

allowing closing only transactions. Nonetheless, the listing exchange still will typically list the improper series for a substantial period of time (often until expiration) because there likely will be open interest in that series. The listing exchange(s), in these circumstances, will be the only exchange(s) that is able to close out the open positions because it is the only exchange(s) where the series is listed. The Exchange has noted circumstances in the recent past where its trading crowds have lost member firm order flow, not only for the series which were improperly added by the listing exchange, but also for the entire class. The refusal of an exchange to violate its own rules to add improperly a series can have lasting effects as an order flow firm may reward those exchanges that were willing to list the series that its customers were interested in trading.

## 2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes the proposed rule change, as amended, is consistent with section 6(b) Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, because it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change, as amended, will impose any 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 were solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-29 and should be submitted by September 11, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44705; File No. SR-CHX-2001-14]

### Self Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Eliminate the "E-Session" After-Hours Trading Session

August 15, 2001.

On July 2, 2001, The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to delete CHX Article XXA, which governed an after-hours trading session (the "E-Session") conducted by the Exchange, and to eliminate other rule references to the E-Session.

The proposed rule change was published for comment in the **Federal Register** on July 16, 2001.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it will allow the CHX to terminate its after-hours trading session, which has not sustained the increases in order flow that the Exchange anticipated when it implemented the E-Session in early 2000.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CHX-2001-14) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44696; File No. SR-DTC-2001-07]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Movement of All DRS Issues Into Profile and the Establishment of the "S" Position as the Default Position

August 14, 2001.

On May 25, 2001, The Depository Trust Company ("DTC") filed with the

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

<sup>3</sup> See Securities Exchange Act Release No. 44534 (July 10, 2001), 66 FR 37081.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78f(b).

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-2001-07) 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 June 29, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## I. Description

In 1996, the New York Stock Exchange, Inc. modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in the Direct Registration System ("DRS").<sup>3</sup> Since then, there has been a steady growth in securities issued through DRS, primarily through corporate action distributions and initial public offerings.

In January 1999, the DRS Committee<sup>4</sup> approved system specifications for the Profile Modification System ("Profile") and authorized DTC to proceed with the development of Profile.<sup>5</sup> DTC completed production of Profile on June 15, 1999, and it has been available for use since then. Profile allows a DTC participant (*i.e.*, a broker-dealer) to submit electronically to a transfer agent who is a "DRS limited participant" at DTC an investor's instruction that the investor's share positions be moved from the investor's DRS account with the limited participant to the investor's broker-dealer's participant account at DTC ("Electronic Participant Instruction").<sup>6</sup> Similarly, a DRS limited participant using Profile may submit an investor's instruction for the movement of the investor's share positions from the investor's broker-dealer's participant account at DTC to the investor's DRS

account with the DRS limited participant ("Electronic Limited Participant Instruction").

At the time that the Commission approved DTC's proposed rule change establishing Profile, it was contemplated that an electronic medallion program would be developed by a party that currently administers a medallion program in connection with transfers of physical certificates and that such an electronic medallion program would become part of Profile.<sup>7</sup> At a meeting held on April 20, 2000, that included representatives of the Securities Transfer Association, the Corporate Transfer Association, the American Society of Corporate Secretaries, the Securities Industry Association, DTC, and the New York Stock Exchange, it was decided that because of its role in DRS, DTC would be a logical party to administer a program that would provide many of the benefits of an electronic medallion program.

As a result, DTC proposed and the Commission approved the DTC Profile Surety Program ("PSP").<sup>8</sup> PSP is open only to DTC participants or DTC DRS limited participants. DTC is the program administrator of PSP. Under PSP, in order to be able to send an Electronic Instruction, an entity is required to have a surety bond issued by either the surety bond company picked by DTC as the administrator of PSP or another surety company. Any surety bond issued by another surety bond company must have the same terms and conditions established by DTC for the PSP. For example, each surety bond must have a limit of \$2 million per occurrence with an aggregate limit of \$6 million. The PSP went into operation on May 3, 2001, and currently 35 broker-dealers and transfer agents have joined the program.

With PSP in place, the DRS Committee at a meeting on April 12, 2001, agreed to take steps to migrate into Profile all securities issues currently in DRS but not in Profile. As a result, DTC filed this rule filing which requires that all security issues which are presently DRS eligible but which are not eligible for processing in Profile must be made eligible for processing in Profile by November 1, 2001.<sup>9</sup> Also beginning on November 1, 2001, a

broker-dealer's request for a withdrawal by transfer (W.T.)<sup>10</sup> for a DRS eligible issue which does not specifically request a certificate will automatically default to a request for a DRS book-entry position (an "S" position) on the books of the issuer or its transfer agent.

## II. Discussion

Section 17A(b)(3)(F)<sup>11</sup> of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>12</sup> For the reasons set forth below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) of the Act.

As the Commission has stated in previous orders concerning DRS, the primary purpose of Profile is to provide a more 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 than the multistep, paper-based processing that is used when Profile is not used. The migration of all DRS issues into Profile processing, with the attendant PSP, should ensure that all investors holding securities positions in DRS will be able to transfer their shares back and forth between their broker-dealers and the transfer agents for the issuers in a prompt and accurate manner.

In addition, the establishment of "S" position as DTC's W.T. default should increase the number of investors who are able to more efficiently move their securities through DRS by reducing the number of instances when an investor receives a certificate not because the investor requested a certificate but because the investor's broker-dealer fails to elect either a certificate or a DRS position on its W.T. request.

As set forth above, the Commission finds that DTC's rule change (1) mandating that all DRS issues must be able to be processed through Profile and (2) establishing the "S" position as DTC's W.T. default position is consistent with Section 17A(b)(3)(F) of the Act because it should facilitate the more efficient transfer of investors' security positions and thereby should promote the prompt and accurate

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

<sup>2</sup> Securities Exchange Release No. 44471, (June 22, 2001), 66 FR 34728.

<sup>3</sup> Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 [File No. NYSE 96-29]. Similarly, the National Association of Securities Dealers modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue. Securities Exchange Act Release No. 39369, (November 26, 1997), 62 FR 64034 [File No. SR-NASD-97-51].

<sup>4</sup> The DRS Committee is comprised of representatives from DTC and the brokerage and transfer agent communities and is responsible for designing DRS.

<sup>5</sup> For a description of Profile, refer to Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (order approving implementation of Profile).

<sup>6</sup> A broker-dealer can also use Profile to electronically add or update broker-dealer information to a shareholder's record at the transfer agent.

<sup>7</sup> Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242 [File No. SR-DTC-00-04].

<sup>8</sup> Securities Exchange Act Release No. 43586 (November 17, 2000), 65 FR 70745 [File No. SR-DTC-00-09] (order approving PSP).

<sup>9</sup> If a securities issuer whose issue is currently eligible in DRS does not agree to allow processing of its securities through Profile by November 1, 2001, that issuer will be prohibited from establishing any new DRS positions.

<sup>10</sup> W.T. is a service that allows participants to withdraw physical stock or registered bond certificates from DTC and have them registered in a name other than Cede & Co., DTC's nominee name.

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 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).

clearance and settlement of securities transactions.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the act and in particular 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-2001-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44707; File No. 600-30]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

August 15, 2001.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 27, 2001, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") an application requesting that the Commission extend EMCC's temporary registration as a clearing agency.<sup>2</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through March 31, 2002.

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.<sup>3</sup> Since it began operations,

EMCC has added certain sovereign debt to the list of eligible securities that may be cleared and settled at EMCC.<sup>4</sup> EMCC began operating on April 6, 1998, with ten dealer members. As of December 31, 2000, EMCC has 21 members. Since EMCC's inception, it has maintained a comparison rate of over 89% on trade date, reaching 99% prior to settlement date.<sup>5</sup>

On February 13, 1998, pursuant to sections 17A(b) and 19(a)(1) of the Act<sup>6</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>7</sup> the Commission granted EMCC's application for registration as a clearing agency on a temporary basis under August 20, 1999.<sup>8</sup> By subsequent orders dated August 12, 1999,<sup>9</sup> and August 18, 2000,<sup>10</sup> the Commission extended EMCC's registration as a clearing agency through August 20, 2000, and August 31, 2001, respectively.

As part of EMCC's initial temporary registration, the Commission granted EMCC temporary exemption from section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members required by that section.<sup>11</sup> To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because no entity in a category not covered by EMCC's rules desires to be a member.<sup>12</sup> Accordingly, the Commission is extending EMCC's temporary exemption for section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of a credit at Euroclear to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another

member.<sup>13</sup> The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2, and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.<sup>14</sup> Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from section 17A(b)(3)(A) and (F).

Finally, the Government Securities Clearing Corporation ("GSCC"), the Mortgage Backing Securities Clearing Corporation ("MBSCC"), and EMCC are currently taking steps toward integration of GSCC, MBSCC, and EMCC and the acquisition of these clearing agencies by The Depository Trust and Clearing Corporation. Because EMCC's governance and organizational structure will be affected by the acquisition and integration, the Commission is extending EMCC's registration as a clearing agency on a temporary basis through March 31, 2002.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.<sup>15</sup> 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 amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600-30 and should be submitted by September 11, 2001.

*It is therefore ordered*, pursuant to section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600-30) be and hereby is temporarily approved through March 31, 2002.

<sup>13</sup> Registration Order at 8720.

<sup>14</sup> Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(a).

<sup>2</sup> Letter from Merrie Faye Witkin, Assistant Secretary, EMCC (July 26, 2001).

<sup>3</sup> Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the principal and certain interest of these bonds is collateralized by U.S. Treasury zero coupon bonds and other high grade instruments.

<sup>4</sup> Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998) and 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999).

<sup>5</sup> EMCC 2000 Annual Report.

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

<sup>7</sup> 17 CFR 240.17Ab2-1.

<sup>8</sup> Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) ("Registration Order").

<sup>9</sup> Securities Exchange Act Release No. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999).

<sup>10</sup> Securities Exchange Act Release No. 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000).

<sup>11</sup> Registration Order at 8716.

<sup>12</sup> EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.