1940 Act and with the general purposes of the 1940 Act. Based on the foregoing and as more fully analyzed below, the Applicant asserts that the Commission would have an appropriate basis from which to grant Applicant an exemptive order pursuant to Section 17(b). In fact, the Commission has exempted substantially similar transactions.

7. Applicant states that the board, including a majority of the Independent Trustees, has reviewed and approved the terms of the Reorganization as set forth in the Reorganization Agreement, including the consideration to be paid or received by all parties. Applicant also states that the Board has independently determined that the proposed Reorganization, as set forth in the Reorganization Agreement and as contemplated by Rule 17a–8 under the 1940 Act, will be in the best interests of the shareholders of each affected Portfolio and of the Owners indirectly invested in each affected Portfolio and that consummation of the Reorganization will not result in the dilution of the current interests of any shareholder or Owner.

8. Applicant states that in determining whether to recommend approval of the Reorganization Agreement to shareholders and Owners, the Board, including a majority of Independent Trustees, inquired into a number of factors, including, among others: the comparative expense ratios of the affected Portfolios; the terms and conditions of the Reorganization Agreement and whether the Reorganization would result in a dilution of shareholder (or Owner) interests; costs incurred by Capital Appreciation and Equity as a result of the proposed Reorganization; and tax consequences of the proposed Reorganization. The Trustees considered, in particular, the potential benefits of the Reorganization to shareholders and Owners, the similarity of investment objectives and policies of the affected Portfolios, the terms and conditions of the Reorganization Agreement which might affect the price of shares (or Owner interests) to be exchanged and the direct or indirect costs to be incurred by the affected Portfolios or shareholders or Owners invested in such Portfolios.

9. Applicant states that the proposed Reorganization will not in any way affect the price of outstanding shares of Equity, nor will it in any way affect the Contract values or interests of Owners indirectly invested therein. Under the Reorganization Agreement, the transfer of assets of Capital Appreciation to Equity, and the issuance of shares of Equity in exchange therefor, will be made on the basis of the relative net asset values of the two Portfolios on the closing date (as described more fully in the Reorganization Agreement). In addition, the aggregate value of Equity Shares to be issued to each Capital Appreciation Sub-Account under the Reorganization will exactly equal the aggregate value of Capital Appreciation shares held by that Sub-Account immediately prior to the proposed Reorganization. As a result, the aggregate value of all Owners' outstanding units of interest of each Capital Appreciation Sub-Account will not change on the closing date as a result of the share exchange phase of the proposed Reorganization. In addition, the Reorganization will have no impact on the value of the Owners' outstanding units of interest in any Equity Sub-Account. The proposed Reorganization will impose no tax liability upon Owners. Applicant asserts that as a result of all of the above, the Reorganization would not dilute the interests of shareholders or Owners currently invested (directly or indirectly) in Capital Appreciation or Equity.

10. Rule 17a–8 under the 1940 Act exempts from Section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. Because of the potential affiliations noted above, neither the Portfolios nor the Sub-Accounts may be able to rely on Rule 17a–8. Applicant asserts, however, that: (i) the Reorganization closely resembles transactions intended to be exempted by Rule 17a–8; and (ii) as a condition to the granting of the requested order, the Board has complied with the conditions that Rule 17a–8 requires respecting approval of the Reorganization.

Conclusion

Applicant requests an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting the proposed Reorganization from the provisions of Section 17(a) of the 1940 Act. Applicant submits that, for all of the reasons summarized above, the terms of the proposed Reorganization as set forth in the Reorganization Agreement, including the consideration to be paid and received, are reasonable and fair to the Trust, to the affected Portfolios and the shareholders and Owners invested therein and do not involve overreaching on the part of any person concerned. Furthermore, the proposed Reorganization will be consistent with the policies of each of the affected Portfolios as recited in the Trust's registration statement and reports filed under the 1940 Act and with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41067; File No. SR–DTC–98–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Frequency of Collection of the Difference Between a Participant's Required Fund Deposit and Its Actual Fund Deposit

February 18, 1999.

On June 11, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 28, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC requires each of its participants to make a deposit to the participants fund. Currently, DTC calculates daily the amount a participant is required to deposit to the participant's fund (''required fund deposit''). If a participant's required fund deposit exceeds the amount a participant has deposited in the participants fund (''actual fund deposit''), DTC requires the participant to deposit the difference into the participants fund on a monthly basis.

The rule change amends this practice to enable DTC to require a participant to deposit the difference into the participants fund within two business days of the day on which the difference is calculated when two conditions are met. First, the amount of the difference must equal or exceed $500,000. Second,

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

[2] Securities Exchange Act Release No. 40588 (October 22, 1998), 63 FR 57716.

the difference must represent twenty-five percent or more of the newly calculated required fund deposit. DTC will continue to calculate each participant's required fund deposit each day and will collect any deficiency between the required fund deposit and the actual fund deposit that does not satisfy both of these conditions on a monthly basis.

II. Discussion

Section 17A(b) (3) (F) of the Act [3] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in the custody and 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 Section 17A(b)(3)(F) because it allows DTC to correct significant differences between a participant's required fund deposit and actual fund deposit sooner. As a result, DTC's potential exposure to a defaulting participant should be reduced.

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 [4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–98–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–4632 Filed 2–24–99; 8:45 am]

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[3] 15 U.S.C. 78q–1 (b)(3)(F).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b) (2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41054; File No. SR–NYSE–98–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Permanently Approving a Pilot Program Amending Paragraph 902.02 of the Exchange's Listed Company Manual to Reduce Listing Fees for Amalgamations

February 16, 1999.

I. Introduction

On December 28, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change establishing a pilot program to amend paragraph 902.02 of the Exchange's Listed Company Manual (''Manual'') and seeking permanent approval of the pilot program. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on January 15, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange is codifying its long-standing interpretation of the term ''amalgamation,'' and deleting language inconsistent with the application of that definition. Further, the Exchange is making non-substantive clarifications to the provision of the Manual that states that the fee for a company listing as a result of an amalgamation is 25% of the basic initial fee.

The Exchange's long-standing interpretation of the term ''amalgamation'' is the consolidation of two or more NYSE-listed companies into a new company. The Exchange is proposing to codify this definition into Paragraph 902.02 of the Manual. While language to that effect currently exists in the Manual, a ''housekeeping'' change is required to clarify that (1) an amalgamation is defend as the consolidation of two or more NYSE-listed companies into a new listed company, and (2) a reduced initial fee will be applied to listing resulting from an amalgamation.

A further housekeeping change is required as the result of a recent change to Paragraph 902.02 of the Manual, currently in effect as a pilot, which implemented a reduced listing fee for mergers between an NYSE-listed company and a non-NYSE listed company.[4] Specifically, current language is being deleted from the rule that refers to the merger of listed companies into an unlisted company which becomes listed.[5] This language is no longer necessary in light of the recent amendments.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act [6] and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the provisions of Section 6 of the Act.[7] More specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.[8] The Commission believes that the proposal enhances the clarity of the Manual with respect to initial listing fees. As a result, the Commission finds that the proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40887 (January 6, 1999), 64 FR 2693 (Notice of filing and order granting partial accelerated approval to the proposed rule change establishing a pilot program to reduce initial listing fees for amalgamations. The pilot expires on April 5, 1999.)

[4] *See* Securities Exchange Act Release No. 40698 (November 20, 1998), 63 FR 65833 (November 30, 1998).

[5] When an NYSE-listed company merges with another NYSE-listed company that becomes unlisted and then lists on the NYSE, the full fee shall apply. Telephone conversation between Daniel Beyda, Associate General Counsel, NYSE; David Sieradzki, Special counsel, Division of Market Regulation (''Division''), Commission; and Robert Long, Attorney, Division, Commission on January 4, 1999.

[6] In permanently approving the pilot, the Commission considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(B)(4).

[9] 15 U.S.C. 78s(b)(2).