

manner in which CBOE will be able to employ Variable RAES. Such issues relate to the degree of authority delegated to the appropriate FPCs regarding Variable RAES, and to internal governance matters. At a later time, when we have resolved these outstanding issues, we will also consider the specific changes to the text of the rules proposed by the CBOE in its Initial Proposal.

Accordingly, after careful review, the Commission finds that the Current Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the Current Amendment is consistent with Section 6(b)(5), in that it is designed "to promote just and equitable principles of trade \* \* \* to remove impediments to and perfect the mechanism of a free and open market \* \* \* and, in general, to protect investors and the public interest."<sup>8</sup> Moreover, the Commission finds good cause for approving the Current Amendment prior to the 30th day after the date the Amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>9</sup> Specifically, the Commission finds that Variable RAES will appropriately permit RAES market makers to limit their risk to compensate for increased exposure to the larger RAES order sizes that go into effect today.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Current Amendment, including whether the Current Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All

submissions should refer to File No. SR-CBOE-99-17 and should be submitted by September 22, 1999.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the Current Amendment to SR-CBOE-99-17, be and hereby is approved on an accelerated basis.<sup>11</sup>

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

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41786; File No. SR-DTC-99-17]

#### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

August 24, 1999.

On July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-99-17) 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 11, 1999.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change involves arrangements to integrate DTC and the National Securities Clearing Corporation ("NSCC"). Under the rule change, DTC and NSCC will form a New York corporation ("Holding Company") that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> In approving the Current Amendment, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

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

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

<sup>2</sup> Securities Exchange Act Release No. 41657 (July 27, 1999), 64 FR 43795.

The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the two current stockholders of NSCC, will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.<sup>3</sup>

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")<sup>4</sup> contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.<sup>5</sup> Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of holding Company common stock. The Holding Company will elect as the Directors of DTC and NSCC the

<sup>3</sup> DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

<sup>4</sup> DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>8</sup> 15 U.S.C. 78s(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

persons that the stockholders of the Holding Company elect as the directors of the Holding Company.

- The rights to purchase Holding Company common stock will be reallocated to the users of DTC and NSCC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.

- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. DTC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to DTC and NSCC pursuant to service contracts.

## II. Discussion

Section 17A(b)(3)(C) of the Act<sup>6</sup> requires that the rules of a clearing agency assure a 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) because it should provide DTC's participants with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of DTC and should provide DTC's participants through their holding of Holding Company stock with adequate and fair representation in the selection of DTC's directors and in the administration of DTC's affairs.

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 DTC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in DTC for common stock in the Holding Company.

## III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's 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-99-17) be and hereby is approved.

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. 34-41787; File No. SR-NYSE-99-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rules 902, 903 and 906

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with

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

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

<sup>2</sup> 17 CFR 240.19b-4.

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange proposed to amend NYSE Rules 902, 903 and 906 to permit coupled orders to be submitted after the official closing of the 9:30 a.m. to 4:00 p.m. trading session until 5:00 p.m. (the period after the 4:00 p.m. close until 5:00 p.m. hereafter referred to as "Crossing Session 1") where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. The text of the proposed rule change is available at the Exchange, and at the Commission.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

In 1991, the Exchange established its "Off-Hours Trading Facility." In connection with its implementation, the Exchange adopted the "900" series of rules to govern trading, order eligibility, order entry and record keeping requirements.

At 4:00 p.m. each day, the Exchange completes its normal procedure for the close of trading of the 9:30 a.m.-4:00 p.m. trading session. After 4:00 p.m., a common message switch broadcast message is published announcing the commencement of Crossing Session 1, which runs until 5:00 p.m.

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