

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40361; File No. SR-DTC-98-15]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change To Incorporate the Rules and Procedures of Participants Trust Company To Increase the Size of the Board of Directors and To Amend the Rules Regarding the Use of the Participants Fund

August 25, 1998.

On July 13, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on July 30, 1998, amended a proposed rule change (File No. SR-DTC-98-15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on August 10, 1998.<sup>2</sup> On August 11, 1998, DTC filed its second amendment to the proposed rule change.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Description

The rule change relates to the merger of DTC and Participants Trust Company ("PTC").<sup>4</sup> DTC and PTC have entered into a merger agreement under which PTC will merge with and into DTC. DTC will form a mortgage-backed securities division ("MSB Division") to deliver the depository services currently provided by PTC to its participants with respect to PTC-eligible securities. DTC will adopt PTC's rules and procedures, with certain modifications, as the rules and procedures of the MBS Division. Under the merger agreement, the MBS Division will remain in place until at least September 30, 2000. Current PTC participants will be given the opportunity to become participants and limited purpose participants in the MBS Division. The cash and securities presently constituting the PTC

participants fund will be transferred to a new MBS Division participants fund.

The merger agreement also provides that as of the effective date of the merger one PTC board member nominated by PTC's board shall become a member of DTC's Board. This new director position is to remain in place at least until September 30, 2000. In order to accommodate the new director position, DTC is amending its By-Laws to increase the number of directors on its Board from seventeen to eighteen.

Virtually all of PTC's participants are also DTC participants.<sup>5</sup> DTC participants are entitled to acquire DTC stock based upon their use of DTC's services. The amount of each DTC participant's entitlement is recalculated each year, and participants that purchase DTC's stock are permitted to vote in the election of DTC's Board of Directors. After DTC and PTC merge, the calculation of each participant's entitlement to acquire DTC stock will take full account of the participant's use of services provided through the MBS Division.

In addition to the amendments regarding the creation of the MBS Division, DTC is adding language to its Rule 4 to make clear that if DTC were to cease providing some or all of its services, it could use the participants fund to cover wind-down costs that are not covered by service fee revenues or other available resources.

#### II. Discussion

The Commission believes that DTC's proposal to make PTC's rules a part of DTC's rules is consistent with DTC's obligations under Section 17A of the Act.<sup>6</sup> The Commission has previously approved all of PTC's rules as being consistent with PTC's responsibility as a clearing agency as set forth in Section 17A(b)(3) of the Act.<sup>7</sup> The Commission believes that by adopting these previously approved rules of PTC as the rules for its newly created MBS Division, DTC will be able to fulfill its statutory obligations under Section 17A(b)(3) with respect to the clearance, settlement, and depository service provided by its MBS Division.

Section 17A(b)(3)(C) of the Act<sup>8</sup> requires that the rules of a clearing agency assure the fair representation of its shareholders (or members) and participants in the selection of its

directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) for several reasons. First, almost all of PTC's members are also members of DTC and therefore are already represented on DTC's Board.<sup>9</sup> Second, the rule change provides that when the merger become effective a PTC board member nominated by PTC's Board will become a member of DTC's Board. Third, the rule change provides that the calculation of DTC participants' entitlement to purchase stock, and therefore vote in the election of DTC's Board, will include the participants' use of the services of the MBS Division.

Section 17A(b)(3)(F) of the Act<sup>10</sup> 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 by adding language to Rule 4 to make clear and explicit DTC's rights and obligations with respect to its participants' fund, DTC's ability to assure the safeguarding of securities and funds which are in DTC's custody or control or for which it is responsible should be enhanced.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow securities transactions that are currently processed through PTC to be processed efficiently through the MBS Division of DTC and will allow an orderly transfer of PTC's operations to DTC.

#### 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<sup>11</sup> 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-98-15) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

<sup>2</sup> Securities Exchange Act Release No. 40300 (August 3, 1998), 63 FR 42650.

<sup>3</sup> The August 11, 1998, amendment represents a technical amendment to the proposed rule change and as such does not require republication of notice.

<sup>4</sup> For a more detailed description of the merger, refer to Securities Exchange Act Release No. 40121 (June 24, 1998), 63 FR 35631 [File Nos. SR-DTC-98-12, SR-PTC-98-02] (notice of proposed rule change relating to proposed merger between DTC and PTC).

<sup>5</sup> The only exceptions are Federal Home Loan Mortgage Corporation (a limited purpose participant), Federal National Mortgage Association, and The Federal Reserve Bank of Cleveland.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>9</sup> *Supra* note 5.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 15 U.S.C. 78q-1.

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

Jonathan G. Katz,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40363; International Series Release No. 1154; File No. SR-EMCC-98-03]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Expansion of Eligible Instruments

August 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 28, 1998, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 20, 1998, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

The proposed rule change will amend EMCC's rules to expand EMCC eligible instruments to include sovereign debt.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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 in Item IV below. EMCC 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

The proposed rule change expands the list of EMCC eligible instruments to

include debt issued by a sovereign issuer where: (1) the debt is rated in one of the four highest rating categories ("investment grade") by at least two Nationally Recognized Statistical Rating Organizations ("NRSRO")<sup>3</sup> or (2) the debt is rated (a) in one of the four highest rating categories by one NRSRO and some satisfactory transaction volume can be demonstrated or (b) in the next highest rating category below investment grade by one NRSRO and both substantial volume and transactions can be demonstrated to indicate liquidity exists.<sup>4</sup>

The proposed rule change also will provide that if sovereign debt fails to continue to meet one of the above requirements for a period of one consecutive year, EMCC will specifically consider and determine whether the sovereign debt should no longer qualify as an EMCC eligible instrument. EMCC's rules are being modified to specifically provide that if an instrument fails to qualify as an eligible instrument transactions that had been accepted by the EMCC prior to such determination will continue to be processed and will be treated as if they were transactions in EMCC eligible instruments.<sup>5</sup> Upon a determination that an instrument fails to qualify as an eligible instrument, no new transactions in such instrument will be accepted by EMCC for processing.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

<sup>3</sup> NRSRO shall have the same meaning as used in Rule 15c3-1(c)(2)(vi)(F).

<sup>4</sup> It is EMCC's understanding that sovereign debt issued by Brazil, Argentina, and Mexico currently meet one of the above requirements.

<sup>5</sup> Accordingly, the buy-in and sell-out provisions set forth in Sections 7 and 8 in EMCC's Rule 8 will continue to apply to such transactions.

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

Section 17A(b)(3)(F) of the Act<sup>6</sup> 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 proposal is consistent with EMCC's obligations under Section 17A(b)(3)(F) because EMCC will apply its existing risk controls, such as its daily margining procedures, to issues of sovereign debt. EMCC's risk controls previously have been approved for use in EMCC's clearance and settlement of Brady Bonds, and EMCC has represented to the Commission that the controls are applicable to sovereign debt.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow EMCC to increase in a timely manner the number of securities that can be processed through EMCC, a registered clearing agency, instead of through riskier and less efficient means.

### 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 N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR-EMCC-98-03 and should be submitted by September 21, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

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

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.