

required equity specialists to obtain written approval prior to contacting an unlisted company.

The proposed rule change, as amended, was published for comment in the **Federal Register** on June 2, 2003.⁵ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission finds that the proposed rule change promotes the objectives of section 6(b)(5) of the Act,⁷ which requires among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is a reasonable modification of the Exchange's performance evaluation and allocations procedures as it is intended to enable the Performance Committee to operate more flexibly and responsively, as well as to more accurately reflect the views of issuers and ETF sponsors in certain situations. Additionally, the timely disclosure of information and materials to the Performance Committee and the Market Quality Committee will ensure adequate time for review and distribution to participants. Finally, the elimination of the now outdated NOMI process will better serve to facilitate the Exchange's listing efforts by removing a process that caused the unintended result of specialist firms requesting NOMIs to contact an unlisted company without then undertaking substantial contact with them.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the amended proposed rule change (SR-AMEX-2002-112) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48130; File No. SR-DTC-2003-08]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Rule 4(A), Pledge of Property to the Corporation and Its Lenders

July 3, 2003.

I. Introduction

On May 6, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2003-08 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on May 21, 2003.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Each DTC participant pays or receives the net debit or net credit balance in its DTC money settlement account at the end of each day. DTC's principal risk is the possible failure of one or more participants to settle their net debit obligations. To assure that it is able to complete its settlement obligations each day, DTC maintains liquidity resources, including a committed line of credit (maximum amount of \$1.75 billion) with a consortium of banks. This committed line of credit is part of a combined syndicated facility with National Securities Clearing Corporation ("NSCC").

The line of credit matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, the lenders requested that Section 1 of DTC's Rule 4(A), "Pledge of Property to the Corporation and its Lenders," be clarified.³ That section

currently provides that for the purpose of securing loans to DTC, DTC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the participants fund and all securities, repurchase agreements, or deposits in which such cash is invested, (ii) net additions, including any security entitlements of participants in net additions, and (iii) preferred stock. That section also provides that any such loan to DTC may be on such terms as DTC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any participant in DTC. It further provides that no lender shall be obligated to return any pledged collateral prior to the full repayment of any loan secured thereby.

DTC is adding language to Section 1 of Rule 4(A) to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no participant may assert a claim against the lender for the return of any collateral pledged by DTC as security therefore.⁴ Subject to the foregoing and the terms of any such loan, the obligation of DTC to return any items of pledged collateral to its participants or to permit substitutions and withdrawals thereof remains unaffected.

In addition, the rule change makes a technical correction to the definition of the term "pledge" in Rule 1 necessitated by the recent revisions to Article 9 of the New York Uniform Commercial Code ("NYUCC"). Currently, the definition of "pledge" refers to Section 9-115 of the NYUCC. The references to that specific section are deleted so DTC's definition refers to the NYUCC in general.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁵ By adding language, as requested by its lenders, to its rules to make clear the rights of DTC, lenders, and participants with respect to pledged deposits, the

No. 47874 (May 15, 2003), 68 FR 27881 (May 21, 2003) [File No. NSCC-2003-08].

⁴ The new language states, "No Participant shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect, of any such collateral Pledged by the Corporation to such secured Lender (or its collateral agent), so long as any loans made by such Lender to the Corporation or other obligations, secured by such collateral, are unpaid and outstanding."

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵ See Securities Exchange Act Release No. 47914 (May 23, 2003), 68 FR 32782 (June 2, 2003).

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 47875 (May 15, 2003), 68 FR 27877.

³ The lenders made a similar request of NSCC which also resulted in the filing of a proposed rule change by NSCC. Securities Exchange Act Release