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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46415; File No. SR–DTC–2002–04]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Application of a Receiver-Authorized Delivery-Like Function to Maturity Presentments for Money Market Instruments in Times of Unusual Market Stress

August 23, 2002.

I. Introduction

On March 25, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2002–04 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 28, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

(i) Current Maturity Presentments

Under DTC's current procedures for the processing of maturity presentments of money market instruments (''MMIs'') that are in DTC's custody, early on the maturity date (generally around 2 a.m.) DTC initiates deliveries of the maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the issuing/paying agent (''IPA''). These maturity presentments are processed as the equivalent of book-entry deliveries versus payment. If the net debit cap or collateralization controls applicable to the IPA's account prevents the delivery from being completed, maturity presentments will ''recycle'' just as any delivery would. If recycled, the maturity presentment delivery would be completed once additional funds such as settlement obligation prepayments or new issuances are credited to the IPA's account. Attempts to complete deliveries of recycling maturity presentments occur randomly without regard to the identity of the offsetting prepayment/issuance transactions. For example, an issuance of Issuer A's commercial paper (''CP'') into the IPA's account might establish collateral in the IPA's account that could be used to support the processing of a maturity presentment of Issuer B's CP. This arrangement has operated successfully since MMIs first became DTC-eligible in 1990.

DTC's MMI procedures provide that the IPA can ''refuse to pay'' for maturing paper of a particular issuer by communicating that intention to DTC before 3 p.m. (ET) on the maturity date. This intention will be communicated to all participants by DTC. DTC will then reverse any completed maturity presentments by recrediting them to presenting participants' accounts, which offsets the associated settlement credits in those accounts. DTC will also unwind the following transactions it may have processed earlier that day in the same and other MMIs of that ''defaulting issuer': uncompleted maturity presentments; any valued issuances; any periodic income (interest or dividend) and principal presentments; and any reorganization presentments. In addition, DTC will mark down the collateral value of all of the defaulting issuer's MMIs in the system to zero and will block further issuances of that issuer's paper through DTC.

(ii) Application of Receiver-Authorized Delivery-like Function

Currently, the Receiver-Authorized Delivery (RAD) function enables each participant to limit and consider certain securities deliveries (those obligating the participant to pay $15 million or more) and certain payment orders (those obligating the participant to pay $1 million or more) which are directed to its account by any other participant before its account is updated. Certain other transactions, including substantially overvalued deliveries and deliveries initiated just prior to cutoff, are automatically subject to the RAD function.

However, under DTC's current procedures, RAD is not available for maturity presentments initiated by DTC on behalf of presenting participants because maturity presentments are known in advance and can generally be presumed to be valid obligations due and payable. Moreover, the processing of maturity presentments occurs early in the processing day in the expectation that the associated money credits posted to the accounts of presenting participants will be available to support the efficient subsequent processing of new MMI issuances. Finally, subjecting all MMI maturities to RAD would impose an operational burden on IPAs who would be required to authorize each maturity presentment in order for the transaction to be completed.

Since the events of September 11, IPAs have raised a concern that in such emergency situations the random nature of DTC's process for updating recycling maturity presentments prevents the IPAs from aligning the funding of maturities with offsetting issuances of the same issue or with decisions to activate back-up lines of credit in order to fund a particular issuer's maturing obligations.

The proposed rule change provides to IPAs in the event of a systemic, operational, or other crisis that could result in MMI maturities not being funded in the normal course a mechanism for dealing with the nonpayment of maturities that does not have the consequences of a ''refusal to pay.'' Under the proposed rule change, in extraordinary circumstances[3] and only after consultation with its regulators, DTC at its option may subject maturity presentments for MMIs maturing on the days following the crisis to a new contingency RAD-like feature. This would afford the IPA an opportunity to review and approve maturity presentments prior to having them processed into its account and would provide the IPA additional measures of control over its financial obligations to particular MMI issuers in times of unusual market stress. DTC would continue this procedure at its option until processing conditions returned to a more normal state.

III. Discussion

Section 17A(b)(3)(F) 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.[4] By implementing a RAD-like function in times of unusual market stress for maturity presentments of MMIs, DTC will enable IPAs to control the presentation of maturing paper into their accounts and thereby better manage their exposures in times of unusual market stress. As a result, the risk that an IPA will have to refuse to pay a maturity presentment, along with the serious issuer default procedures

[6] 17 CFR 200.30–3(a)(12).

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

[2] Securities Exchange Act Release No. 45969 (May 20, 2002), 67 FR 36945.

[3] Such circumstances would be evidenced by the closing of one or more national securities exchanges (*e.g.*, the New York Stock Exchange or Nasdaq).

[4] 15 U.S.C. 78q–1(b)(3)(F).

that DTC employs in such a refuse to pay situation, will be reduced. Therefore, the Commission finds that the rule change implementing the RAD-like function for maturity presentments of MMIs should facilitate the prompt and accurate clearance and settlement of securities at DTC and for that reason is consistent with Section 17A and the rules and regulations thereunder.

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 with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46403; File No. SR–NYSE–2002–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to a Technical Correction in the Exchange's Listed Company Manual

August 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on July 16, 2002, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On August 15, 2002, the NYSE filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE is proposing to amend Section 102.04 of the Exchange's Listed Company Manual (the ''Manual'') to correct an erroneous statutory reference.

Below is the text of the proposed rule change. Proposed new language is *italicized.*

Listed Company Manual

102.00 Domestic Companies

* * * * *

102.04 Minimum Numerical Standards-Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

* * * * *

Notwithstanding the foregoing requirement for market value of publicly held shares of $60,000,000, the Exchange will generally authorize the listing of all the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are ''affiliated persons'', as defined in Section 2(*a*)(3) of the Investment Company Act of 1940, as amended, *if:*

- Total group market value of publicly held shares equals in the aggregate at least $200,000,000;
- The group market value of publicly held shares averages at least $45,000,000 per Fund; and
- No one Fund in the group has market value of publicly held shares of less than $30,000,000.

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 NYSE 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 NYSE 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

The Exchange recently amended Section 102.04 of the Manual to permit the concurrent listing of closed-end funds with a common investment adviser or advisers who are ''affiliated persons.''[4] The Exchange incorrectly stated that ''affiliated persons'' was defined in Section 2(3) of the Investment Company Act of 1940, as amended. In fact, ''affiliated persons'' is defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.[5] The Exchange proposes to correct this reference in Section 102.04 of the Manual. The Exchange also proposes to correct a typographical error in the rule text.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[7] in general, and with section 6(b)(5) of the Act,[8] specifically, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

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

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public

[5] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 13, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE made a technical correction to the proposed rule text. For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers August 15, 2002 to be the effective date of the proposed rule change, the date the NYSE filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

[4] *See* Securities Exchange Act Release No. 46163 (July 3, 2002), 67 FR 46559 (July 15, 2002).

[5] 19 U.S.C. 80a-2(a)(3).

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f.

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