

www.dtc.org/. The two formats contain the same information and are similar in functionality. At this time, DTC updates such information on its web site on a monthly basis and distributes CD ROM updates on a quarterly basis.⁴

The proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC because the proposed rule change will contribute to the ease of use of DTC's services and PTS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances the utilization of DTC's existing services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with a number of participants. Written comments from participants or others have not been solicited or received on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)⁶ of the Act and Rule 19b-4(f)(1)⁷ promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁴ DTC will provide the Commission with above-mentioned CD ROMs upon issuance each quarter. The Commission has been granted access to those screens on DTC's web site which contain the Service Guides and related information.

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-01 and should be submitted by September 14, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44720; File No. SR-NASD-2001-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Electronic Filings With the Corporate Financing Department

August 17, 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 August 6, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

"Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to amend Rule 2710 of the Conduct Rules of the NASD ("Corporate Financing Rule" or "Rule") to: (i) require electronic filing of certain information with the Corporate Financing Department ("Department") with respect to offerings subject to Rules 2710, 2720, and 2810; (ii) provide that all public offering documents that are filed with the Commission's Electronic Data Gathering and Retrieval System ("EDGAR") will be treated as filed with the Association; and (iii) reduce the number of offering documents that are required to be filed with the Association for members that file manually with the Commission instead of electronically through EDGAR. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

- (a) No Change.
- (b) Filing Requirements
 - (1)–(4) No Change.
 - (5) Documents To Be Filed

(A) The following documents relating to all proposed public offerings of securities *that are required to be filed under subparagraph (b)(4) above* shall be filed *with the Association* for review:

[[A]i] [Five (5)] *Three* copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

[[B]ii] *Three* ([3]) copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which

may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Association's review;

(C) *iii* [Five (5) *Three* copies of each pre- and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three [(3)] copies of any other amended document previously filed pursuant to subparagraphs [(A)] *i* and [(B)] *ii* above, one copy marked to show changes; and [(D)] *iv*] Three [(3)] copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one [(1)] copy of the executed form of the final underwriting documents and any other document submitted to the Association for review.

(B) *All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with the Association.*

(6) Information Required To Be Filed

(A) Any person filing documents [pursuant to subparagraph] *that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through the Association's electronic filing system:*

(i) An estimate of the maximum public offering price;

(ii) An estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons;

(iii) a statement of the association or affiliation with any member of any officer, director or security holder of the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent or more of any class of the issuer's securities, to include:

- a. The identity of the person;
- b. The identity of the member and whether such member is participating in any capacity in the public offering; and
- c. The number of equity securities or the face value of debt securities owned by such person, the date such securities

were acquired, and the price paid for such securities.

(iv) a statement addressing the factors in subparagraphs (c)(4) (C) and (D), where applicable;

(v) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering, which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; [and]

(vi) a detailed explanation and any documents related to the modification of any item of compensation subsequent to the review and approval of such compensation by the Association;³ *and* (vii) *any other information required by the Association's electronic filing system.*

(B) Any person filing documents pursuant to paragraph (b)(5) above shall [file with the Association written notice] *notify the association through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal decision to abandon the offering.*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

Background

The Corporate Financing Rule regulate the underwriting terms and arrangements of public offerings of securities. The Rule requires members

to file multiple copies of documents such as registration statements and other supplemental information with the Corporate Financing Department for most public offerings.

The Department reviews the filings to ensure compliance with NASD Rules, including Rules 2710, 2720, and 2810.⁴ These rules require underwriters and their counsel to submit specified documents to the Department, such as registration statements and other documents describing the underwriting and other arrangements relating to distributions. The Department receives thousands of packages and letters each year in paper form from underwriters and their counsel. Before the Department deployed its electronic filing system, members and their counsel had to send these documents and information by regular mail, courier or fax.

In June 1999, the Department deployed the Corporate Offerings Business Regulatory Analysis System ("COBRA") to permit members and their counsel to file information electronically with the Department and to permit the staff to access any documents filed with the SEC through EDGAR. On April 30, 2001, the Department deployed a Web-based application of the COBRA system. The system consists of an internal software application used by the Department and "Web COBRADesk," a user interface that permits members and their counsel to file offerings from their offices over the Internet.

Members' use of the electronic filing system has greatly facilitated the Department's review of filings. Filings made through Web COBRADesk automatically enter the Department's database for review by the staff. By contrast, for paper filings, the staff must manually enter information into the COBRA system, which delays its review.

Web COBRADesk eliminates the need for members to file registration statements with the Department if the registration statement already has been filed with the SEC using EDGAR. Filers simply provide the Department with an EDGAR accession number when they file the original registration statement, subsequent amendments, and final prospectus. COBRA allows the staff to link to each document for review. Using COBRADesk significantly reduces members' printing and delivery expenses related to Corporate Financing

³ Subparagraphs (i)-(vi) are proposed to be amended in SR-NASD-00-04. See Securities Exchange Act Release Nos. 42619 (April 4, 2000), 65 FR 19409 (April 11, 2000); 44044 (March 6, 2001), 66 FR 14949 (March 14, 2001).

⁴ NASD Rule 2720 regulates corporate public offerings of securities where a participating member may have a conflict of interest. NASD Rule 2810 regulates public offerings of direct participation program securities.

review. In addition, the system provides each filer with a local electronic database of the information it has filed with the Department. NASD Regulation District examiners, Enforcement staff and other internal users also can access the filing information as needed.

Since its implementation, COBRA has improved the efficiency of the review process for electronic filings, decreased review time, and reduced the amount of paper correspondence and documents that members must file with the Department. The system has operated as a faster and more efficient mechanism for communication between filers and NASD Regulation.

Description of Proposed Amendments

NASD Regulation is proposing to amend NASD Rule 2710(b)(6) to require members to file information required by subparagraph (b)(6) with the Department through its electronic filing system. The obligation to file information electronically that is proposed in subparagraph (b)(6) would apply to all offerings subject to the Rule's filing requirements, regardless of whether the offering is exempt from registration with the SEC or is submitted confidentially to the SEC for review.

NASD Regulation also is proposing to adopt new subparagraph (b)(5)(B) of Rule 2710 to provide that all documents that are filed with the SEC through the EDGAR system shall be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR would remain obligated to continue to submit multiple copies of any required documents in paper format. However, NASD Regulation is proposing to amend NASD Rule 2710(b)(5)(A) (ii) and (iii) to reduce the number of required copies of these documents from five to three.

Implementation

NASD Regulation has hosted several training sessions to provide opportunities for members and their counsel to learn how to file offerings using COBRADesk. In addition, certain Department staff members are dedicated to assisting filers when they access and navigate the system. Prior to and following Commission approval of the proposed rule change, the Department will provide additional training sessions and providing continuing support and assistance to members and their counsel who have questions and are unfamiliar with the system.

The NASD will publish a Notice To Members within 30 days of Commission approval announcing the proposed rule

change and providing an effective date within 60 days of Commission approval.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will facilitate the Association's review of public offerings of securities and assist the Association to maintain a confidential, nonpublic database of information related to such filings.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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 NASD Regulation 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 proposal 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,

⁵ 15 U.S.C. 78o-3.

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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2001-46 and should be submitted by September 14, 2001.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44723; File No. SR-OCC-2001-03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Rescind Concentration Restrictions on Letters of Credit Issued by Certain Non-U.S. Institutions

August 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 11, 2001, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would rescind the concentration restrictions on letters of credit issued by certain non-U.S. institutions.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² A copy of OCC's proposed rule change is available at the Commission's Public Reference Section or through OCC.