

connection with the submission of listing proposals to the Exchange.

The proposed rule would permit a member to submit to the Secretary of the Exchange a written request that the Exchange list a particular option class, whether or not the option class is traded on any other exchange or market. The written request would be required to specify the reasons why the member believes the Exchange should list the option class. The Stock Selection Committee (or whichever Exchange committee is designated as the "appropriate Exchange committee" by CBOE's Board of Directors) would be required to make every reasonable effort to consider and make a decision regarding the request at its next meeting and, in any event, would be required to consider and make a decision regarding the request within 35 days of its receipt. If the Stock Selection Committee denies the request or approves the request subject to conditions or limitations, it would be required to provide the member that submitted the request with a written response setting forth the rationale for the decision within 10 days of making the decision. If, in denying a request or approving a request subject to conditions or limitations, the appropriate Exchange committee relies upon a factor of other bona fide business considerations, the Exchange would be required to maintain a record of the bona fide business considerations supporting its decision.

The proposed rule also would codify the factors used to determine whether to list an option class, whether based upon a member request or otherwise. These factors would be: (i) Whether the proposed option class satisfies applicable listing criteria; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations.

2. Statutory Basis

The Exchange believes that the proposed rule change ensures that listing proposals by members are submitted and handled pursuant to formalized procedures. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in

particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The CBOE did not solicit or receive written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

SR-CBOE-2001-10 and should be submitted by May 8, 2001.

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. 34-44172; File No. SR-DTC-00-17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate DTC's Option To Resell to Deliverers the Securities They Had Previously Delivered by Book-Entry to the Account of a Participant That Has Failed To Settle Its Debit Obligation to DTC

April 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 14, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

DTC is proposing to amend its Rule 9(B) to eliminate DTC's option to resell to deliverers the securities they had previously delivered by book-entry to the account of a participant that has failed to settle its debit obligation to DTC.²

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

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² A copy of the text of DTC's proposed rule change is available at the Commission's Public Reference Room or through DTC.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5)

in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

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

If a participant fails to pay its settlement obligation to DTC at the end of the day, DTC will use its liquidity resources (all-cash participants fund and bank line of credit) to complete settlement. Currently, DTC's rules provide that if the participant is insolvent and use of the participant's fund deposit does not eliminate its net debit obligation, DTC may on the business day following the failure-to-settle either: (1) Resell to deliverers the securities they had delivered to the insolvent participant on the day of the failure ("resale procedure") or (2) sell in the open market those securities and other collateral in the insolvent participant's account.

The resale procedure was included in DTC's rules prior to the industry's conversion to same-day funds settlement and DTC's adoption of associated risk management controls, including the collateral monitor and the imposition of net debit caps.⁴ The collateral monitor systematically prevents a participant from accruing a net debit that exceeds the value of the collateral in its account by blocking any transaction that would have that effect. For this purpose, collateral includes: (1) The participant's deposit to the participant's funds, (2) the value of securities in the participant's account that it has designated as collateral, and (3) the value of securities that are the subject of deliveries from other participants. The collateral value attributed to securities is equal to their market value minus a "haircut" as determined by DTC.

DTC believes that its risk management controls adequately limit DTC's risk exposure in the event of a participant insolvency and that there is no need to rely upon the resale procedure. In addition, the proposed rule change will help clarify that book-entry deliveries on DTC's books are final.

The proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by clarifying that book-entry deliveries once effected are final.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no 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

The Depository Trust & Clearing Corporation's ("DTCC") July 2000 White Paper on the goals of straight-through processing and T+1 settlement identified the subject of the proposed rule change as one of the changes that would be required to achieve these goals. DTCC received two favorable comment letters expressing views on the subject proposal.⁶ These comment letters are attached as Exhibit 2 to DTC's filing.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-00-17 and should be submitted by May 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44176; File No. SR-DTC-01-02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Enhancement of the End-of-Day Settlement Process of the Depository Trust Company

April 11, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 24, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change consists of an enhancement to the end-of-day

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ For a description of same day funds settlement and DTC's adoption of associated risk management controls, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 [File No. SR-DTC-87-04] (order granting temporary approval to DTC's same-day fund settlement service) and 26051 (August 31, 1988), 53 FR 34853 [File No. SR-DTC-88-06] (order granting permanent approval to DTC's same-day fund settlement service).

⁵ 15 U.S.C. 78q-1.

⁶ Letters from Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers Operations and Arthur L. Thomas, Chief Operating Officer, Merrill Lynch Securities Services Division, to Dennis Dirks, President, Depository Trust Company (June 7, 2000), and from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House, to John Mancuso, Senior Systems Director, The Depository Trust & Clearing Corporation (September 22, 2000).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).