foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

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

DTC does not believe that the proposed rule change will impose any burden on competition that is 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

Written comments from DTC participants 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)(F) of the Act requires that the rules of a clearing agency must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[4] By enabling a representative of NSCC to serve on DTC's board, NSCC and DTC will be better able to coordinate their activities. Such coordination may assist both entities in fulfilling their statutory mandates in a more efficient manner. Thus, the Commission believes that DTC's proposal in consistent with Section 17A(B)(3)(F) of the Act.

DTC requests the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will permit the new directors to be elected at a shareholder's meeting scheduled for the middle of May.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–04 and should be submitted by June 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[4] *Id.*

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38600; International Release No. 1078; File No. SR–DTC–96–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Temporarily Approving a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 9, 1997.

On July 12, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–96–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to establish standards for the admission of non-U.S. participants.[1] Notice of the proposal was published in the **Federal Register** on September 12, 1996.[2] On May 5, 1997, DTC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is temporarily approving the proposed rule change through May 31, 1998.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37652 (September 5, 1996), 61 FR 48187.

[3] Letter from Larry E. Thompson, Senior Vice President and Deputy General Counsel, DTC, (May 5, 1997). This amendment was technical in nature and did not require republication of notice.

I. Description

The rule change amends DTC's current participant admissions policy to permit entities that are organized in a country other than the United States and that are not otherwise subject to U.S. federal or state regulation (''non-U.S. entities'') to be eligible to become direct DTC participants.[4] Under the rule change, DTC will require that the non-U.S. entity execute the standard DTC participants agreement and enter into an additional series of undertakings [5] and agreements that are designed to address jurisdictional concerns, sufficiency of collateral, and to assure that DTC is provided with audited financial information that is acceptable to DTC.[6]

In connection with a non-U.S. firm executing the participants agreement and entering into such undertakings, DTC will require appropriate opinions of counsel, satisfactory to DTC, that state, among other things, that all such undertakings and agreements are legal and enforceable against the non-U.S.

[4] In determining whether to grant access to its services, DTC's 1990 ''Policy Statement on the Admission to Participant's'' (''1990 Policy Statement'') considers whether the applicant is subject to comprehensive U.S. federal or state regulation to be a critical factor. *See* Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (order approving proposed rule change regarding 1990 Policy Statement). Such regulation includes, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct of the applicant. Under the 1990 Policy Statement, an applicant not subject to state or federal regulatory oversight generally would not have been eligible to become a participant. However, since 1990 DTC has admitted a small number of non-U.S. entities as participants if their obligations to DTC are guaranteed by participants deemed creditworthy by DTC. In lieu of requiring non-U.S. entities to obtain such guarantees, the rule change establishes admissions criteria that will permit a well-qualified non-U.S. entity to obtain direct access to DTC's services. To the extent that the 1990 Policy Statement is inconsistent with the rule change, the rule change amends the 1990 Policy Statement.

[5] These undertakings and agreements include irrevocably waiving all immunity from DTC's attachment of the non-U.S. entity's assets, submitting to the jurisdiction of a U.S. court, and waiving any objection to venue in a U.S. court. In addition, the non-U.S. entity must designate an agent in New York to receive service of process, provide DTC with all regulatory filings made in the non-U.S. entity's home country, and furnish DTC with all financial reports or other information as requested by DTC, with all fiscal information presented in U.S. dollar equivalents. The additional undertakings and agreements are set forth in DTC's Policy on Admissions of Foreign Entities which is set forth in Exhibit B to DTC's filing and is available for review and copying at the principal office of DTC and the Commission's Public Reference Room.

[6] DTC Rules 2 and 3 set forth the basic standards for the admission of DTC participants. These rules provide, among other things, that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

entity and will be recognized and given effect under the laws of the United States and the non-U.S. entity's home country as appropriate.

The rule change also requires that the non-U.S. entity (i) Be subject to applicable securities or banking regulation in its home country, (ii) be in good standing with its home country regulator, and (iii) if there is a central securities depository established in the non-U.S. entity's home country, be eligible to become a member of that depository. Additionally, the rule change requires that the home country regulator of the non-U.S. entity have entered into a memorandum of undertaking with the Commission to share or exchange information.

The rule change sets forth special financial conditions for non-U.S. entities. The central purpose of these special financial conditions is to compensate for the fact that U.S. authorities have limited oversight of non-U.S. entities and that these entities are subject to regulatory oversight and requirements that are different from those of U.S. entities. As such, information concerning financial difficulties or the impending insolvency of non-U.S. entities may not be available to DTC as such information is for U.S. entities.[7]

Under the special financial conditions, non-U.S. entities will be required to have and to maintain excess net capital equal to US$5,000,000 if the entity is a broker-dealer and US$20,000,000 if the entity is a bank.[8] In addition to the standard deposit requirements applicable to all DTC participants, non-U.S. entities also will be required to deposit with or pledge to DTC ''special collateral'' with a value after imposing specified haircuts equal to 50 percent of the entity's net debit cap.[9] Except for U.S. Treasury securities, securities included in the special collateral account will receive a haircut of 50 percent.[10] In addition, the non-U.S. entity will not receive credit for the special collateral in DTC's collateral monitor. Any net debit must be supported by the value of collateral other than the special collateral. Such special collateral requirements are designed to help assure that DTC will not suffer a loss even if the non-U.S. entity fails to settle and the market value of the collateral supporting its net debit declines.

II. Discussion

Section 17A [11] of the Act, among other things, requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with DTC's obligations under this section. Specifically, by requiring non-U.S. applicants to execute the standard participants agreement, enter into additional undertakings with DTC, and provide DTC with opinions of counsel as to these matters, the rule change should serve to bind non-U.S. entities to DTC's rules and procedures in a manner similar to U.S. domestic participants. Additionally, the participants agreement and undertakings, as supported by the opinions of counsel, should lessen or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights and remedies against a non-U.S. entity if such entity fails to settle.

To further protect DTC and its participants from the potential risks posed by non-U.S. participants, the rule change limits direct participation in DTC to those non-U.S. entities that are operationally capable and well-capitalized. The rule change imposes substantial capital requirements on non-U.S. entities. Moreover, because each non-U.S. entity must maintain special collateral having a value equal to 50 percent of its net debit cap after haircuts and will not receive credit for such special collateral in its collateral monitor, the rule change should protect DTC and its participants against a firm's failure to settle even if there is a significant drop in the value of the collateral supporting a firm's settlement activities.

Accordingly, the Commission believes that by requiring non-U.S. entities to (i) Execute the standard DTC participants agreement and abide by DTC's rules and procedures, (ii) enter into the additional undertakings, (iii) provide DTC with opinions of counsel regarding the foregoing, and (iv) be subject to the special financial conditions, the rule change should assist DTC in assuring the safeguards of securities and funds which are in its custody, control, or for which it is responsible.

The Commission is temporarily approving the proposed rule change through May 31, 1998, so that DTC can gain experience with its new admissions standards for non-U.S. entities and the unique risks posed by the settlement activities of these firms as direct DTC participants. Temporary approval also should offer both the Commission and DTC an opportunity to observe whether the admissions criteria, procedures, and additional capital and collateralization requirements applicable to non-U.S. entities adequately protect DTC and its participants, and whether any adjustments are necessary. During the temporary approval period, DTC will be expected to monitor the adequacy and soundness of the rule change as necessary in order to protect securities and funds.

III. Conclusion

On the basis of the foregoing the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–13) be and hereby is approved on a temporary basis through May 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[7] Rule 17a–11 (17 CFR 240.17a–11) under the Act requires broker-dealers to give notice to the Commission and to the broker-dealers' designated examining authority when, among other things, the broker-dealers' net capital (i) declines below the minimum amount required by Rule 15c3–1 (17 CFR 240.15c3–1) under the Act or (ii) is less than 120% of the broker-dealer's required minimum net capital.

[8] DTC's notice of the proposed rule change provided that non-U.S. entities would be required to have and to maintain 1000% of the excess net capital (for broker-dealers) or the minimum equity (for banks) required of U.S. participants. Under the rule change as originally proposed, the minimum capital requirements for non-U.S. broker-dealers and banks would have been US$5,000,000 and US$20,000,000, respectively. To avoid confusion, DTC amended the proposed rule change to require that non-U.S. entities have and maintain excess net capital of US$5,000,000 if a broker-dealer and minimum equity of US$20,000,000 if a bank instead of basing its capital standards for non-U.S. entities on a multiple of the minimum capital requirements of U.S. broker-dealers and banks.

[9] DTC will require non-U.S. participants to deposit all necessary collateral with DTC before such participants are permitted to create a net debit in DTC's settlement system.

[10] Non-U.S. entities can pledge only DTC-eligible securities as special collateral. Securities for which the non-U.S. entity is the sole or a principal market maker are not acceptable as special collateral.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).