

WI. VOR/DME OR GPS-A, AMDT 1...CHANGE NOTE TO READ...USE CAMBRIDGE, MN ALTIMETER SETTING. THIS IS VOR/DME OR GPS-A, AMDT 1A.

Siren

BURNETT COUNTY
Wisconsin
VOR OR GPS RWY 4, AMDT 2...
FDC Date: 03/30/98

FDC 8/1991 /RZN/ FI/P BURNETT COUNTY, SIREN, WI. VOR OR GPS RWY 4, AMDT 2...CHG CAMBRIDGE ALSTG MNMS TO READ... CAMBRIDGE, MN ALSTG MNMS. CHG NOTE TO READ... OBTAIN LOCAL ALSTG ON CTAF; WHEN NOT RECEIVED, USE CAMBRIDGE, MN ALSTG. THIS IS VOR OR GPS RWY 4, AMDT 2A.

[FR Doc. 98-9650 Filed 4-10-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 241

[Release No. 34-39829; File No. S7-10-98]

Confirmation and Affirmation of Securities Trades; Matching

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release; request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing its interpretation that a "matching" service that compares securities trade information from a broker-dealer and the broker-dealer's customer is a clearing agency function. The Commission also is soliciting comment on two possible approaches for providing exemptive relief from full clearing agency regulation for qualified electronic trade confirmation ("ETC") vendors that fall within the Commission's interpretation of clearing agency because they provide a matching service.

DATES: The interpretation contained in Section III of this release is effective April 13, 1998.

Comments should be submitted on or before June 12, 1998.

ADDRESSES: Interested persons should submit comments in triplicate to Jonathan Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549-6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All

comment letters should refer to File No. S7-10-98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director; Jeffrey Mooney, Special Counsel; or Theodore R. Lazo, Attorney; at 202/942-4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Recently, the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD"), and the Municipal Securities Rulemaking Board ("MSRB") (collectively "SROs") filed proposed rule changes under Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ to amend their rules dealing with the post-trade processing of trades executed by their members. The SROs' current rules require their broker-dealer members to use the facilities of a securities depository² for the electronic confirmation and affirmation of transactions where the broker-dealer provides delivery-versus-payment ("DVP") or receive-versus-payment ("RVP")³ privileges to its customer ("SRO confirmation rules").⁴ As a practical matter, the SRO confirmation rules require broker-dealers to use The Depository Trust Company's ("DTC") Institutional Delivery ("ID") system because it is the only confirmation/affirmation service offered by a securities depository.⁵

¹ 15 U.S.C. 78s(b)(1).

² A "securities depository" is defined in the SRO confirmation rules as a clearing agency that is registered under Section 17A of the Exchange Act, 15 U.S.C. 78q-1.

³ RVP services allow an institutional seller to require cash payment before delivering its securities at settlement. DVP services allow an institutional buyer to pay for its purchased securities only when the securities are delivered. Generally, bids only extend RVP/DVP privileges to their institutional customers.

⁴ The confirmation rules are: MSRB Rule G-15(d)(ii); NASD Rule 11860(a)(5); and NYSE Rule 387(a)(5). The SROs and the Commission have separate rules requiring customer confirmations and specifying their content. See, e.g., Exchange Act Rule 10b-10, NASD Rule 2230; NYSE Rule 409. These rules are not the subject of this proceeding.

⁵ Previously, the Philadelphia Depository Trust Company and the Midwest Securities Trust Company offered confirmation/affirmation services,

Under the proposed amendments to the SRO confirmation rules, broker-dealers will be permitted to use entities that are not registered clearing agencies for the confirmation and affirmation of RVP/DVP transactions as long as the entities are qualified ETC vendors as defined by the SRO rules. A qualified ETC vendor intermediary will only transmit information between the parties to a trade, and the parties will confirm and affirm the accuracy of the information.

The Commission understands that the next step in the evolution of post-trade processing will be the development of matching services. "Matching" is the term used to describe the process by which an intermediary reconciles trade information from the broker-dealer and its customer to generate an affirmed confirmation which is then used in effecting settlement of the trade.

The Commission is of the view that matching constitutes a clearing agency function within the meaning of the clearing agency definition under Section 3(a)(23) of the Exchange Act.⁶ Specifically, matching constitutes "comparison of data respecting the terms of settlement of securities transactions." The Commission concludes that matching is so closely tied to the clearance and settlement process that it is different not only in degree but also different in kind from the current confirmation and affirmation process. The purpose of this release is to seek comment on the concept of providing exemptive relief either through registration as clearing agencies subject to reduced requirements or through the grant of a conditional exemption from registration to qualified ETC vendors that provide a matching service.

II. Background

A. Confirmation and Affirmation Process

The confirmation/affirmation process refers to the transmission of messages among broker-dealers, institutional investors, and custodian banks regarding the terms of a trade executed for the institutional investor. Because the trades of institutional investors involve larger sums of money, larger amounts of securities, more parties, and more steps between order entry and final settlement, institutional trades are usually more complex than retail transactions.

but these securities depositories no longer provide any depository services.

⁶ 15 U.S.C. 78c(a)(23).

1. Confirmation Using the ID System

The typical components of the "customer-side" settlement of an

institutional trade under the current

SRO confirmation rules are illustrated in Figure 1.⁷

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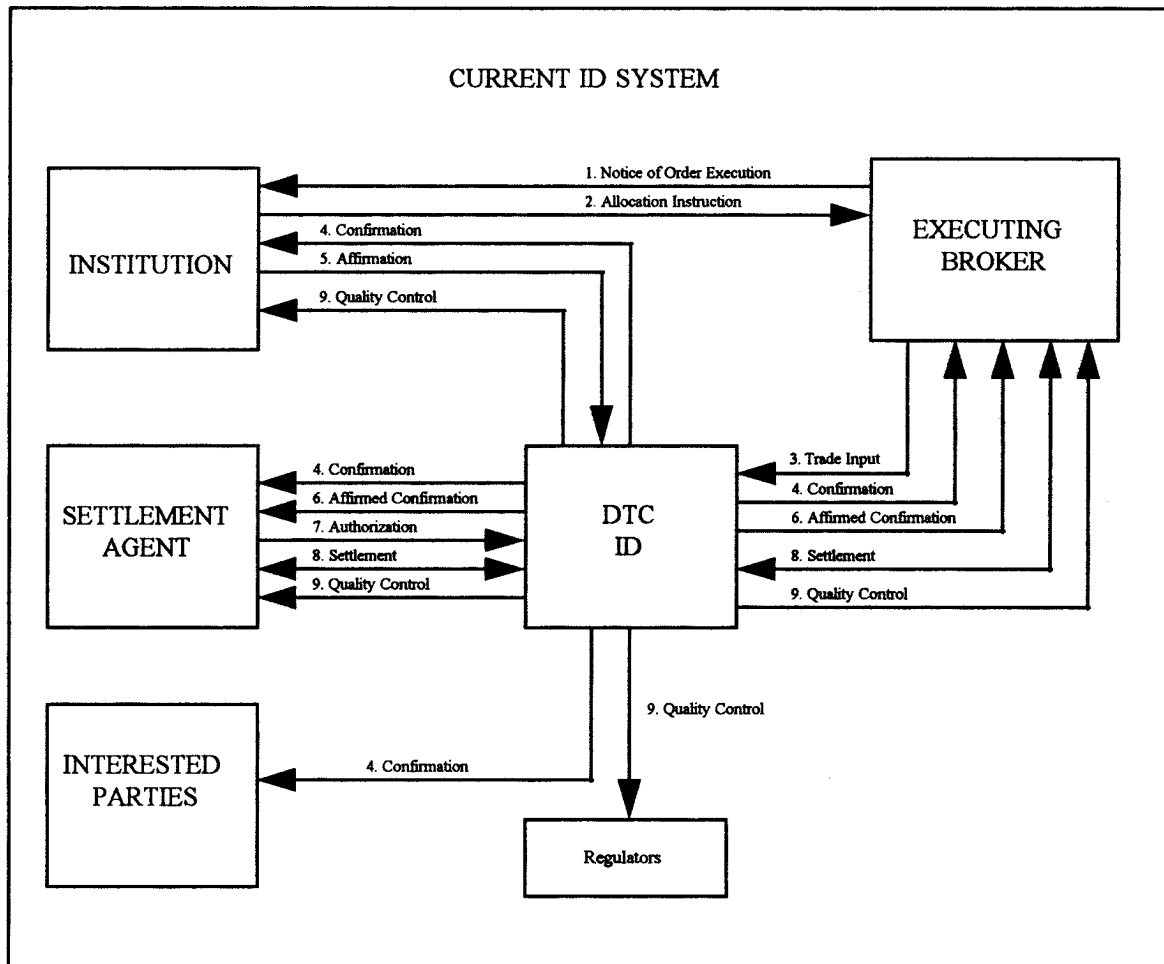


Figure 1

Typically, an institutional trade will begin with the institution's investment manager placing an order with the broker-dealer. After the broker-dealer executes the trade, the broker-dealer will advise the institution of the execution details. This is commonly referred to as giving notice of execution (step 1 of Figure 1). The institution then advises the broker-dealer as to how the trade should be allocated among its accounts (step 2 of Figure 1).⁸ The broker-dealer then submits the trade data to DTC (step 3 of Figure 1).

Next, DTC adds the transaction to the ID system's trade database, assigns an ID

control number, and forwards an electronic confirmation to the institution, the broker-dealer, the institution's settlement agent, and other interested parties (e.g., trustees, plan administrators, or correspondent banks) (step 4 of Figure 1). The institution reviews the confirmation for accuracy. If accurate, the institution or its designated affirming agent affirms the trade through the ID system (step 5 of Figure 1). DTC then generates an affirmed confirmation and sends it to the broker-dealer and to the institution's settlement agent (step 6 of Figure 1).⁹ At this point, the trade is sent into DTC's settlement system (i.e., the ID system is not a settlement system in that no

money or securities move through it) and must be authorized by the party obligated to deliver the securities (i.e., the selling party) institution or the settlement agent before settlement occurs (steps 7 and 8 of Figure 1). "Quality Control" involves DTC's monitoring and production of various reports for regulators and ID system users which show such things as when a confirmation was sent and the affirmation was received (step 9 of Figure 1).

2. Confirmation Using a Qualified ETC Vendor

Under the proposed SRO rule changes, a qualified ETC vendor may be used for the confirmation/affirmation process. The broker-dealer submits trade data to the qualified ETC vendor which generates and sends a confirmation to the institution (steps 3 and 4 of Figure

⁷This is a separate process from the "street-side" settlement of the trade which is carried out between the buying and selling broker-dealers involved in the trade.

⁸The current confirmation rules do not require use of any system or type of system for notice of execution or allocation instructions.

⁹In the ID system, the affirming party may be the institution, the institution's agent, or another party designated by the institution (i.e., an "interested party").

1). After reviewing the confirmation, the institution sends an affirmation to the broker-dealer through the facilities of the qualified ETC vendor (step 5 of Figure 1). At some point in this process, the qualified ETC vendor forwards the confirmation to DTC in an ID system format in order that DTC can assign an ID control number to the trade. DTC sends the confirmation with the control

number back to the qualified ETC vendor, and the qualified ETC vendor provides the control number to the broker-dealer and the institution. After receipt of the affirmation from the institution, the qualified ETC vendor sends the affirmed confirmation with the ID control number to DTC in ID system format. In this process, a qualified ETC vendor only transmits

information between the parties to the trade and the parties verify the accuracy of the information.

B. Matching Services

The components of customer-side settlement of an institutional trade through a "matching" system are illustrated in Figure 2.

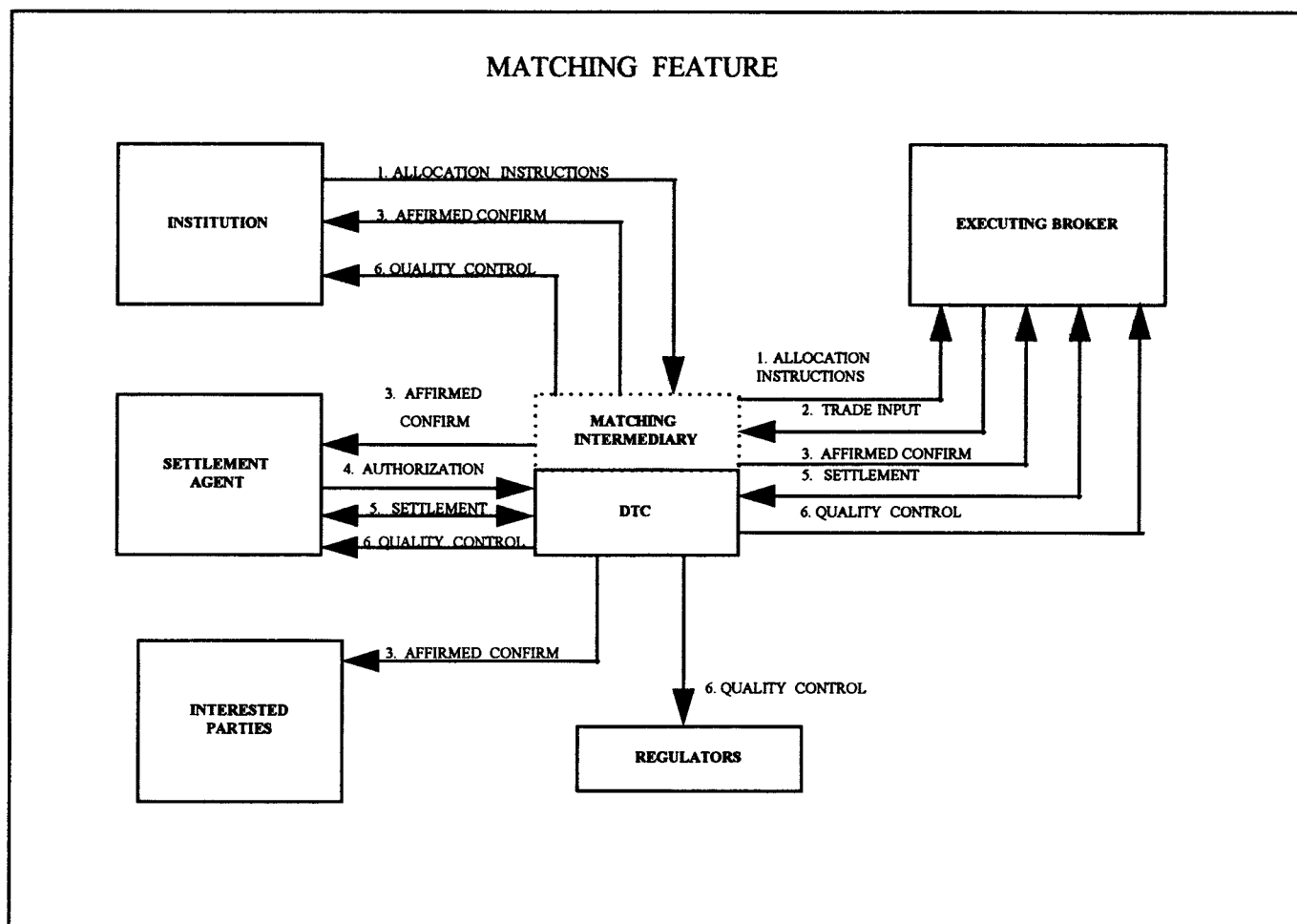


Figure 2

"Matching" is the term that is used to describe the process whereby an intermediary compares the broker-dealer's trade data submission (step 2 of Figure 2) with the institution's allocation instructions (step 1 of Figure 2) to determine whether the two descriptions of the trade agree.¹⁰ If the

trade data and institution's allocation instructions match, an affirmed confirmation is produced (step 3 of Figure 2). This would eliminate the separate steps of producing a confirmation (step 4 of Figure 1) for the institution to review and affirm (step 5 of Figure 1). At this point, the trade goes into DTC's settlement process but must be authorized by the delivering party agent before settlement occurs (steps 4 and 5 of Figure 2).¹¹

III. Matching as a Clearing Agency Function

Section 3(a)(23)(A) of the Exchange Act defines a clearing agency broadly as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of

¹⁰ Figure 2 illustrates a "matching intermediary" other than DTC matching the Institution's allocation instructions with the Executing Broker's trade data. The Commission has approved a proposed rule change filed by DTC that will allow DTC to provide matching services. Securities Exchange Act Release No. 39832 (April 6, 1998), File No. SR-DTC-95-23. Currently, no one provides the type of services described in DTC's matching proposal.

¹¹ This authorization and settlement process is the same process for the authorization and settlement of institutional trades where a matching service is not used (steps 7 and 8 of Figure 1).

securities settlement responsibilities.”¹² Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder require any person who engages in any of these functions to register with the Commission as a clearing agency or obtain an exemption from registration.¹³

Based on the language, purposes, and policies of Section 3(a)(23) and 17A, the Commission concludes that an intermediary that captures trade information from a buyer and a seller of securities and performs an independent reconciliation or matching of that information is providing facilities for the comparison of data within the scope of Exchange Act Section 3(a)(23).¹⁴ As a result, the intermediary is performing a clearing agency function. Accordingly, under this interpretation, only an entity that is registered as a clearing agency or is exempt from such registration may provide a matching service.

The legislative history of the Securities Acts Amendments of 1975 (“1975 Amendments”) supports this statutory interpretation,¹⁵ including the purposes of establishing a national clearance and settlement system and the scope of authority granted to the Commission. Moreover, considering a matching service to be a clearing agency function is consistent with the purposes of the Exchange Act regulation of the clearance and settlement system. Congress viewed the clearance and settlement system in the early 1970s as inadequate and in the 1975 Amendments directed the Commission to facilitate the development of an improved national clearance and settlement system. Congress articulated

the goals of this national system in Section 17A of the Exchange Act,¹⁶ and gave the Commission the authority and responsibility to regulate, coordinate, and direct the operations of all persons involved in processing securities transactions toward the goal of a national system for the prompt and accurate clearance and settlement of securities transactions.¹⁷ Congress specifically declined to address the merits of any particular system or to dictate the shape a national clearance and settlement system should take.¹⁸ Instead, Congress recognized that “data processing and communications techniques” involved in clearance and settlement processes would continue to evolve.¹⁹ As a result, the Commission was given broad authority over the clearance and settlement system and wide discretion in determining what activities fall within the clearing agency function triggering the requirement to register as a clearing agency.

In fact, the clearance and settlement process for institutional trades has evolved dramatically. When the 1975 Amendments were enacted, the processing of institutional trades was carried out directly between the broker-dealer and the institution with little or no automation. The SROs’ rules requiring the use of electronic confirmation and affirmation of institutional trades were adopted in response to the increased complexity of institutional trades and the need to automate the process. Today, the volume of institutional trades has grown to an extent that they now account for a large portion of the trading activity in the U.S. securities markets.²⁰ Because of the increased volume and complexity of institutional trades, virtually all of them are now processed through electronic systems.

Matching is inextricably intertwined with the clearance and settlement process. A vendor that provides a matching service will actively compare trade and allocation information and will issue the affirmed confirmation that will be used in settling the transaction.²¹ In addition, matching addresses two areas that the Commission and the securities industry view as critical to maintaining a sound clearance and settlement system: reducing errors and reducing the amount of settlement time.

As noted above, matching combines certain steps in the confirmation and affirmation process and therefore can help to reduce errors. Effective matching also will be critical in any effort to shorten the settlement cycle.²² At the same time, matching concentrates processing risk in the entity that performs matching instead of dispersing that risk more broadly to broker-dealers and their institutional customers. In particular, matching eliminates a separate affirmation step that would allow the detection of errors that could delay settlement or cause the trade to fail.²³

Accordingly, the Commission believes that an entity providing matching would have a significant impact on the national clearance and settlement system. The breakdown of a matching system’s ability to accurately compare the trade information from hundreds of institutions and broker-dealers involving thousands of transactions and millions of dollars worth of securities could result in a widespread systemic failure of the national clearance and settlement system.²⁴ Without any regulatory authority over matching vendors, the Commission would have only limited ability to guard against

¹² 15 U.S.C. 78c(a)(23)(A).

¹³ 15 U.S.C. 78q-1; 17 CFR 240.17Ab2-1.

¹⁴ A matching service conducted by an intermediary falls within the literal terms of the definition of clearing agency. A matching service conducted by an intermediary clearly provides a facility in which the terms of transactions between broker-dealers and their institutional customers are compared to each other to assure that both parties agree to the terms of the trades before they are submitted for settlement.

Other portions of the statute also support this interpretation. Section 3(a)(23)(B) of the Exchange Act, 15 U.S.C. 78c(a)(23)(B), specifically excludes broker-dealers (and other entities) from the definition of clearing agency if they would fall within the definition solely because they perform clearing agency functions as a part of their customary activities, such as brokerage. Therefore, in connection with its customary business as a broker-dealer, a broker-dealer may match trades among its own customers without triggering clearing agency registration. Furthermore, Section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(A), also contains another definition that includes an entity that “otherwise permits or facilitates the settlement of securities transactions * * *”

¹⁵ Pub. L. No. 94-29, 89 Stat. 97 (1975). The definition of clearing agency in Section 3(a)(23) of the Exchange Act was adopted as part of the 1975 Amendments.

¹⁶ 15 U.S.C. 78q-1. Section 17A(a)(2) of the Exchange Act, 15 U.S.C. 78q-1(a)(2), states that the Commission is directed: (i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities, and (ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.

¹⁷ *Id.* at 232.

¹⁸ *Id.* at 184.

¹⁹ See Section 17A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78q-1(a)(1)(C); S. Rep. 75, 94th Cong., 1st Sess. 54 (1975); H. Rep. 123, 94th Cong., 1st Sess. 44 (1975).

²⁰ Using block trades (*i.e.*, 10,000 shares or more) as a proxy for institutional trades, in 1996 institutional trading accounted for 55.9% of NYSE volume and 34.1% of Nasdaq National Market volume. NYSE, *Fact Book for the Year 1996*, p. 16 (1997); The Nasdaq Stock Market, Inc., *1997 Fact Book & Company Directory*, p. 27 (1997).

²¹ In contrast, a vendor that provides confirmation/affirmation services only will exchange messages between a broker-dealer and its institutional customer. The broker-dealer and its institutional customer will compare the trade information contained in those messages, and the institution itself will issue the affirmed confirmation.

²² The vast majority of the comment letters that the Commission received regarding DTC’s matching proposal supported the proposal. Twenty-two of the commenters specifically noted matching’s effect on shortening the settlement cycle as a reason for their support.

²³ This is in contrast to a Qualified ETC Vendor which would transmit confirmations and affirmations between broker-dealers and their customers for their review and therefore would involve less concentration of risk.

²⁴ Based on conversations between Commission staff and DTC, the Commission understands that over the last five months of 1997 the ID system received an average of 165,000 trade inputs per day. On the highest volume day during that period, the ID system received approximately 310,000 trade inputs.

such failure. Congress granted the Commission broad power to establish a centralized system of regulation over the national clearance and settlement system in order to prevent such a situation from occurring.²⁵ Given the significant role played by matching services and the scope of the definition, the Commission believes that some form of regulation is appropriate to assure the prompt and accurate clearance and settlement of securities.²⁶

IV. Possible Regulatory Approaches

Even though matching services fall within the definition of clearing agency, the Commission preliminarily is of the view that an entity that limits its clearing agency functions to providing matching services need not be subject to the full panoply of clearing agency regulation. The Commission has broad exemptive authority under Section 17A. Section 17A(b)(1) authorizes the Commission to exempt (conditionally or unconditionally) any clearing agency from any provision of Section 17A if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A.

Two alternative approaches may provide an appropriate regulatory structure for entities providing matching facilities: limited registration or conditional exemption. Under either approach only those regulatory requirements that the Commission views as necessary and appropriate to achieve the goals of Section 17A would be applicable to an entity providing a matching facility.²⁷ The limited registration alternative is a "scaled back" approach, which would register the matching service provider as a clearing agency while providing exemptions from individual clearing agency requirements. The conditional exemption alternative is a "building block" approach, which would exempt the entity from clearing agency registration subject to appropriate conditions.²⁸ Under either approach,

²⁵ S. Rep. 75, 94th Cong., 1st Sess. 55 (1975); H. Rep. 123, 94th Cong., 1st Sess. 78-79 (1975).

²⁶ Letter regarding Bradford National Corporation (June 1, 1981), CCH Transfer Binder, ¶ 76,853.

²⁷ Under either approach, an entity would have to meet the requirements to become qualified as an ETC vendor under the SRO rules. The requirements needed to become a qualified ETC vendor are necessary elements but in themselves are not sufficient for an entity that provides a matching function.

²⁸ Under the exemptive approach, the Commission anticipates that an entity seeking an exemption for matching would be required to: (1) provide the Commission with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency that provides for

the Commission would publish for comment a notice of the qualified ETC vendor's application for limited registration or conditional exemption, including the proposed terms of the registration or exemption, before approving the application.²⁹

The Commission requests commenters' views on whether limited clearing agency registration or conditional exemption from clearing agency registration is the best alternative for regulating qualified ETC vendors that provide matching services. Does either or both of these proposed alternatives provide a prudent method to ensure the safety and soundness of the national system for clearance and settlement of securities transactions and the continued development of linked and coordinated clearance mechanisms subject to uniform standards? Generally speaking, what clearing agency requirements under Section 17A(b) would be necessary and appropriate for matching services, and which would not? Are there other alternatives by which the Commission could maintain oversight of matching by qualified ETC vendors that would ensure the safety and soundness of the national clearance and settlement system?

List of Subjects in 17 CFR Part 241

Securities.

Amendment of the Code of Federal Regulations

For the reasons set out in the preamble, Title 17 Chapter II of the Code of Federal Regulations is amended as set forth below:

the settlement of its matched trades; (3) allow the Commission to inspect its facilities and records; and (4) make periodic disclosures to the Commission regarding its operations.

Applicants requesting exemption from clearing agency registration are required to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of that section are furthered (*i.e.*, safety and soundness of the national clearance and settlement system). See, *e.g.*, Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving application for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank, société anonyme; and 38589 (May 9, 1997), 62 FR 26833 (notice of application for exemption from clearing agency registration by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System).

²⁹ See Section 19(a) of the Exchange Act, 15 U.S.C. 78s(a), and Exchange Act Rule 17Ab2-1, 17 CFR 240.17Ab2-1.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding Release No. 34-39829 and the release date of April 6, 1998 to the list of interpretive releases.

By the Commission.

Dated: April 6, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-9594 Filed 4-10-98; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Bacitracin Zinc; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for bacitracin zinc to correct several regulations concerning the use of new animal drugs in animal feeds. Those corrections concern a codified designated source of bacitracin zinc for use in combination with several other new animal drugs. This document corrects those errors.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0213.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 1992 (57 FR 7652), FDA published a document reflecting the change of sponsor of several new animal drug applications from Pittman-Moore, Inc., to American Cyanamid Co. In that document, FDA failed to change several regulations regarding the source of bacitracin zinc in combination with other new animal drugs, namely at 21 CFR 558.175(d)(1)(iii)(b) and (d)(1)(iv)(b), 558.195(d) in the table under "Limitations," 558.311(e)(1)(ii) in the table under "Limitations," and 558.515(d)(1)(vi)(b). Consequently, FDA also failed to include these citations in a change of sponsor from American Cyanamid Co. to Hoffmann-La Roche, Inc. (61 FR 18081, April 24, 1996).