

Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-97-06) 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 persons.

### **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 modify the way DTC processes cent-denominated securities.

### **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 that 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.<sup>2</sup>

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

DTC began processing cent-denominated securities in January, 1997.<sup>3</sup> Participants depositing cent-denominated securities received credit for the whole dollar amount of the deposit. But the cents portion of the aggregate dollar figure for the deposited securities was truncated. The truncated amounts were collected in an internal DTC account and along with any income derived therefrom became part of DTC's general revenues. DTC now has developed the capability to credit the cents positions resulting from deposits or principal and income payments to a participant's account. These cents positions will be maintained in a contra-CUSIP account and will be eligible for various DTC services including deposit, withdrawal, and rush withdrawal services. DTC proposes to track cent-denominated securities in the manner described above so that its records may more accurately reflect the true

<sup>2</sup> The Commission has modified the text of the summaries submitted by DTC.

<sup>3</sup> Securities Exchange Act Release No. 36798 (January 31, 1996), 61 FR 4692 [File No. SR-DTC-95-14] (order approving proposed rule change which made fractional shares and cent-denominated securities depository eligible at DTC).

ownership of cent-denominated positions.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act<sup>4</sup> and the rules and regulations thereunder because it will promote efficiencies 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, in the public interest, and for the protection of investors.

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

While most DTC participants recognize the benefits of tracking cents in a contra-CUSIP account, some participants have expressed concern with the new tracking method because participants will be required to make programming changes in order to use the new system. As a result, DTC has made participation in the cent-denominated program voluntary so that participants that must make systems changes to use the new program may have sufficient time to do so.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(3)<sup>5</sup> of the Act and Rule 19b-4(e)(4)<sup>6</sup> promulgated thereunder because the proposal effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(3).

<sup>6</sup> 17 CFR 240.19b-4(e)(4).

### **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-97-06 and should be submitted by August 13, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38846; International Series Release No. 1092; File No. SR-ISCC-96-05]

#### **Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Election of Directors**

July 17, 1997.

On October 11, 1996, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on October 17, 1996, December 11, 1996, March 21, 1997, and May 8, 1997, filed amendments to a proposed rule change (File No. SR-ISCC-96-05). Notice of the proposal was published in the **Federal Register**

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

on May 16, 1997.<sup>2</sup> On June 27, 1997, ISCC filed a technical amendment to the proposed rule change.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

The proposed rule change modifies ISCC's by-laws and adopts an Amended and Restated Shareholders Agreement between ISCC and the National Securities Clearing Corporation ("NSCC"), ISCC's sole shareholder, in order to amend ISCC's current procedures for the election of directors. Pursuant to ISCC's temporary exemption from the fair representation requirements of the Act, NSCC currently appoints ISCC's board.<sup>4</sup>

Under the proposed rule change, the size of the board of directors is reduced from twenty-two directors to seven directors. Of the seven directors, NSCC will select two directors. The NSCC directors will serve one year terms. The other five directors ("participant directors") are divided into three classes, and their terms will expire on a staggered basis. The nominating committee is reduced from seven persons to three persons and is divided into two classes. The terms for the two classes will expire on a staggered basis every two years.

Beginning in 1998, at least fifteen business days prior to the regularly scheduled board meeting that is (i) closest in time to the upcoming annual meeting of shareholders and (ii) at least ninety days before such annual meeting, the nominating committee will submit to the Secretary by overnight mail or by telefax its list of nominees to fill the

nominating committee positions whose terms are expiring immediately following the upcoming annual meeting (i.e., for the nominating committee that will make nominations for the next year's election).<sup>5</sup> The Secretary will include such list in the materials sent to the directors in connection with the upcoming board meeting.

At the board meeting, the board may nominate individuals for one or more vacancies on the nominating committee. The board must notify the Secretary of any nominations within two business days of the meeting by overnight mail, telefax, or telephone. Within five business days of the meeting, the Secretary must mail a list of all nominating committee to each participant.

At least ninety days before the annual meeting of shareholders, the nominating committee will submit to the Secretary its list of nominees for participant directors. Within five days of receipt of the list, the Secretary will mail a list of all nominees for the positions of participant director to each participant.

Participants have the right to nominate candidates for the nominating committee and for participant directors by filing with the Secretary, not less than sixty days prior to the date of the annual meeting, a petition signed by the lesser of 5% of all participants or fifteen participants. If a participant petition is filed or if the board nominates additional candidates to the nominating committee, the Secretary will mail to each participant at least forty-five days prior to the date of the annual meeting a ballot setting forth all of the nominees. Each participant is entitled to one vote for each ten dollars of its average monthly fee payable or paid by the participant to ISCC during the previous twelve month period. Participants must return their ballots to the Secretary at least fifteen days prior to the annual meeting. NSCC will then vote its shares in favor of the nominees selected by the participants.

### II. Discussion

Section 17A(b)(3)(C)<sup>6</sup> of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or member and participants in the selection of its

directors. In the release announcing standards for the registration of clearing agencies ("Standards Release"), the Division of Market Regulation stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.<sup>7</sup> The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that ISCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in ISCC's election process. ISCC participants will have the opportunity to nominate candidates for both the board of directors and for the nominating committee. Furthermore, the board, which should be responsive to participant concerns, will also have the opportunity to nominate members of the nominating committee. When there is a contested election for either board or nominating committee positions, the participants will have the ability to select the candidates that will serve in such capacities. Thus, the Commission believes that ISCC's proposal is consistent with its obligations to assure the fair representation of participants.

### 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-ISCC-96-5) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority,<sup>8</sup>

**Margaret H. McFarland,**

*Dputy Secretary.*

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<sup>2</sup> Securities Exchange Act Release No. 38615 (May 12, 1997), 62 FR 27100.

<sup>3</sup> The amendment was a technical amendment that did not require republication of notice.

<sup>4</sup> ISCC's current by-laws and shareholders agreement set forth provisions establishing the number and composition of ISCC's board as well as the procedures for the election of directors. Such provisions provide for a staggered board of twenty-two directors composed of management, shareholder, and participant directors divided into four classes. Each director is nominated by a nominating committee consisting of seven members. ISCC participants have the opportunity to nominate additional candidates for directors and the right to vote in the event that additional nominees are submitted by participants. In connection with its original application for registration as a clearing agency, ISCC obtained and continues to have a temporary exemption from Section 17A(b)(3)(C) of the Act (15 U.S.C. 78q-1(b)(3)(C)) pursuant to which the above described procedures have never been used.

<sup>5</sup> The nominating committee that will select candidates for the 1998 annual meeting of shareholders will be appointed by the board of directors.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>7</sup> Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

<sup>8</sup> 17 CFR 200.30-3(a)(12).