



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Act *Securities Exchange Act of 1934*
Section *Section 15(c)(3)*
Rule *March 13, 2009 Rule 15c3-1*
Public *Two weeks from date of letter*

Ms. Merrie Faye Witkin
Managing Director and Deputy General Counsel
The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

Re: Net Capital Treatment of Class A Preferred Stock Issued by the Depository Trust Company

Dear Ms. Witkin:

This is in response to your letter dated February 10, 2009, on behalf of the Depository Trust Company ("DTC") and its broker-dealer participants, that requests the Division of Trading and Markets ("Division") not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if DTC broker-dealer participants treat their investments in DTC Series A Preferred Stock as allowable assets when calculating net capital pursuant to Rule 15c3-1 (the "net capital rule" or "Rule 15c3-1") under the Securities Exchange Act of 1934 as amended.

Based upon your letter of February 10, 2009, as well as the Division's letters to Mr. Richard B. Nesson of DTC dated September 29, 2006 and August 21, 2000, I understand the following facts to be pertinent to DTC's request. DTC is a limited purpose trust company under New York Banking Law and operates as a securities depository and clearinghouse for the settlement of securities trading activity. It is registered with the Commission as a clearing agency and also is regulated by the Board of Governors of the Federal Reserve System.

DTC provides custodial and processing services to banks, broker-dealers, clearing agencies, securities exchanges and other financial institutions, which are known as "participants" under DTC's rules. All participants must be approved by DTC and deposit cash into a Participants Fund maintained by DTC. DTC uses this Participants Fund as a risk management device to protect against losses incident to its custodial and trade processing operations.

In letters to the Commission dated January 19, 1999, February 2, 2000, and September 20, 2006, DTC proposed to increase its capital by restructuring DTC's Participants Fund. It proposed to reduce the cash deposits in the Participants Fund and issue a corresponding amount of preferred stock. DTC, as a depository institution, is subject to risk-based

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Ms. Merrie Faye Witkin
March 13, 2009
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capital guidelines issued by the Board of Governors of the Federal Reserve. The issuance of preferred stock assists DTC in meeting those regulatory capital requirements.

In letters addressed to Richard B. Nesson of DTC dated August 21, 2000 and September 20, 2006,¹ the Division stated that it would not recommend enforcement action to the Commission if broker-dealer participants treated their investments in DTC Series A Preferred Stock ("Preferred Stock") as allowable assets when calculating net capital.

DTC now intends to issue an additional 250,000 shares of Preferred Stock at the par value of \$100 per share. Accordingly, aggregate cash deposits in the Participants Fund of all participants will be reduced by \$25 million, and replaced with \$25 million worth of the additional Preferred Stock. This will increase the outstanding Preferred Stock to \$150 million and reduce the Participants Fund deposit to \$450 million, maintaining the total amount having the characteristics of clearing fund deposits at \$600 million. DTC Participants will collectively purchase all of the \$25 million worth of additional Preferred Stock in accordance with DTC's rules.

You have represented that, under DTC's rules, the Preferred Stock will be treated similarly to the cash portion of the Participants Fund deposit. For example, when an entity ceases to be a participant, the remaining participants will be required to purchase pro rata the departing participant's Preferred Stock position. The proceeds from the Preferred Stock purchases will be credited to the withdrawing participant's cash deposit, which will be returned in accordance with DTC's rules governing the return of clearing deposits. In addition, DTC may pay dividends on the Preferred Stock on a quarterly basis in an amount that will approximate the interest that DTC is paying on the cash portion of the Participants Fund deposits. Any such dividend payments will be credited to the participants' settlement accounts.

Generally, under paragraph (c)(2)(iv) of the net capital rule, broker-dealers are required to deduct all assets not readily convertible into cash when calculating their net capital. However, subparagraph (c)(2)(iv)(E) provides that "clearing deposits shall not be so deducted." Pursuant to this provision, broker-dealer participants may treat their required cash deposits in DTC's Participants Fund as allowable assets. You ask that this treatment be extended to the par value of the additional 25,000 shares of Preferred Stock DTC intends to issue and which the participants will be required to purchase pursuant to DTC's Rules.

¹ Letter from Thomas K. McGowan, Assistant Director, Division of Market Regulation, to Richard B. Nesson, Executive Managing Director, Legal, Regulatory and Compliance, The Depository Trust Company (August 21, 2000); Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to Richard B. Nesson, Executive Vice President & General Counsel, The Depository Trust Company (September 20, 2006).

Ms. Merrie Faye Witkin
March 13, 2009
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Based on the foregoing facts and representations in your letter dated February 10, 2009, the Division will not recommend enforcement action to the Commission if a broker-dealer participant, when computing net capital under Rule 15c3-1, does not deduct from its net worth the par value of the Preferred Stock it is required to purchase pursuant to DTC's Rules. You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified, if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the purposes of the securities laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom K. McGowan", with a long horizontal flourish extending to the right.

Thomas K. McGowan
Assistant Director

Merrie Faye Witkin
Managing Director and
Deputy General Counsel

February 10, 2009



**The Depository Trust &
Clearing Corporation**
55 Water Street
New York, NY 10041-0099

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mwwitkin@dtcc.com
SEC / PR

Mr. Michael Macchiaroli
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **DTC Participant Fund Deposits**

Dear Mr. Macchiaroli:

The Depository Trust Company ("DTC") is writing to request your advice that the staff of the Securities and Exchange Commission (the "Commission") would not recommend that the Commission take any enforcement action if DTC broker-dealer Participants treat investments in DTC Series A Preferred Stock (as further described herein) as allowable assets ("clearing deposits") for purposes of Section 15c3-1 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(i) Background

In a letter to the Commission dated September 20, 2006 (a copy of which is enclosed), DTC informed the Commission of its proposal to increase DTC's capital by restructuring DTC's Participants Fund through reducing its amount and issuing a corresponding amount of preferred stock in order to raise capital to meet regulatory requirements (the "Proposal").¹ At that time, the Proposal called for the reduction of the mandatory amount of DTC's Participants Fund from \$525 million to \$475 million, and the issuance by DTC of 500,000 shares of variable rate non-cumulative nonvoting Series A Preferred Stock at the par value of \$100 per share; preferred over DTC's common stock as to dividends and in the event of liquidation ("Series A Preferred Stock").²

In accordance with the Proposal, DTC's Series A Preferred Stock functions in coordination with mandatory deposits to DTC's Participants Fund, the requirements for which are reduced by the amount of the Series A Preferred Stock. In addition, the investment by broker-dealer Participants in Series A Preferred Stock has the same

¹ DTC, as a depository institution, is subject to risk-based capital guidelines issued by the Board of Governors of the Federal Reserve. To be considered "well capitalized" under these guidelines, DTC must maintain a Tier I Leverage Ratio of at least 3% and Tier I Risk Based Capital Ratio of at least 8%. The issuance of the Series A Preferred Stock enabled DTC to meet these requirements.

² DTC implemented the conversion of \$50 million of the Participants Fund to Participant investments in Series A Preferred Stock shortly after approval from the Commission and the New York State Banking Department.

withdrawal and other features as the broker-dealers' mandatory Participants Fund deposits at DTC. In order to implement its proposal, and to ensure that a Participant's investment in the Series A Preferred Stock has the same characteristics as its Participants fund deposit, DTC submitted a rule filing to the Commission, which was approved.³

Because broker-dealer investments in DTC's Series A Preferred Stock are treated by DTC in substantially the same way as mandatory deposits to DTC's Participants Fund, DTC at that time requested that the Commission advise that it would take no action in respect of DTC broker-dealer Participants treating such investments as allowable assets ("clearing deposits") for purposes of Section 15c3-1 of the Exchange Act. The Commission granted such relief.

(ii) Additional Preferred Stock

DTC Management plans to seek approval of DTC's Board of Directors at its February 25, 2009 meeting to issue an additional 250,000 shares of Series A Preferred Stock at the par value of \$100 per share, and to amend DTC's Certificate of Organization, accordingly. As a result, aggregate cash deposits in the Participants Fund of all Participants will be reduced by \$25 million, and replaced with \$25 million worth of Series A Preferred Stock. This will increase the outstanding Series A Preferred Stock to \$150 million and reduce the mandatory Participants Fund deposit to \$450 million, maintaining the total amount having the characteristics of mandatory Participants fund deposits at \$600 million.⁴ DTC Participants will collectively purchase all of the \$25 million worth of the Series A Preferred Stock in accordance with the formula set forth in DTC's rules.

As was the case in 2006, the Series A Preferred Stock will be treated similarly to the cash portion of the Participant's fund deposit. For example, when an entity ceases to be a Participant, the remaining Participants will be required to purchase pro rata its Preferred Stock position. The proceeds from these purchases will be credited to the withdrawing Participant's cash deposit, which will be returned in accordance with DTC's rules governing the return of Participant fund deposits. In addition, DTC may pay dividends on the Series A Preferred Stock on a quarterly basis in an amount that will approximate the interest that DTC is paying on the cash portion of the Participants' fund deposits. Any such dividend payments will be credited to the Participants' settlement accounts.

(iii) Conclusion

Based on the foregoing, DTC respectfully requests that the Commission advise that it will take no action in respect of DTC broker-dealer Participants treating investments in

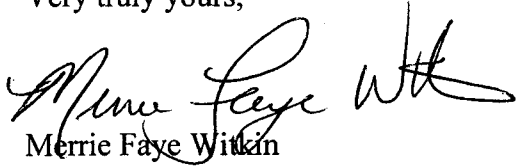
³ See SR-DTC-06-14, Rel. No. 34-54775.

⁴ At the end of the first quarter of 2009, the total mandatory Participants Fund deposits will be increased to 1.3 billion, as recently approved by the SEC. See SR-DTC-08-12, Rel. No. 34-59148.

additional shares of DTC Series A Preferred Stock as allowable assets for purposes of Section 15c3-1 of the Exchange Act.

DTC welcomes the opportunity to discuss this request with you. If you have any questions regarding this request, please call the undersigned at (212) 855-3208. We appreciate the staff's time and consideration.

Very truly yours,



Merrie Faye Witkin
Managing Director and Deputy General Counsel

Enclosures

cc: Grace Vogel
Executive Vice President
Risk Oversight and Oversight Regulation
Financial Industry Regulatory Authority
20 Broad Street
20th Floor
New York, NY 10005



The Depository Trust &
Clearing Corporation
55 Water Street
New York, NY 10041-0099

Richard B. Nesson
Executive Managing Director
Legal, Regulatory and
Compliance

Tel: 212 855 3200
Fax: 212 855 3279
messon@dtcc.com

September 20, 2006

Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

Re: DTC Clearing Fund Deposits

Dear Mr. Macchiaroli:

The Depository Trust Company ("DTC") is writing to request your advice that the staff of the Securities and Exchange Commission (the "Commission") would not recommend that the Commission take any enforcement action if DTC broker-dealer Participants treat investments in DTC Series A Preferred Stock (as further described herein) as allowable assets for purposes of Section 15c3-1 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(i) Background

In letters to the Commission dated January 19, 1999 and February 2, 2000 (copies of which are enclosed) DTC informed the Commission of its proposal to increase DTC's capital by restructuring DTC's Participants Fund through reducing its amount and issuing a corresponding amount of preferred stock in order to raise capital to meet regulatory requirements.¹ At that time, the proposal called for the reduction of DTC's Participants Fund from \$400 million to \$ 325 million, and the issuance by DTC of 750,000 shares of variable rate non-cumulative nonvoting Series A Preferred Stock at the par value of \$100

¹ DTC, as a depository institution, is subject to risk-based capital guidelines issued by the Board of Governors of the Federal Reserve. To be considered "well capitalized" under these guidelines, DTC must maintain a Tier I Leverage Ratio of at least 3% and Tier I Risk Based Capital Ratio of at least 8%. The issuance of the Series A Preferred Stock enabled DTC to meet these requirements.

per share; preferred over DTC's common stock as to dividends and in the event of liquidation ("Series A Preferred Stock").²

In accordance with the proposal, DTC's Series A Preferred Stock functions in coordination with mandatory deposits to DTC's Participants Fund, the requirements for which are reduced by the amount of the Series A Preferred Stock. In addition, the investment by broker-dealer Participants in Series A Preferred Stock has the same withdrawal and other features as the broker-dealers' mandatory Participants Fund deposits at DTC. In order to implement its proposal, and to ensure that a Participant's investment in the Series A Preferred Stock has the same characteristics as its clearing fund deposit, DTC submitted a rule filing to the Commission, which was approved.³

Because broker-dealer investments in DTC's Series A Preferred Stock are treated by DTC in substantially the same way as mandatory deposits to DTC's Participants Fund, DTC at that time requested that the Commission advise that it would take no action in respect of DTC broker-dealer Participants treating such investments as allowable assets ("clearing deposits") for purposes of Section 15c3-1 of the Exchange Act. The Commission granted such relief.

(ii) Additional Preferred Stock

On August 23, 2006, DTC's Board of Directors voted to approve the issuance of 500,000 additional shares of Series A Preferred Stock at the par value of \$100 per share.⁴ Accordingly, aggregate cash deposits in the Participants Fund of all Participants will be reduced by \$50 million, and replaced with \$50 million worth of Series A Preferred Stock. This will increase the outstanding Series A Preferred Stock to \$125 million and reduce the mandatory Participants Fund deposit to \$475 million, maintaining the total amount having the characteristics of clearing fund deposits at \$600 million. DTC Participants will collectively purchase all of the \$50 million worth of the Series A Preferred Stock in accordance with the formula set forth in DTC's rules.

As was the case in 2000, the Series A Preferred Stock will be treated similarly to the cash portion of the clearing fund deposit. For example, when an entity ceases to be a Participant, the remaining Participants will be required to purchase pro rata its Preferred Stock position. The proceeds from these purchases will be credited to the withdrawing Participant's cash deposit, which will be returned in accordance with DTC's rules governing the return of clearing fund deposits. In addition, DTC may pay dividends on the Series A Preferred Stock on a quarterly basis in an amount that will approximate the interest that DTC is paying on the cash portion of the Participants' clearing fund deposits. Any such dividend payments will be credited to the Participants' settlement accounts.

² DTC implemented the conversion of \$75 million of the Participants Fund to Participant investments in Series A Preferred Stock during the fourth quarter of 2000.

³ See SR-DTC-00-02, Rel. No. 34-43197.

⁴ In 1999, DTC's Certificate of Organization was amended to provide for the issuance of up to \$150 million of preferred stock as thereafter authorized by the Board.

(iii) Conclusion

Based on the foregoing, DTC respectfully requests that the Commission advise that it will take no action in respect of DTC broker-dealer Participants treating investments in additional shares of DTC Series A Preferred Stock as allowable assets for purposes of Section 15c3-1 of the Exchange Act.

DTC welcomes the opportunity to discuss this request with you. If you have any questions regarding this request, please call the undersigned at (212) 855-3200. We appreciate the staff's time and consideration.

Very Truly Yours,



Richard Nesson
Executive Managing Director, Legal, Regulatory and Compliance

cc: E. David Hwa
Special Counsel
Office of Broker-Dealer Finances
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

THE DEPOSITORY TRUST COMPANY

55 WATER STREET

NEW YORK, N.Y. 10041

February 2, 2000

Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W. - Mail Stop 10-1
Washington, DC 20549

Re: DTC Clearing Fund Deposits

Dear Macchiaroli:

This is in further regard to our letter of January 19, 1999 (a copy of which is enclosed as Exhibit 1) regarding the proposal to increase DTC's capital by restructuring DTC's Participants Fund through reducing its amount and issuing a corresponding amount of preferred stock. It has now been determined that the Participants Fund will be reduced from \$400 million to \$325 million and that DTC will issue \$75 million variable rate noncumulative nonvoting Series A preferred stock preferred over DTC's common stock as to dividends, and in the event of liquidation ("Series A Preferred Stock") (to be issued in accordance with DTC's Certificate of Amendment of the Organization Certificate, a draft of which is attached as Exhibit 2).

We are writing to request that the Commission advise that it will take no action in respect of DTC broker-dealer Participants treating investments in DTC Series A Preferred Stock, as described herein, as allowable assets ("clearing deposits") for purposes of Section 15c(3)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The new Series A Preferred Stock will function in coordination with mandatory deposits to DTC's Participants Fund, the requirements for which are being reduced by the amount of the Series A Preferred Stock. The investment by broker-dealer Participants in the new Series A Preferred Stock will have the same withdrawal and other features as the broker-dealer's mandatory Participants Fund deposits at DTC. In particular, Rule 4, Section 2(h) provides that, promptly after an entity has ceased to be a Participant, its shares of Series A Preferred Stock will be sold to other Participants pro rata their required Series A Preferred Stock

Mr. Michael Macchiaroli
February 2, 2000
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investments (and such other Participants will be required to purchase such shares), and the proceeds thereof will be added to the Actual Participants Fund Deposit of the former Participant subject to disposition in accordance with Section 1(h) of Rule 4 (which provides for the return of such Actual Participants Fund Deposit to a party ceasing to be a Participant).

Assuring that a Participant's investment in the Series A Preferred Stock will have the same characteristics as its clearing fund deposit will be accomplished by revisions to DTC's Rules, a copy of which are attached as Exhibit 3.* The revised Rules will provide:

- (1) the requirement that Participants purchase and own shares of Series A Preferred Stock (Rule 4, Section 2);
- (2) the amount of Series A Preferred Stock that Participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of Series A Preferred Stock are to be transferred among Participants, the method and timing of payment for shares of Series A Preferred Stock and certain limitations on the transfer of shares of Series A Preferred Stock (Rule 4, Section 2);
- (3) the right of the Corporation, acting as agent and attorney-in-fact for its Participants, to pledge their shares of Series A Preferred Stock to its end-of-day lenders (Rule 4, Section 2(f));
- (4) the right of the Corporation, acting as agent and attorney-in-fact for its Participants, to sell their shares of Series A Preferred Stock to other Participants (which have a corresponding obligation to purchase such shares), and apply the proceeds to the obligations of the Participant to the Corporation (Rule 4, Section 2);
- (5) various changes in defined terms to (A) describe the Series A Preferred Stock and the required investment of Participants in Series A Preferred Stock, (B) distinguish, when necessary, between the Series A Preferred Stock and the required investment of Participants in Series A Preferred Stock (on the one hand) and the Participants Fund and the required deposit of Participants to the Participants Fund (on the other hand) and (C) refer collectively, when appropriate, to the Series A Preferred Stock and the required investment of Participants in Series A Preferred Stock and the Participants Fund and the required deposit of Participants to the Participants Fund (Rule 1);
- (6) the structure under which, after a party has ceased to be a Participant, the Corporation, acting as agent and attorney-in-fact for such party, shall sell all of

* These revisions to DTC's Rules are the subject of a filing which is being filed with the Commission under Section 19(b) of the Exchange Act.

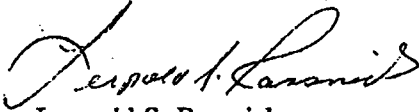
Mr. Michael Macchiaroli
February 2, 2000
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the shares of Series A Preferred Stock of the former Participant to current Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and add the proceeds thereof to the Actual Participants Fund Deposit of the former Participant for disposition in accordance with Rule 4, Section 1(h) (which provides for the return of such Actual Participants Fund Deposit to a party ceasing to be a Participant); and

- (7) certain other conforming and minor stylistic changes.

Accordingly, inasmuch as broker-dealer investments in DTC's Series A Preferred Stock will increase and decrease, and be subject to substantively the same rules governing withdrawal, and the like as mandatory deposits to DTC's Participants Fund, we request that the Commission advise that it will take no action in respect of DTC broker-dealer Participants treating such investments as an allowable asset ("clearing deposits") for purposes of Section 15c(3)(1) of the Securities Exchange Act of 1934.

Very truly yours,



Leopold S. Rassnick
Managing Director and
Senior Special Counsel

cc: Jerry Carpenter (w/o enclosures)

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Mr. Michael Macchiaroli
February 2, 2000
Page 4

bcc: R. Nesson
M. Agnes

(w/o
Enclosures)

THE DEPOSITORY TRUST COMPANY**55 WATER STREET
NEW YORK, NY 10041****RICHARD B. NESSON
EXECUTIVE VICE PRESIDENT****AND****GENERAL COUNSEL
TEL: (212) 855-3200
FAX: (212) 855-3274**

January 19, 1999

**Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W. - Mail Stop 10-1
Washington, DC 20549**Re: DTC CAPITAL


Dear Mike:

As you requested in our telephone conversation last week, I am enclosing a listing of DTC's broker-dealer Participants together with the dollar amount of the Required Fund Deposit made by each of these Participants to DTC's Participants Fund as of December 31, 1998 (set forth under the heading "Mandatory"). For example, Merrill Lynch (Broker Participant Account #161) had a required deposit of approximately \$11.8 million.

Under the proposal we discussed, approximately one-fourth of each Participant's Required Fund Deposit would in effect be re-characterized as an investment in a new class of DTC Preferred Stock. A description of the Preferred Stock is also enclosed.

Thank you for agreeing to consider this matter. In time for me to provide a report to DTC's Board at its meeting on February 2. If you have any questions or need further information, please call me at (212) 855-3200.

Very truly yours,


Richard B. NessonRBN/fg
Enclosurescc: T. McGowan - SEC
J. Carpenter - SEC

cc w/o listing:

M. Agnes
R. Flaum - PWC
R. Coffin - PWC

**DESCRIPTION OF CLEARING FUND DEPOSIT
PREFERRED STOCK — VARIABLE RATE NONCUMULATIVE PREFERRED STOCK**

- Aggregate amount of stock Issued — to be determined. Approximately one-fourth of Required Fund Deposits to DTC's Participants Fund.
- Amount of stock Issued to each Participant — approximately one-fourth of the Participant's Required Fund Deposit to DTC's Participants Fund. This amount will be adjusted on a periodic basis (e.g., monthly) using the same formula that is used by DTC to calculate the Participant's Required Fund Deposit.
- Par value and issue price per share — to be determined.
- Annual dividend based upon a formula that will provide a yield comparable to the yield that DTC earns on cash in the Participants Fund.
- No voting rights.
- Preferred as to dividends.
- Preferred over DTC's Common Stock in the event of DTC's liquidation.
- Redeemable by DTC at the Issue Price, with redemption subject to the same conditions as the return to a retired or terminated Participant of its Deposit to the Participants Fund (ordinarily 90 days after retirement or termination).