On December 19, 2000, the Commission approved SR–CHX–00–37,[4] implementing SuperMax 2000, the CHX's new price improvement program, which will govern price improvement of all orders for issues quoting in decimal price increments. SuperMAX 2000 was designed to afford specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than alternatives that existed previously at the CHX. SuperMAX 2000 originally did not by its terms permit price improvement of odd lot orders.

To remain competitive, the CHX proposes that its specialists be permitted (but not obligated) to offer price improvement to odd lot orders. The proposal would permit odd lot dealers to provide price improvement of $.01 or better, in the case of odd lot orders received when the national best bid and offer spread is $.05 or larger.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission believes that the proposed rule change may increase the opportunities for price improvement by allowing the Exchange's odd lot dealers to offer price improvement of odd lot orders, resulting in a benefit to investors. Additionally, the Commission believes the proposal is reasonable because it contemplates equality among order-sending firms and their customers by mandating that price improvement be provided by CHX odd lot dealers on an issue-by-issue basis, rather than allowing odd lot dealers to distinguish among order-sending firms when designating price improvement levels.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,[7] the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, given the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)[8] in particular.

In is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2001–06), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9963 Filed 4–20–01; 8:45 am]

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[4] Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000).

[5] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* footnote 3, *supra.*

[8] 15 U.S.C. 78f(b)(5).

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

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44189; File No. SR–DTC–00–10]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Combination of The Depository Trust Company's TradeSuite Institutional Trade Processing Services with Thomson Financial ESG's Institutional Trade Processing Services

April 17, 2001.

On August 22, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on January 31, 2001, February 20, 2001, February 23, 2001, and March 16, 2001, amended[1] a proposed rule change (File No. SR–DTC–00–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on November 17, 2000.[3] The Commission received thirty-six comment letters in response to the proposed rule change.[4] For the reasons

[1] The amendments clarify the proposed rule change and notice is not necessary.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 43541 (November 9, 2000), 65 FR 69591.

[4] Letters from Jerome J. Clair, Chairman, Securities Industry Association (''SIA'') Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear, Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); Richard B. Nesson, Managing Director and General Counsel, The Depository Trust & Clearing Corporation (''DTCC'') (November 20, 2000); Burkhard Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, Global Straight Through Processing AG (''GSTP AG'') (December 18, 2000); Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (''TLX'') (December 18, 2000); and John P. Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000); J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Nomura Securities Co., Ltd. (December 29, 2000); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 12, 2001); Bradley I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001); Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001); Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001); and Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

Copies of the comment letters and a copy of the Summary of Comments can be obtained through the Commission's Public Reference Room (File No. DTC–00–10).

discussed below, the Commission is approving the proposed rule change.

I. Description of DTC's Proposed Rule Change

The proposed rule change seeks Commission approval of DTC's proposal to combine its TradeSuite family of institutional trade processing services (''TradeSuite Business'') with the institutional trade processing services offered by Thomson Financial ESG (''ESG Business'')[5] in a proposed joint venture, Omgeo,[6] between DTCC,[7] Thomson Financial Inc.,[8] and Interavia, A.G. (''Interavia'').[9] The proposal is as follows:

- After receipt of all necessary regulatory approvals, DTC will transfer existing assets of the TradeSuite Business, Thomson Financial Inc. will transfer existing U.S. assets of the ESG Business, and Interavia will transfer existing non-U.S. assets of the ESG Business to Omgeo.
- Certain support functions and other services will be provided to Omgeo by DTCC, DTC, and Thomson Financial Inc. Pursuant to service contracts.
- Omgeo will provide through its wholly owned subsidiary, Global Joint Venture Matching services-US, LLC (''GJVMS''),[10] which has applied for an exemption from registration as a clearing agency,[11] post-trade, presettlement related services, including execution notification, allocation, electronic trade confirmation (''ETC''), Central Matching Service,[12] operational and standing databases (*i.e.,* trade enrichment), and communications between trading parties and their settlement agents.
- Omgeo's governance arrangements will be designed to assure that the ''U.S. regulated aspects'' of Omgeo's activities,[13] including the pricing structure for the fees to be charged to users of such services, will be subject to the control of users.
- Omgeo will be operated on a for-profit basis. Fifty percent of any profits not retained by Omgeo will be distributed to DTCC.[14]

As trading volumes have continued their dramatic upward climb over the past decade, it has become clear that the current system for post-trade presettlement processing institutional trades needs major changes. Operations professionals in both domestic and foreign securities markets have concluded that the current sequential and fragmented electronic trade confirmation/affirmation model must be made more efficient and that connectivity to electronic systems by a much broader spectrum of industry participants must be encouraged so that institutional trades can be processed efficiently and settled on time.

According to DTC, the combination of the TradeSuite Business[15] and ESG Business[16] and the linking of their customers could produce immediate benefits. For example, DTC estimates that 12% of institutional trades processed in TradeSuite are affirmed on trade date and that only 87% are affirmed by noon of T+2. By using allocations processed on the ESG Business' OASYS system in the TradeSuite Business' TradeMatch, a much larger percentage of trades could be affirmed earlier in the settlement cycle. Earlier affirmation would allow broker-dealers and their institutional customers to identify and resolve the exceptions and potential fails much earlier in the settlement cycle.

In addition, the DTC resources to be transferred to Omgeo or provided to Omgeo pursuant to a services contract are for the most part resources that are already fully dedicated to the TradeSuite Business. Therefore, implementation of the subject proposal will not deprive DTC of resources needed for it to provide its other services in a safe and sound manner. Furthermore, all existing services of the TradeSuite and ESG Businesses will continue uninterrupted during and after the transfer to Omgeo.

II. Comment Letters

The Commission received thirty-six comment letters in response to the notice of filing of GJVMS's application.[17] Eleven of the comment letters praised GJVMS's timing in light of the industry need for straight-through processing and a shortened settlement cycle to reduce settlement risks and stressed that there remain no more meaningful efficiencies to be drawn

[5] Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (March 16, 2001).

[6] As originally filed, Omgeo was to be called the Global Joint Venture. Letter amending DTC–00–10 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

Omgeo will be a manager managed limited liability company which is managed by its board of managers. The Omgeo board of managers will consist of nine voting managers and one non-voting manager. Five of the voting managers will be industry representatives, three of which will be nominees of DTCC, and two will be nominees of Thomson. Of the remaining four voting managers, two of the voting managers will be DTCC representatives, and two will be representatives of Thomson.

As originally filed, DTC–00–10 set forth that the board of managers was to be composed of seven voting managers and one non-voting manager. Three of the voting managers were to be industry board representatives with two nominated by DTCC and one nominated by Thomson. Letter amending DTC–00–10 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

[7] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation (''NSCC'').

[8] Thomson Information Services Inc. has been renamed Thomson Financial Inc. Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (February 23, 2001).

[9] Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

[10] GJVMS is a member managed limited liability company and as such it will be managed by its only member, Omgeo.

[11] The Commission has stated that matching is a clearing agency function that requires an entity that performs matching to register as a clearing agency or obtain an exemption from registration as a clearing agency. However, an entity that only provides a matching services does not have to be subject to the full range of clearing agency regulation. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. In 1999, the Commission granted Thomson an exemption from clearing agency registration to provide matching services. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. Concurrent with this order, the Commission is issuing an order granting GJVMS an exemption from registration as a clearing agency so that it can provide a Central Matching Service. Securities Exchange Act Release Nos. 44188 (April 17, 2001) [File No. 600–32] (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600–32] (notice of filing of application for exemption from clearing agency registration).

[12] ''Central Matching Service,'' as such term is used in this order, means an electronic service to centrally match trade information between a broker-dealer and its institutional customer (so long as one or both of such parties is a U.S. person) relating to transactions in securities issued by a U.S. issuer, regardless of where the transactions are settled.

[13] The term ''U.S. regulated aspects'' of Omgeo's activities refers to any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a ''qualified vendor'' as defined in New York Stock Exchange Rule 387(a)(5), in National Association of Securities Dealers Rule 11860(a)(5), and in similar rules of other self-regulatory organizations. Such activities, therefore, would include the Omgeo's proposed ETC and centralized matching services for institutional transactions (so long as one or both of such parties is a U.S. person) in securities issued by a U.S. issuer, regardless of where the transactions are settled.

[14] Profits distributed to DTCC that are not retained by DTCC will be available, if so determined by DTCC's Board of Directors, for rebate to the participants of DTCC's wholly-owned subsidiaries, DTC and NSCC.

[15] Generally, the TradeSuite Business consists of the following products: TradeMessage, TradeMatch, TradeSettle, and TradeHub.

[16] Generally, the ESG Business consists of the following products: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

[17] Most comment letters were commenting on this proposed rule change and GJVMS's application for exemption from clearing agency registration.

from the current settlement system.[18] In addition, these letters applauded GJVMS's intention to interoperate with other competitors and pledged support in furtherance of GJVMS's progress.

Seventeen comment letters urged the Commission to ensure that no entity improperly gains a monopoly on any aspect of trade processing.[19] Those letters requested that before the Commission grants an exemption to GJVMS, the Commission take steps to safeguard interoperability and competition among service providers.

GSTP AG expressed its concern that combining elements of DTC, an industry utility, with a commercial entity, Thomson Financial Inc., could limit access to DTC by competitors and could give GJVMS an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of GJVMS's clients by DTC.[20]

In a response to the GSTP AG's comment letters and other comment letters raising similar issues, DTCC stated that (1) DTC, as a registered clearing agency, is prohibited from unfairly discriminating among users, (2) interoperability is a complex issue that must be solved through participation of the SIA, the Commission, and competing providers, (3) access to DTC's settlement system and the prices it charges will not be affected by GJVMS, (4) GJVMS will not use intellectual property concerns to interfere with access to DTC, (5) standardized access to DTC will still be available as it has been for the past twenty-five years, and (6) GJVMS will have its own sales force separate from DTC.[21]

GSTP AG responded to DTCC's letter and stated that DTC must clearly explain which functions will continue to be performed exclusively by DTC and which will be performed by GJVMS.[22] In particular, GSTP AG stated that DTCC's response left unclear whether DTC will consider GJVMS to be a vendor at the same level as GSTP AG or any other central matching service, or whether DTC will accord to GJVMS preferential treatment. Also, GSTP AG stated that DTCC failed to address how communications with settlement agents will occur. GSTP AG said that fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC, not GJVMS, continue to provide this service. Furthermore, GSTP AG expressed its concern that DTCC did not clarify interoperability and whether DTC's customer service will show preferential treatment to clients of GJVMS.

DTCC responded to GSTP AG's January 3, 2001, letter by stating that the GSTP AG comment letter reflects confusion by GSTP AG about the functions to be performed by GJVMS.[23] In addition, DTCC stated that DTC would limit its activities to following the settlement instructions authorized by its participants whether those instructions were submitted by GJVMS, GSTP AG, or any other Central Matching Service or vendor. Finally, DTCC stated that it expects that the concerns expressed by GSTP AG about interoperability and the relationship between DTC and GJVMS will be fully addressed in the Commission's approval orders.

A comment by TLX Trading Network expressed concern about the post-merger availability and affordability of TradeMessage, SID, and ALERT to vendors.[24] DTCC stated in response that access to TradeMessage, SID, and ALERT will not be hampered by GJVMS.[25] DTCC asserted that the same procedure for settlement instructions will continue after the formation of GJVMS. Vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of GJVMS. As is done today, DTC will charge fees for such services to the participants on whose behalf the vendors are acting, with no additional charges to the vendors. In addition, DTCC stated in its letter that the same open access by customers' vendors to SID will continue with respect to the unified database after GJVMS commences operations.

Sungard expressed concern that moving TradeSuite and SID to GJVMS will require competitors either to adhere to GJVMS's protocols and presumably higher fees for access or to incur the expense of building redundant databases.[26] DTCC responded that the Sungard letter appears to raise the same issues that were previously addressed in DTCC's January 4 and 12, 2001, letters responding to the TLX and GSTP AG letters.[27]

III. Discussion

In Section 17A, Congress made several findings with respect to the national system for the clearance and settlement of securities transactions.[28] Among these, Congress found that: the prompt and accurate clearance and settlement of securities transactions is necessary for the protection of investors and persons facilitating transactions by an acting on behalf of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors; and new data processing and communications techniques create the opportunity for more efficient, effective,

[18] Jerome J. Clair, Chairman, Securities Industry Association Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); and John P. Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000).

[19] J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Normura Securities Co., Ltd. (December 29, 2000); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); Bradley I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); and Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001).

[20] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001).

[21] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 12, 2001).

[22] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief, Executive Officer, GSTP AG (January 30, 2001).

[23] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[24] Letter from Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (''TLX'') (December 18, 2000).

[25] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001).

[26] Letter from Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001).

[27] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[28] 15 U.S.C. 78q–1(a)1).

and safe procedures for clearance and settlement.

The Commission finds that the approval of DTC's rule change for the transfer and combining of its TradeSuite Business with Thomson's ESG Business is consistent with these findings. As set forth above, the current processing system for the confirmation/affirmation of institutional securities transactions is showing signs of inadequacy as trading volumes continue to increase and needs to undergo major changes. By combining DTC's TradeSuite Business with Thomson ESG Business, a major step will be taken with respect to a more efficient and effective post-trade presettlement procession of institutional trades. Among other benefits, the combination should provide a means whereby a larger percentage of trades will be affirmed earlier in the settlement cycle which should allow broker-dealers and their institutional customers to identify and resolve exceptions and potential fails earlier. In addition, the combination of TradeSuite's and ESG's systems development expertise and other resources should facilitate the move to straight-through processing, a shorter settlement cycle, and improved management of rising trading volume.

The Commission also finds that the competition concerns raised by some commenters about the services of TradeSuite being provided through GJVMS are adequately addressed in the terms of the Commission's order granting GJVMS an exemption from clearing agency registration. Furthermore, DTC has represented that it shall not favor any single provider of Central Matching Services, including GJVMS, over any other Central Matching Services in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders.[29]

IV. 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 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–00–10) be and hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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[29] Letter amending DTC–00–10 from Richard B. Nesson, Managing Director and General Counsel, DTCC (February 20, 2001).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44181; File No. SR–MSRB–2001–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Providing Guidance on Specific Electronic Primary Offering and Trading Systems and Electronic Recordkeeping

April 16, 2001.

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 27, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSRB. The SEC 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 proposed rule change consists of interpretations on the application of (i) rules G–32 and G–36 to new issues offerings through auction procedures; (ii) G–8, G–12 and G–14 to specific electronic trading systems; and (iii) rules G–8 and G–9 to electronic recordkeeping. The text of the proposed rule change is set forth below in *italics.*

Interpretation on the Application of Rules G–32 and G–36 to New Issue Offerings Through Auction Procedures

Traditionally, brokers, dealers and municipal securities dealers (''dealers'') have underwritten new issue municipal securities through syndicates in which one dealer serves as the managing underwriter. In some cases, a single dealer may serve as the sole underwriter for a new issue. Typically, these underwritings are effected on an ''all-or none'' basis, meaning that the underwriters bid on the entire new issue. In addition, new issues are occasionally sold to two or more underwriters that have not formed a syndicate but instead each underwriter has purchased a separate portion of the new issue (in effect, each underwriter serving as the sole underwriter for its respective portion of the new issue).

In the primary market in recent years, some issuers have issued their new offerings through an electronic ''auction'' process that permits the taking of bids from both dealers and investors directly. In some cases, these bids may be taken on other than an all-or-none basis, with bidders making separate bids on each maturity of a new issue. The issuer may engage a dealer as an auction agent to conduct the auction process on its behalf. In addition, to effectuate the transfer of the securities from the issuer to the winning bidders and for certain other purposes connected with the auction process, the issuer may engage a dealer to serve in the role of settlement agent or in some other intermediary role.

Although the Municipal Securities Rulemaking Board (the ''MSRB'') has not examined all forms that these auction agent, settlement agent or other intermediary roles (collectively referred to as ''dealer-intermediaries'') may take, it believes that in most cases such dealer-intermediary is effecting a transaction between the issuer and each of the winning bidders. The MSRB also believes that in many cases such dealer-intermediary may be acting as an underwriter, as such term is defined in Rule 15c2–12(f)(8) under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'').[3] A dealer-intermediary that is effecting transactions in connection with such an auction process has certain obligations under rule G–32. If it is also an underwriter with respect to an offering, it has certain additional obligations under rules G–32 and G–36.

Application of Rule G–32, on Disclosures in Connection With New Issues

Rule G–32(a) generally requires that any dealer (i.e., not just the underwriter) selling municipal securities to a customer during the issue's underwriting period must deliver the

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

[2] 17 CFR 240.19b–4.

[3] *Questions regarding whether an entity acting in an intermediary role is effecting a transaction or whether a dealer acting in such an intermediary role for a particular primary offering of municipal securities would constitute an underwriter should be addressed to staff of the Securities and Exchange Commission.*