

leaves the Insurance Companies little time to recover the cost of the Credit or Excess Credit. For example, permitting an owner to retain a Credit upon the exercise of the free look return would encourage the purchase of Contracts for a quick profit upon return rather than with the intention of making a long-term investment. Similarly, an owner would have an incentive to make a very large purchase payment shortly before death or to execute a Letter of Intent with no intention of fulfilling it in order to obtain Credits or Excess Credits the cost of which the Insurance Companies would be unable to recover. As stated above, the amounts recovered will equal the Credits or Excess Credits provided by the Insurance Companies from general account assets, and any gains attributable thereto will remain a part of the owner's Contract value. For the foregoing reasons, Applicants submit that the provisions for recovery of Credits and Excess Credits under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the issuance and subsequent recovery of Credits and Excess Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The Insurance Companies' recovery of Credits and Excess Credits as described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts.

8. Applicants believe that the recovery of the Credits and Excess Credits does not violate Section 22(c) of the Act or Rule 22c-1. Such recovery does not involve either of the harms that Rule 22c-1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

9. Applicants submit that the recovery of Credits and Excess Credits does not pose such a threat of dilution. In effecting recoveries, the Insurance Companies will redeem interests in an owner's Contract at a price determined on the basis of the current net asset value of the sub-accounts(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits or Excess Credits that the Insurance Companies have paid out of general account assets. The owners will be entitled to retain any investment gains attributable to the Credits or Excess Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits or Excess Credits does not involve dilution. Applicants further submit that the second harm that Rule 22c-1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of Credits or Excess Credits.

10. Applicants contend that, because neither of the harms that Rule 22c-1 was meant to address are found in the recovery of Credits or Excess Credits, Rule 22c-1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainty in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recover Credits and Excess Credits under the Contracts and Future Contracts as described in the Application.

11. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by MSS or Affiliated Broker-Dealers is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive

applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42621; File No. SR-DTC-00-6]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Revising the By-Laws

April 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 31, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule

¹ 15 U.S.C. 78s(b)(1).

change from interested persons and to grant accelerated approval on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's By-Laws.

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 such statements.²

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's By-Laws in order to take advantage of changes to the New York Banking Law that provide greater flexibility and to conform DTC's By-Laws to the By-Laws of DTC's parent, The Depository Trust and Clearing Corporation.³ The principal changes will:

- Allow annual stockholder's meetings to take place in April instead of in March;
- Allow annual stockholder's meetings to take place wherever the Board of Directors shall determine instead of just in New York City;
- Provide that once a quorum is reached at a Board meeting, the Board of Directors can continue conducting business at that Board meeting as long as at least one-third of the directors are present;
- Allow DTC's Board of Directors to fix the number of directors from time to time rather than require the stockholders to do so; and
- Delete references to Senior Executive Vice Presidents, Executive Vice Presidents, and Senior Vice Presidents because the title of Managing Director is replacing those titles.

DTC believes that the proposed rule change is consistent with the

requirements of Section 17 of the Act⁴ and the rules and regulations thereunder applicable to DTC because the proposed rule change makes changes to DTC's By-Laws but does not affect participant's rights with respect to fair representation.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act⁵ requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. The Commission believes that DTC's proposal is consistent with this obligation because the proposed changes should not affect DTC's participant's right or ability to be fairly represented in the selection of DTC's directors or in the administration of DTC's affairs.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing because such approval will allow DTC to immediately amend its By-Laws so that DTC's and DTCC's By-Laws are consistent.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 provision of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-00-6 and should be submitted by May 3, 2000.

V. Order

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-00-6) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42622; File No. SR- NSCC-00-2]

Self-Regulatory Organizations; National Securities Clearing Corporations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Revising the By-Laws

April 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ notice is hereby given that on March 31, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on the proposed rule change.

² The Commission had modified parts of these statements.

³ The changes to DTC's By Laws are attached as Exhibit 2 to DTC's filing, which is available through the Commission's Public Reference Section or through DTC.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(C).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).