

# **IMPORTANT NOTICE**

**The Depository Trust Company**



**B#:** 0006-11  
**Date:** January 12, 2011  
**To:** All Participants  
**Category:** Underwriting  
**From:** General Counsel's Office  
**Attention:** Managing Partner/ Officer; Cashier, Operations, Underwriting Managers, Issuers, and their Agents  
**Subject:** Information for Securities to be made "DTC- Eligible"

The purpose of this notice is to announce the posting on DTCC's website of the document, "Information for Securities to be made DTC-Eligible", which follows below. It outlines key criteria applied by DTC to determine that securities are initially, and may continue to be, eligible for its book-entry delivery and depository services.

DTC is providing this information to assist interested parties in planning ahead for DTC eligibility of issues, but each party should bear in mind that this information is not a complete guide or an explanation of all the relevant considerations under DTC's rules and procedures ("Rules") which govern the eligibility process. The examples provided in the document are for illustrative purposes only but also represent a substantial number of answers to the inquiries DTC regularly receives.

Questions relating to the guidance, or to the eligibility of particular securities outlined in the attached should be addressed to the appropriate DTC staff as indicated on Annex A.

This document may also be viewed on DTCC's website at:

[http://dtcc.com/products/documentation/asset/Securities\\_DTCEligibility.pdf](http://dtcc.com/products/documentation/asset/Securities_DTCEligibility.pdf)

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## Information for Securities to be made “DTC-Eligible”

The Depository Trust Company (“DTC”), a subsidiary of The Depository Trust & Clearing Corporation (“DTCC”), through its Underwriting Department (“Underwriting”), serves the financial industry by making securities eligible for depository services. Through DTC, Participants have the ability to distribute new and secondary offerings quickly and economically by electronic book-entry delivery and settlement. This document outlines key criteria applied by DTC to determine that securities are initially, and may continue to be, eligible for its book-entry delivery and depository services.

DTC is providing this information to assist interested parties in planning ahead for DTC eligibility of issues, but each party should bear in mind that this information is not a complete guide or an explanation of all the relevant considerations under DTC’s rules and procedures (“Rules”)<sup>1</sup> which govern the eligibility process. The examples below are provided for illustrative purposes only but also represent a substantial portion of the inquiries DTC regularly receives.

### **Examples of Types of Eligible Securities**

DTC makes a wide range of security types eligible for its services in accordance with its Rules. Securities that may be eligible include, but are not limited to, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, collateralized mortgage obligations, equity and debt derivatives, variable-rate demand obligations, money market instruments (*e.g.*, commercial paper, bankers’ acceptances, institutional certificates of deposit, short-term bank notes, discount notes and certain medium-term notes), American/global depository receipts, shares of closed end funds, retail certificates of deposit, unit investment trust certificates, shares of exchange traded funds and insured custodial receipts. In the case of hybrid securities, or securities with unique processing requirements, Participants should contact DTC well in advance of the requested eligibility date to review the structure and processing requirements of the security, in order to determine if it may be made eligible.

### **Submission of an Eligibility Request to DTC**

Only Participants<sup>2</sup> can request that DTC make a security eligible. It is therefore incumbent on an issuer of Securities (an “Issuer”) to have a relationship with an underwriter or other financial institution that is a Participant or is directly associated with a Participant that is willing to sponsor the eligibility process for the Issuer’s securities. A Participant can submit an eligibility request through the underwriting services of DTC either at the time a security is initially being offered and distributed to the marketplace or at a later time for already issued and outstanding

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<sup>1</sup> Defined terms used but not otherwise defined herein have their meanings provided in the Rules. For example, the term “Participant” refers to a DTC Participant under and pursuant to the Rules.

<sup>2</sup> Underwriters that have a correspondent relationship that is approved by a Participant may also request DTC eligibility for a security.

securities. (New securities that result from reorganizations of already existing and Eligible Securities are also reviewed for eligibility.)

Eligibility requests for newly issued municipal, equity and corporate debt securities that will be distributed through DTC's Underwriting Service are required to be submitted through the online Securities Origination, Underwriting and Reliable Corporate Action Environment ("UW SOURCE") system. As of January 1, 2011, eligibility requests for most new issues presented outside of UW SOURCE will be subject to an additional processing fee. The fee will not apply to those securities that cannot be processed through UW SOURCE. For example, the paper based form of eligibility request is required to be submitted to DTC when requesting eligibility for securities in the secondary market if the initial offering of the securities was not processed through DTC until such request can flow through UW SOURCE.

A transfer/paying agent (the "Agent") must be appointed with respect to the Issuer or the security for which eligibility is being requested, prior to the security being made eligible for DTC services. The applicable Agent must have on file with DTC a completed DTC Operational Arrangements Agent Letter ("Agent Letter") pursuant to which the Agent agrees to be bound by the terms and conditions of DTC's Operational Arrangements. Please see the General Eligibility Requirements section for more information on Operational Arrangements which contains the form of the Agent Letter. The Operational Arrangements outline the Agent's obligations to DTC to allow a security to become and remain eligible at DTC. The Agent may also be participating in DTC's Fast Automated Securities Transfer ("FAST") program.<sup>3</sup>

In the case of an eligibility request for an older, already issued and outstanding security, the Participant also must present to DTC a copy of the physical certificate representing the security and an Agent Attestation form. Further documents and data, many of which are addressed later in this presentation, may be required as part of the eligibility review. (Note that virtually all eligibility requests, whether for an underwritten distribution through DTC or for older securities already outstanding in the secondary market, require a copy of the offering documentation<sup>4</sup> to be provided to DTC for review.)

Underwriting conducts an eligibility assessment and coordinates the inter-departmental review of eligibility of securities<sup>5</sup> for DTC safekeeping and processing. Securities that do not to meet DTC's standards for full eligibility may qualify for eligibility in the limited custody service offered by DTC<sup>6</sup>.

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<sup>3</sup> A FAST Agent is able to hold securities in custody on behalf of DTC's nominee, Cede & Co., based upon agreements in place with DTC.

<sup>4</sup> In the event an offering document is not available, DTC, in its discretion, may accept a substitute document containing relevant required terms of the securities.

<sup>5</sup> Eligible Securities, as used in this document, are defined in the Rules.

<sup>6</sup> Services offered for custody only are limited. Typically securities that are custody-only are, for example, subject to transfer restrictions and not part of a fungible bulk and are not, therefore, eligible for nominee registration nor traditional book-entry services.

It is the responsibility of the Participant requesting eligibility for the securities to provide evidence that the securities satisfy the criteria set forth below. Once DTC has identified the legal basis for eligibility of the security (based on information provided by the submitting Participant), DTC will advise the Participant whether an opinion of counsel to the Issuer is also required to substantiate the legal basis for eligibility. DTC expects any such opinion to be provided by an experienced securities practitioner who is licensed to practice law in the relevant jurisdiction and is in good standing in any bar to which such practitioner is admitted. Such counsel must be engaged in an independent private practice (i.e., DTC will not rely on the opinion of in-house counsel) and may not have a beneficial ownership interest in the security for which the opinion is being provided or be an officer, director or employee of the Issuer. Non U, S, Counsel must be experienced in the application of U.S. securities laws. DTC reserves the right to approve counsel upon whose opinion DTC is being asked to rely.

### **General Eligibility Requirements**

DTC's Operational Arrangements set forth the criteria for an issue to become and remain eligible at DTC. To view the Operational Arrangements, please go to DTCC's website at: [http://www.dtcc.com/downloads/legal/rules\\_proc/eligibility/operational.arrangements.memo.pdf](http://www.dtcc.com/downloads/legal/rules_proc/eligibility/operational.arrangements.memo.pdf). In addition to operational criteria specified in the Operational Arrangements, legal criteria (set forth in the Operational Arrangements) include that the securities must be:

- (i) issued in a transaction registered with the U.S. Securities and Exchange Commission ("SEC") pursuant to the Securities Act of 1933, as amended (the "'33 Act"); or
- (ii) issued in a transaction exempt from registration pursuant to a '33 Act exemption that at the time of the request for DTC eligibility no longer involves transfer or ownership restrictions<sup>7</sup>; or
- (iii) eligible for resale pursuant to Rule 144A or Regulation S under the '33 Act (and must otherwise meet DTC's eligibility criteria)<sup>8</sup>.

Additionally, securities of issuers that are not subject to registration as investment companies under the Investment Company Act of 1940, as amended (the "'40 Act") in reliance on Section 3(c)(7) of the '40 Act, may be made eligible if the securities are eligible for resale without transfer restrictions under an exemption from registration under the '33 Act. The underwriting community has requested that DTC assist in identifying those issues that are exempt on this basis by posting an "Important Notice." The Important Notice will remind Participants that sales and resales must be restricted to "Qualified Purchasers," as defined in the '40 Act.

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<sup>7</sup> There are some exceptions for ownership thresholds that are imposed by an Issuer for a tax benefit (e.g., Real Estate Investment Trusts ("REITS"), Net Operating Loss ("NOL") or if certain thresholds are required by law (e.g., maritime and communications issues). In these cases, an indemnity letter or an instruction letter is required. DTC may provide a template letter and will work with Issuers as to the required content of the letter.

<sup>8</sup> Please refer to DTC's Operational Arrangements, Section I.A.1.

## **General Document Requirements for Issuers:**

Whether at the point of initial offering or when the terms of an already eligible security are amended in a corporate action, Underwriting may require the Issuer to execute and deliver related documentation to DTC. Following is an overview of the most commonly requested documentation that may be required. This list is not exhaustive, nor does it represent eligibility requirements for every possible scenario.

### **I. Letters of Representations and Riders**

#### **A. Requirements for BEO Securities**

Book-entry-only (“BEO”) securities are securities for which (i) physical certificates are not available to investors and (ii) DTC, through its nominee, Cede & Co., will hold the entire balance of the offering, either at DTC or through a FAST Agent in DTC’s FAST program. Issuers of BEO securities must submit to DTC a Letter of Representations (“LOR”) among the Issuer, its Agent (as applicable) and DTC, prior to such issue being made eligible. For corporate and municipal securities, there are two acceptable forms of an LOR. An Issuer may submit to DTC a Blanket Issuer Letter of Representations (“BLOR”) or an Issuer Letter of Representations (“ILOR”). A BLOR is Issuer-specific and applicable to all DTC-eligible issuances of the same Issuer. Once a BLOR is on file for an Issuer, a new BLOR is not required for future issuances unless the Issuer’s name changes (in which case an opinion of counsel may also be required). An ILOR may be used for one-time only issuances such as trust issuances. LOR forms may be found at the DTCC web address listed in Annex A. For more information on LORs, please contact the Underwriting Eligibility Group by calling the hotline provided in Annex A.

#### **B. Required Riders**

Additional riders to the LOR are required for eligibility of many securities. Some common examples where riders are required include Rule 144A and Regulation S securities, securities denominated or having payments in non-U.S. currencies and securities of a U.K. issuer. All relevant CUSIP (or CINS) numbers must be listed on each applicable rider. The rider forms may be obtained from DTCC’s website at the address listed in Annex A.

### **II. Opinions of Counsel**

As described above, DTC evaluates issues for eligibility on a case-by-case basis and may require the Participant seeking to make a security DTC-eligible to provide an opinion from the Issuer’s counsel regarding the security. Such opinions are typically requested to confirm either (1) that the SEC registration requirements for that security have been met, or (2) that the security was exempt from SEC registration under the ’33 Act under an acceptable exemption and that the security is not subject to transfer restrictions and is freely transferable. Opinions may also be requested in other circumstances, such as when an Issuer changes its name or its form of organization in respect of a corporate action and in exchange offers.

### **A. Securities Not Registered Pursuant to the '33 Act**

Opinions of counsel with respect to requests to make eligible unregistered securities may be required in connection with the following transactions (among others):

- i) **securities (newly issued or in the secondary market or issued in connection with corporate actions) which are issued pursuant to an acceptable exemption from SEC registration under the '33 Act<sup>9</sup>; and**
- ii) **the exchange of securities subject to transfer restrictions represented by certificates bearing a restrictive legend for certificates not subject to transfer restrictions with no restrictive legend (e.g., in reliance on the '33 Act Rule 144(b)(1)).**

### **B. Issuers Organized Outside of the United States (“Foreign Issuers”)**

A Foreign Issuer may be required to make special representations or provide additional legal opinions to protect DTC and its Participants from certain risks associated with the laws under which the Issuer is organized and/or the laws governing the securities. A foreign legal opinion will refer to relevant laws of the foreign jurisdiction in which the Issuer is organized.

The General Counsel’s Office of DTC, working with Underwriting, may provide a form of opinion letter to be used in these instances. The foreign counsel opinion must be provided by an attorney qualified to practice law in the Issuer’s jurisdiction of organization. If the laws governing the issuance of the security differ from the laws governing the Issuer’s organization, an additional opinion of appropriate counsel may be required.

## **III. Indemnity Letters**

### **A. Ownership Thresholds**

Thresholds Relating to Tax Consequences:

In certain cases (e.g., REITs), Issuers may seek to restrict the maximum amount of an outstanding security that an individual owner may acquire or to prevent transfers to certain categories of investors. An Issuer of this type of security must submit to DTC written assurances that these restrictions will not be enforced against DTC, Cede & Co. or any other party, as may be requested by DTC. An indemnity letter must be provided to DTC by the Issuer for equity issues. A copy of the required form of indemnity letter may be obtained from DTCC’s website at the address listed in Annex A.

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<sup>9</sup> For example, securities exempt from '33 Act registration requirements pursuant to provisions of Section 3 of the '33 Act such as Section 3(a)(9) and Section 3(a)(10).

## Thresholds Imposed by Regulators:

Under certain provisions of laws and regulations administered by federal, provincial or state regulators, Issuers may be required to withhold dividends, interest and/or voting rights or to compel the redemption or disposition of one or more of the Issuer's securities held by any beneficial owner found by any such regulatory commission to be unsuitable. These restrictions apply to Issuers involved in special activities such as gaming or other regulated activities. Issuer's subject to these types of regulatory regimes must provide an indemnity letter to DTC as a condition of DTC eligibility for any securities they may issue. A copy of the required form of indemnity letter for such Issuers may be obtained from DTCC's website at the address listed in Annex A.

Certain U.S. companies are subject to requirements under the Shipping Act of 1916 or regulations of the Federal Communication Commission which restrict the percentage of equity securities of the company which may be owned by non-U.S. persons. Similarly, there are other legal and regulatory regimes which limit ownership of specified equity securities by defined categories of investors including citizenship and/or country of residence or domicile).

For issues of these types, Agents may require Participants to use DTC's "Segregation Account 100" ("SEG 100") service to limit holding of securities with such ownership thresholds. Electronic withdrawal by transfer instructions on equity securities issued under the above circumstances must be accompanied by a certification as to the citizenship and/or country of residence or domicile of the transferee beneficial owner.

It is the responsibility of the investor (and the investor's broker) to ensure compliance with any restrictions on foreign ownership or other related restrictions. DTC is not responsible for and does not monitor investor or broker compliance but offers the service to support such compliance by the responsible parties. Participants must provide an indemnity letter from the Issuer to DTC for any equity issues with such limitations. A copy of the required form of this letter may be obtained from DTCC's website at the address listed in Annex A.

### **B. Maturity Revisions of Eligible Securities**

DTC cannot effect changes on its records with regard to the terms and conditions of an outstanding security without the lawful instruction and proper authorization from the Issuer of the respective security. When the maturity of an issue is amended, the Issuer must provide DTC with an indemnity letter which instructs DTC to make relevant changes to the terms and conditions of the affected security, at the time such changes are duly authorized.

## **IV. Instruction Letters Regarding the Expiration of a Restrictive Period**

### **Rule 144A/Regulation S Securities Becoming Freely Tradable**

To lift restrictions applicable to securities which DTC has initially accepted as eligible pursuant to Rule 144A and/or Regulation S on the grounds that the original restricted and/or distribution compliance period imposed under such exemptions has elapsed, the Issuer of the securities must provide an instruction letter to DTC. The instruction letter confirms to DTC that the restricted

period and/or distribution compliance period has elapsed and supports the exchange of the formerly restricted securities represented by a restricted CUSIP number for new unrestricted securities of the same issue represented by an unrestricted CUSIP number. A copy of the instruction letter required by DTC may be obtained from DTCC's website at the web address for DTC listed in Annex A.

### **DRS Eligibility and Stock Exchange Listing**

DTC also offers a "Direct Registration System" ("DRS") that affords investors the option to hold their investments directly on the books and records of the Issuer's transfer agent. DRS eliminates the need, cost and risk of maintaining a physical certificate representing the security.

To be DRS eligible, securities must first be determined to be eligible for DTC full service book-entry processing, as described above. Not all DTC eligible securities are DRS eligible. Please note that the rules of the various U.S. securities exchanges (e.g., NYSE and NASDAQ) require DRS eligibility as a condition for the Issuer's securities to be listed on the exchange. **It is therefore advisable that Issuers seeking to be listed on a U.S. exchange initiate the DTC and DRS eligibility processes (through an interested Participant) well in advance of any trading or anticipated listing date.**

To be DRS eligible, the Issuer's transfer agent must be a "FAST Agent" in DTC's FAST program. Further, the transfer agent must have a dedicated, DTC account designated for DRS processing purposes and the security must be approved by DTC to be in the FAST program. The Issuer should begin discussions at an early stage with its transfer agent, to determine if the transfer agent is active in the FAST and DRS programs.

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Questions relating to this guidance or to the eligibility of particular securities should be addressed to the appropriate DTC staff as indicated on Annex A following.

## Contact Information – DTC Underwriting Eligibility

Below are important email addresses, DTCC's web address for obtaining DTC's eligibility forms and the telephone number and general information for DTC's Underwriting Eligibility Hotline:

### Important Email Addresses:

To provide electronic copies of Letters of Representations, please use the following email addresses:

For corporate issues:            [uwcorplor@dtcc.com](mailto:uwcorplor@dtcc.com)  
For municipal issues:           [uwmunilor@dtcc.com](mailto:uwmunilor@dtcc.com)

To provide general eligibility documentation (e.g., questionnaires or older issue eligibility requests, and relevant offering documents) please use the following email addresses:

For corporate issues:            [uw-corp@dtcc.com](mailto:uw-corp@dtcc.com)  
For municipal issues:           [uw-muni@dtcc.com](mailto:uw-muni@dtcc.com)

### DTCC Web Address for DTC Forms/Information

To obtain forms related to the DTC eligibility process from DTCC's website, please use the following web address:

<http://www.dtcc.com/legal/eligibility/index.php>

### Underwriting Customer Service Hotline

For information about eligibility and related required documentation, please call the Underwriting Customer Service Hotline at:

**(866) 724-4402**

Below are the most commonly used Underwriting Customer Service Hotline options:

**Option 2 - General Eligibility and IPO Inquiries**  
**Option 3 - Book Entry Only Inquiries**  
**Option 5 - Closing Desk Inquiries**

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To remove your name from the former system of email notifications, send a message to [unsubscribe@dtcc.com](mailto:unsubscribe@dtcc.com).