C. Extension of Exercise Notification Deadline and Exercise Cutoff

The Commission notes that the purpose of the Exchange's exercise notification deadline [26] for American-style, cash-settled index options, and noncash-settled equity options, as well as the exercise cutoff time for noncash-settled equity options is to limit the differences in the ability of long options holders as compared to short options holders to offset their positions through exercise following the close of trading. The Commission recognizes that permitting the President or his designee to extend the applicable exercise deadline or cut-off time in unusual circumstances will marginally increase this existing disparity. The Commission, however, believes that any potential detriment that may result from increasing the disparity between long and short options holders will be exceeded by the benefit of allowing the President or his designees to give market participants additional time in which to make and process exercise decisions under unusual circumstances.

Furthermore, the Commission believes that the proposed rule change will promote efficient exercise procedures for both equity and index options by permitting market participants the opportunity to make informed decisions before exercising their options under unusual circumstances. For example, it would be an unusual circumstance if the reporting authority was late in reporting the closing value of an American-style, cash-settled index option, or if there were not enough time to process an exercise decision for a noncash-settled equity option due to a late closing rotation that ended just before the normal deadline for submitting the exercise notice to the Exchange. These provisions will also promote just and equitable principles of trade because public customers or Exchange members should not have to make exercise decisions based on incomplete information about the index value (in the case of index options) and should have time to process their exercise decisions (in the case of equity options). The Commission also notes that the Exchange represents that its President or his designee will only exercise this authority in unusual circumstances, and that extensions in the applicable exercise deadline or cutoff time will not occur often. The Exchange further represents that the Exchange's President or his designee will in no event extend the applicable exercise deadline or cut-off time beyond the time required by the OCC for submission of exercise instructions by its clearing members.

D. Documentation Evidencing Timely Exercise Determinations Made Prior to a Trading Delay, Halt, or Suspension

Finally, the Commission believes that it is reasonable for the Exchange to no longer ordinarily accept internal exercise memoranda prepared by CBOE members as evidence of timely exercise determinations of American-style, cash-settled (standardized, or FLEX) index options made prior to a trading delay, halt, or suspension. The Commission believes that by allowing only objective evidence to indicate timely exercise determinations, the proposal promotes the ability of the Exchange to verify the authenticity of the exercise documents.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–99–03) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10262 Filed 4–24–00; 8:45 am]

BILLING CODE 8010–01–M

[26] *See* Securities Exchange Act Release No. 40334 (August 18, 1998), 63 FR 45275 (August 25, 1998) (SR–CBOE–98–34).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42704; File No. SR–DTC–00–04]

Self-Regulatory Organizations; the Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Profile Modification Feature of the Direct Registration System

April 19, 2000.

On February 28, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act or 1934 (''Act''),[1] a proposed rule change. Notice of the proposal was published in the **Federal Register** on March 15, 2000.[2] The Commission received five comment letters in response to the proposed rule change.[3] The Commission is publishing this order to grant approval of the proposed rule change.

I. Description

The Profile Modification System (''Profile''), a feature of the Direct Registration System (''DRS''), is an electronic messaging system that allows a DTC participant (*i.e.*, generally a broker-dealer) or a DRS limited participant (*i.e.*, a transfer agent) [4] to submit instructions to transfer investors' book-entry position from one to the other.[5] The primary purpose of DTC's filing is to modify Profile by incorporating the use of an electronic screen-based indemnification. As described more fully below, the inclusion of the electronic indemnification in Profile enables DTC to make DRS fully operational and available for use by qualified issuers, DTC participants, and DRS limited participants. DTC's filing also establishes the procedures governing the use of Profile in the Participant Terminal System (''PTS'') [6] and specifies the fees connected with the use of Profile.

A. Background

Since 1996 when the New York Stock Exchange, Inc. (''NYSE'') and the National Association of Securities

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

[2] Securities Exchange Act Release No 42504 (March 8, 2000), 65 FR 14003.

[3] Letters from Stephen J. Dolmatch, Executive Vice President, General Counsel, and Secretary, Chase Mellon Financial Group (April 3, 2000); John Cirrito, Chief Operating Officer and Managing Director, ING Barings (April 5, 2000); William Talbot, Vice President, Pershing (April 5, 2000); Jerome Clair, Chairman, Securities Industry Association (''SIA'') Operations Committee, SIA (April 6, 2000); Larry E. Thompson, Managing Director and Deputy General Counsel, DTC (Apri 7, 2000); Charles V. Rossi, Division President, EquiServe Limited Partnership (April 19, 2000).

[4] For a description of DRS limited participants, refer to Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996).

[5] For a description of DRS and Profile, see Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release relating to DRS); Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) (order approving implementation of the Profile Modification feature of DRS); Securities Exchange Act Release No. 42366 (January 28, 2000), 65 FR 5714 (February 4, 2000) (order approving an interpretation of an existing rule pertaining to DRS).

[6] DTC's procedures governing the use of Profile in PTS are attached as Exhibits 3 and 4 to DTC's filing. Copies of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC. In addition, DTC understands that the DRS Committee is developing guidelines to the use of DRS. When such guidelines have been approved by the DRS Committee, DTC will work with the DRS Committee to implement the guidelines. Members of the DRS Committee include representatives from the American Society of Corporate Secretaries, Corporate Transfer Association, Securities Industry Association, Securities Transfer Association, and DTC.

Dealers, Inc. modified their listing criteria to permit listed companies to issue securities in book entry using DRS in lieu of issuing certificates, there has been a steady growth in securities issued through DRS. There has also been a corresponding increase in the movement of share positions from investors' accounts at DRS limited participants to DTC participants' accounts at DTC.[7] In connection with the movement of DRS share positions, DRS limited participants have been processing thousands of hard copy transaction advices [8] or other written instructions to transfer DRS positions.

There is substantial evidence to indicate that this paper-based processing of transaction advices, which is currently required by DRS limited participants to transfer DRS position, is labor intensive and slow. Without Profile, an investor or a DTC participant acting as an investor's agent, must have the transaction advice medallion signature guaranteed and physically delivered to the DRS limited participant. When the transaction advice is received, the DRS limited participant determines that the signature guarantee is valid and enters the information into its system to process the instructions. Only after the DRS limited participant completes its processing is the investor's DRS position moved to the DTC participant's account at DTC. In addition, since the information contained on the transaction advice is not standardized throughout the industry, investors (or DTC participants sending the transaction advices on behalf of their customers) do not always provide the correct or complete information necessary to process the instruction thereby further slowing the transfer of DRS account positions.

The DRS Committee, the industry committee responsible for designing DRS, has been working through the various legal and processing issues in an effort to reduce the handling of hard copy documents associated with processing transactions advices and to develop an electronic indemnification mechanism to replace the physical signature guarantees.[9] In January 1999, the DRS Committee approved Profile's system specifications, which included a screen-based indemnification, and authorized DTC to proceed with the development of Profile.[10] DTC completed production on Profile on June 15, 1999.[11]

After DTC began development of Profile according to the agreed upon specifications, issues arose as to whether the screen-based indemnification provided sufficient protection to address perceived risks and liabilities to investors, DRS limited participants, and issuers. Some members of the DRS Committee contended that a more comprehensive indemnification agreement between DTC participants and DRS limited participants was needed. In addition, these members asserted that guarantors (*i.e.*, the initiators of the instruction to move an investor's position) should subscribe to surety bond coverage that would specifically cover DRS transactions in the event that a guarantor refused or failed to satisfy a claim that the transfer was unauthorized.[12] Since physical signature guarantees are administered through industry programs such as the Securities Transfer Association Medallion Program (''STAMP'') and the NYSE's Medallion Stamp Program (''MSP''), several DRS Committee members suggested that these industry groups should extend their current programs to include the use of an indemnification agreement and surety bond to cover the use of an electronic indemnification in DRS transactions.

Over the past year the DRS Committee, in coordination with STAMP and MSP, has attempted to reach consensus on an indemnification program. To date, the parties have not reached consensus. In the meantime, issuers have continued to put additional investors into DRS even though Profile remained inoperable due to the lack of an electronic indemnification.

B. DTD's Profile and Electronic Indemnification

In making Profile operational, DTC will require the use of a screen-based indemnification until such time as an electronic guarantee program is established. Under the rule change, a DTC participant and DRS limited participant will submit investors' instructions electronically via DTC's PTS or via the Computer-to-Computer Facility (''CCF''). Profile will provide the same information set out in the transaction advice by requiring a DTC participant or DRS limited participant to enter specific information, including the investor's account registration, tax I.D. number, DRS account number with the DRS limited participant, CUSIP number, and number of shares to be transferred. DTC participants and DRS limited participants will use the information provided through Profile to ensure that beneficial ownership does not change when there is a share movement.

A DTC participant submitting a Profile instruction to a DRS limited participant will agree to a PTS screen indemnity substantially in the following form:

(1) Participant represents that it has authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's record or (b) a third party who has actual authority to act on behalf of the registered owner on participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete;

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

Upon receipt of an instruction, a DRS limited participant will indicate whether the transaction is approved or rejected. For rejected instructions, the DRS limited participant will supply reject codes that will indicate the reason for rejecting. When the DRS limited participant approves a DTC participant's instruction for the movement of an

[7] Movements of share positions within DTC from DRS limited participants' accounts to DTC participants' accounts is done through the use of ''free deliver orders.'' In 1999, the volume of DRS-related free deliver orders exceeded 183,000 transactions. In comparison, the volume of DRS-related free deliver orders in 1998 was 87,148 transactions.

[8] Transaction advices are statements indicating account positions or activity. DRS limited participants generally require the transaction advices before they will move a DRS position from the books of the issuer to the account of a DTC participant at DTC.

[9] *Supra* note 6.

[10] DRS Committee meeting minutes of January 12, 1999. Minutes of the DRS Committee meetings are available from DTC.

[11] DTC filed and the Commission approved a rule change that attempted to resolve an impasse that had developed between DTC participants and DRS limited participants regarding the use of Profile, including the use of an electronic indemnification. The rule change barred DRS limited participants from making additional securities issues eligible for DRS until after January 15, 2000, if DRS limited participant had not agreed to implement Profile by September 15, 1999. Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162. DTC subsequently filed an interpretation of its rule change to clarify that a DRS limited participant implemented Profile when it entered into a written agreement with DTC stating that it would continue to use DRS, including Profile, when Profile became operational. Securities Exchange Act Release No. 42366 (January 28, 2000), 65 Fr 5714 (February 4, 2000).

[12] These members of the DRS Committee also raised several other concerns, including such things as the need for a formal claims process and an education program.

investor's share position, the DRS limited participant will move the investor's position from a position on the DRS limited participant's books to a position in the DTC participant's account at DTC. Using Profile, DTC participants can view the status of all transaction instructions submitted to DRS limited participants for processing. Profile will provide an aging status of up to thirty business days for all instructions that are neither accepted nor rejected (*i.e.*, open items) in an effort to avoid duplicate submissions. After thirty business days, these instructions will be deleted.

A DRS limited participant may also submit an instruction for the movement of an investor's position from the investor's broker-dealer's DTC participant account to a position on its books. For rejected instructions, the DRS limited participant will supply reject codes that will indicate the reason for rejecting. If the DTC participant approves the instruction, then the DTC participant must submit a withdrawal by transfer (''WT'') instruction which will move the investor's position from the DTC participant's account at DTC to an account at the DRS limited participant.[13]

A DRS limited participant submitting an instruction to a DTC participant will agree to a PTS screen-based indemnity substantially in the following form:

(1) Transfer agent represents that it has authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or (b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete;

(2) Transfer agent indemnifies the participant and its officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

In the event that an electronic guarantee program is established, Profile will be able to accommodate it. Until an electronic guarantee program is established, DTC's procedures will reflect the existence of the screen-based indemnity. DTC will not operate a screen-based indemnification and an electronic medallion program simultaneously.

The fees DTC will charge for DRS transactions are the fees agreed upon by the DRS Committee.[14] DTC will charge DTC participants a fee of 31 cents per submitted instruction and charge the receiving DRS limited participant a fee of 9 cents for that instruction.[15] DRS limited participants will be charged 40 cents for each instruction submitted.[16]

II. Comment Letters

The Commission received six comment letters.[17] The SIA, Pershing, and ING Barings support the implementation of Profile and the use of a screen-based electronic medallion until such time as the industry reaches consensus on an alternative electronic guarantee program. These commenters believe Profile will offer investors a secure and efficient electronic facility that will enable them to move their securities in a secure, timely, and efficient manner. The SIA also added that Profile would offer an electronic facility similar to that used for many years by institutional investors and by the mutual fund industry to move securities. Furthermore, the SIA and ING Barings believes that the use of Profile will be critical to further compress the settlement cycle.

ChaseMellon Financial Group and EquiServe Limited Partnership, both commercial transfer agents, support DRS but raised concerns regarding Profile and the use of an electronic indemnification. The commenters contend that Profile will not offer the protection against unauthorized transfers and potential losses arising from such transfers. Both transfer agents note that in existing signature guarantee programs the transfer agent receives physical evidence of the investor's authorization of the transfer, but in DRS transfers using Profile, the transfer agent will transfer the investor's position based solely on an electronic instruction from the broker-dealer. In an effort to resolve these perceived deficiencies, the commenters offer several suggestions including (1) a requirement that guarantors (*i.e.*, either the DTC participant or the DRS limited participant that sends the instruction to move an investor's position to its books) obtain a surety bond similar to those used in current signature guarantee programs and (2) changes in the language used in the screen-based language to provide additional protection for transfer agents. In addition, ChaseMellon believes that the fee structure should be changed to establish parity between the fees paid by DRS limited participants and those paid by DTC participants and should require the initiator of the instruction to pay for all DTC fees.[18] EquiServe also suggested that the claims procedures be in place before Profile is made available.

III. Discussion

Section 17A(b)(3)(F) of the Act[19] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[20] As set forth below, the Commission believes that DTC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F).[21]

The primary purpose of Profile is to provide a prompt and accurate mechanism for the transfer of an investor's book-entry position between the investor's broker-dealer and the transfer agent for the issue. Investors desiring to transfer their positions will not longer be subject to a multi-step,

[13] In such a situation, the DTC participant will use an ''S'' indicator with the WT instruction that will instruct the DRS limited participant to establish a DRS account for the investor.

[14] See DRS Committee meeting minutes of January 29, 1998, and October 16, 1998.

[15] The 9-cent fee is to cover DTC's cost of developing a CCF linkage between DTC and DRS limited participants. Securities Transfer Association representatives on the DRS Committee requested the development of a CCF linkage.

[16] There is no CCF development fee when a DRS limited participant submits an instruction to move an investor's position from the books of a broker-dealer to its own books, because the SIA representatives on the DRS Committee have not requested and DTC has not built a CCF linkage between DTC and DTC participants. In addition, DTC participants will be charged the fee for WTs when a share position is moved to a DRS limited participant's records.

[17] *Supra* note 3.

[18] In its letter responding to ChaseMellon's comments, DTC indicated that the DRS Committee agreed upon the fees DTC will charge for instructions through Profile. DTC also indicated the screen-based indemnification language that DTC will use in Profile modeled on the language agreed upon by the DRS Committee. Finally DTC noted that its procedures will accommodate an electronic guarantee program if such a program is established.

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] The prompt and accurate clearance and settlement of securities transactions includes the transfer of record ownership of securities. 15 U.S.C. 78q–1(a)(1)(A).

[21] The Commission also notes that when enacting Section 17A, Congress set forth its findings that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, is necessary for the protection of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors; and that new data processing and communication techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. 15 U.S.C. 78q–1(a)(1)(A), (B), and (C).

paper-based process that is labor intensive and slow and that often results in transfer delays. Using Profile, DTC participants and DRS limited participants will send automated and standardized instructions which should reduce the possibility that an instruction to move an investor's position will contain erroneous or incomplete information. Because Profile will eliminate the need for paper in transferring an investor's positions, Profile should also greatly reduce the possibility that an investor's instructions to move her position will be misplaced or lost.

In order to implement a more efficient manner in which to move an investor's position than is currently available using the paper-based DRS processing, DTC has decided to make Profile fully operational by using a screen-based indemnification until on an electronic guarantee program is established. Although some transfer agents and issuers do not believe that the screen-based indemnification provides sufficient protection against fraudulent transfers or potential losses resulting from such transfers, that view does not appear to be held by all transfer agents, issuers, or broker-dealers. Many industry participants believe that Profile using the screen-based indemnification provides sufficient protection and have expressed their intention to use it.

As the Commission has stated in prior orders dealing with DRS and Profile, participation in DRS by issuers and DRS limited participants is not mandatory.[22] Issues regarding risks and liabilities to issuers or DRS limited participants are internal business issues and should be addressed prior to an issuer's, transfer agent's, or DRS limited participant's decision to participate or participate further in DRS.

V. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal to modify Profile to include an electronic screen-based indemnification 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 N. SR–DTC–00–04) be and hereby is approved.

[22] *Supra* note 5.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10264 Filed 4–24–00; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42694; File No. SR–NYSE–00–13]

Self-Regulatory Organizations: Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program for Amendments to Exchange Rule 123B Until April 26, 2000

April 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 and to grant accelerated approval to the proposed rule change.

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

The Exchange requests that the pilot program for commission-free execution of orders received by specialists through the SuperDOT System, and language clarifying the status of an order that is cancelled and replaced, be extended for 60 days.

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, 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

On October 4, 1999, the Exchange filed a proposed rule change with the Commission consisting of three amendments to Exchange Rule 123b. One amendment provided for the commission-free execution of all orders received by the Exchange specialists through the SuperDOT system if such orders were executed within five minutes. A second amendment added language to Rule 123B to clarify that if an order placed with the specialist is cancelled and replaced, the replacement order is considered a new order for purposes of the Rule.[3] The Commission approved these changes as a pilot program through February 26, 2000.

The Exchange requests that the pilot be extended for 60 days as it relates to the commission-free policy and the provision in Rule 123B relating to cancelled and replaced orders. The Exchange instituted the pricing initiative of commission-free executions, in conjunction with the Exchange's specialist community, effective with trades executed on December 29, 1999. To date, the procedure has worked well. The Exchange has not received any complaints concerning this policy. As to that portion of Rule 123B on cancelled and replaced orders, the Exchange is not aware of any problems associated with the clarifying language.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that the Exchange have rules that are designed to promote just and equitable principles of trade, that facilitate transactions in securities, that remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the basis under the Act for

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

[2] 17 CFR 240.19b–4.

[3] The third proposed change to Rule 123B related to reports of executions within two minutes for orders stopped by specialists. The Exchange is not requesting extension of this provision at this time. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated February 25, 2000. The Commission published notice of these two amendments to Rule 123B. *See* Exchange Act Release No. 42572 (March 23, 2000), 65 FR 17325 (March 31, 2000) (SR–NYSE–00–09).

[4] 15 U.S.C. 78f(b)(5).