

The rule changes set forth additional requirements that must be met before a security will be deemed to be "depository eligible," within the meaning of the SROs' "uniform book-entry settlement rules."⁹ The new rules specify different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").¹⁰ Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on a national securities exchange or Nasdaq.

II. Discussion

The Commission believes that the rule changes are consistent with Sections 6(b)(5)¹¹ and 15A(b)(6)¹² of the Act. Sections 6(b)(5) and 15A(b)(6), among other things, require that the rules of a national securities exchange and a national securities association, respectively, be designed to remove impediments to and perfect a national market system, and in general, to protect investors and the public interest. The depository-eligibility requirement should limit market impediments arising from the physical delivery of securities and thereby should promote the perfection of a national market system. Further, the rule changes should

serve to increase the efficiency of the U.S. clearance and settlement system and thereby should reduce the risks associated with that system and should serve to better protect investors and the public interest.

Furthermore, the Commission believes the rule changes should promote the purposes of Section 17A of the Act.¹³ In Section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In Section 17A(e),¹⁴ Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.

Book-entry settlement of interdealer securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975.¹⁵ Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of interdealer and institutional securities transactions.¹⁶ In 1993, the Commission approved the uniform book-entry settlement rules applicable to transactions in depository eligible securities between SRO members and their customers when the SRO member extends certain credit privileges (*i.e.*, delivery versus payment) as a means to facilitate the conversion from a five-day settlement cycle to a three-day settlement cycle,¹⁷ which is set to occur June 7, 1995.¹⁸ The present rule changes are designed to facilitate efficient and timely settlement of trades through the various market facilities and to further aid the transition to a three-day

settlement cycle by increasing the number of depository-eligible securities.¹⁹ The uniform depository-eligibility requirement should reduce costs, risks, and delays associated with the physical delivery of securities certificates and should eliminate many of the labor intensive functions associated with physical delivery of nondepository eligible securities.

The SROs have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule changes in order that they become effective on June 7, 1995, contemporaneously with the conversion to a three-day settlement cycle.²⁰

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with Sections, 6, 15A, and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule changes (File Nos. SR-Amex-95-17, SR-BSE-95-09, SR-CHX-95-12, SR-NASD-95-24, SR-NYSE-95-19, SR-PSE-95-14, and R-PHLX-95-34) be and hereby are approved for effectiveness on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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⁹ Each SRO has a uniform book-entry settlement rule which generally requires SRO members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary (*e.g.*, a broker, dealer, or bank) or institutional customer. See, *e.g.*, Amex Rules, Part IV, Section 3, Rule 776; UPC Section 11; and NYSE Rule 226.

¹⁰ Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s).

¹¹ 15 U.S.C. 78f(b)(5) (1988).

¹² 15 U.S.C. 78o-3(b)(6) (1988).

¹³ 15 U.S.C. 78q-1 (1988)

¹⁴ 15 U.S.C. 78q-1(e) (1988).

¹⁵ Pub. L. No. 94-29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77-80H (1988)).

¹⁶ *E.g.*, Securities Exchange Act Release No. 22021 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies); 19698 (April 15, 1983), 48 FR 17604 (order implementing The Depository Trust Company's ("DTC") Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); 30505 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues); 31645 (December 23, 1992), 57 FR 62407 (order approving rule change requiring that most interdealer transactions in municipal securities be settled by book-entry through a depository); and 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

¹⁷ Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

¹⁸ Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6-1 from June 1, 1995 to June 7, 1995).

¹⁹ While the proposed rule changes should serve to further reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical certificates, the rule changes will not eliminate the ability of investors to obtain physical certificates after settlement of the transaction. As the Commission recently noted, subject to an issuer's determination whether to make physical certificates available to shareholders, the Commission believes investors should be able to obtain negotiable certificates on request. Securities Exchange Act Release No. 35038, (December 1, 1994) at note 17.

²⁰ *Supra* note 17 and accompanying Text.

²¹ 15 U.S.C. 78s(b)(2) (1988).

²² 17 CFR 200.30-3(a)(12) (1994).