securities” are defined as nonconvertible debt securities and nonconvertible preferred stock which are in one of the top four categories by a nationally recognized statistical rating organization.

³ See Securities Exchange Act Release No. 34-28028 (May 18, 1990); File No. DTC-90-06; Securities Exchange Act Release No. 34-30568 (April 10, 1992); Securities Exchange Act Release No. 34-32114 (April 7, 1993).

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Investment Grade Securities) on initial and continued inclusion of those securities in an SRO Rule 144A System, such as the NASD's PORTAL Market System".⁴ This requirement is referred to herein as the "SRO Requirement". The SRO Requirement contemplated that an SRO Rule 144A System would include comprehensive requirements that would facilitate the SRO's ability to detect violations of Rule 144A. In fact, however, the only SRO Rule 144A System that was developed, the NASD's PORTAL Market System ("PORTAL") did not develop as anticipated and did not include the requirements contemplated by the DTC Rule 144A Filing in 1993.⁵ In light of the above, DTC believes that the SRO Requirement is no longer necessary or appropriate.

The elimination of the SRO Requirement would result in a uniform procedure for making Rule 144A Securities DTC-eligible, whether or not they were classified as Investment Grade Securities.

Under the proposed rule change issuers and Participants shall continue to be responsible for determining that their deposit of Rule 144A Securities with DTC, and their transactions in Rule 144A Securities through the facilities of DTC, are in compliance with the Rules of DTC and the federal securities laws.

The full text of the proposed rule filing can be found at the following link: http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008-13.pdf or on DTC's public website, www.dtc.org. Written comments may be addressed to Sheila Candler, 55 Water Street, 22nd Floor, New York, N.Y. 10041; any such comments will be forwarded to the SEC. Written comments may also be addressed to the SEC at 100 F Street, N.E., Washington, D.C. 20549-9303. We request that you provide a copy of any such comments to DTC.

Questions regarding the rule filing may also be directed to Sheila Candler at (212) 855-3281.

⁴ See Securities Exchange Release No. 34-33327 (December 22, 1993); File No. SR-DTC-90-06.

⁵ See Securities Exchange Release No. 34-56172 (July 31, 2007); File No. SR-NASDAQ-2006-65.