

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

The Exchange represents that the proposed rule change will impose no 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 with respect to the proposed rule change.

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 self-regulatory organization consents, the Commission will:

A. by order approve the 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-00-04 and should be submitted by September 19, 2000.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43197; File No. SR-DTC-00-2]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Issuance of Preferred Stock

August 23, 2000.

On February 2, 2000, the Depository Trust company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-00-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On February 3, 2000, DTC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on April 4, 2000.² On April 18, 2000, DTC filed a second amendment to the proposed rule change.³ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

In March 1999, DTC amended its organization certificate to provide for up to \$150 million of preferred stock as thereafter authorized by the Board of Directors.⁴ Under the rule change, DTC will issue \$75 million of series A preferred stock and will reduce the mandatory deposits to the participants fund by a like amount.⁵

The issuance of the \$75 million of series A preferred stock, the

corresponding reduction of mandatory participants fund deposits, and the transition to the new arrangements will be governed by the following documents.⁶

(1) *Certificate of Amendment of the Certificate of Incorporation*. The certificate of amendment sets forth the relative rights (including a dividend which will provide an after-tax return comparable to the after-tax return on participant fund deposits), preferences, and limitations of the series A preferred stock.

(2) *Revised DTC Rules*. The revised rules set forth:

(a) the requirement that participants purchase and own shares of series A preferred stock;⁷

(b) the amount of series A preferred stock that participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of series A preferred stock are to be transferred among participants, the method and timing of payment for shares of series A preferred stock, and certain limitations on the transfer of shares of series A preferred stock;⁸

(c) the right of DTC, acting as agent and attorney-in-fact for its participants, to pledge participants' shares of series A preferred stock to DTC's end-of-day lenders;⁹

(d) the right of DTC, acting as agent and attorney-in-fact for its participants, to sell any participant's shares of series A preferred stock to other participants (which have a corresponding obligation to purchase such shares) and to apply the proceeds to the participant's obligations to DTC;¹⁰

(e) various new and amended defined terms such as "preferred stock," "required preferred stock investment," "actual preferred stock investment," and "aggregate required deposit and investment";¹¹

(f) the structure under which DTC, acting as agent and attorney-in-fact for a party that has ceased to be a participant, shall sell all of the shares of series A preferred stock of the former participant to current participants (who shall be required to purchase such shares pro rata to their required preferred stock investments at the time

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42578, (March 27, 2000), 65 FR 17688.

³ The April 18, 2000 amendment to the proposed rule filing was technical in nature and did not require republication of the notice.

⁴ Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333.

⁵ In connection with this proposed rule change, the Commission advised DTC that it will take no action with respect to DTC broker-dealer participants treating investments in DTC series A preferred stock as allowable assets for purposes of Rule 15c3-1 promulgated under Section 15(c)(3) of the Act. Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard B. Nesson, Executive Vice President and General Counsel, DTC, (August 21, 2000).

⁶ A copy of DTC's proposed rule change and the attached exhibits, including the Certificate of Amendment of the Organization Certificate, the revised DTC Rules, and the Transition Procedures, are available at the Commission's Public Reference Section or through DTC.

⁷ DTC Rule 4, Section 2.

⁸ *Id.*

⁹ DTC Rule 4, Section 2(f).

¹⁰ DTC Rule 4, Section 2(f).

¹¹ DTC Rule 1.

of such purchase) and shall add the proceeds thereof to the participants fund deposit of the former participant for disposition in accordance with DTC Rules;¹² and

(g) certain other conforming and minor stylistic changes.

(3) *Transition Procedure.* The transition procedure sets forth the time and manner in which, without any action required on the part of participants (other than the consent deemed to be given to DTC by virtue of their receipt of all necessary information and their continued use of the services and facilities of DTC), the required deposits of existing participants to the participants fund will be reduced in the aggregate amount of \$75 million and the \$75 million will be used by existing participants to purchases from DTC the series A preferred stock.

II. Discussion

Section 17A(b)(3)(F)¹³ of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. For the reasons set forth below, the Commission finds that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The new series A preferred stock will be used in conjunction with and will have the characteristics of required deposits to DTC's participants fund. DTC and its participants' rights and obligations with respect to investments in series A preferred stock will be very similar to their rights and obligations with respect to participants' fund deposits. The rule change enables DTC to increase its capital base and maintain the same level of assets for use in the event of a participation default without imposing any additional financial burden on its participants. Therefore, the Commission finds that the rule change is consistent with DTC's obligation to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

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-00-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43200; File No. SR-GSCC-00-03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Choice of Law Rules

August 23, 2000.

On April 27, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-00-03) 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 July 7, 2000.² On August 21, 2000, GSCC filed an amendment to the proposed rule change.³ No Comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change adds a new provision to GSCC's rules, section 1 of Rule 38, that specifies that GSCC's rules and the rights and obligations under the rules will be governed by and construed in accordance with the laws of the State of New York.⁴ Even though GSCC believes that New York law governs its rules since GSCC's membership agreement states that the agreement and rules are expressly governed by New York law, GSCC believes that the rule change eliminates any doubts as to which law governs its rules.

II. Discussion

Section 17A(b)(3)(F)⁵ of the Act requires, among other things, that the

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42991 (June 29, 2000), 65 FR 42051.

³ The amendment to the rule filing was nontechnical in nature and did not require republication of the notice.

⁴ As a result of the rule change, old section 1 of Rule 38, which deals with captions used in GSCC rules, is now section 2 of Rule 38.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that GSCC's rule change is consistent with GSCC's obligations under the Act because it should help reduce the legal uncertainty associated with GSCC providing depository, clearance, and settlement services to its participants in that these transactions could potentially be governed by numerous states' laws. The choice of New York law assures that GSCC and their respective participants will find harmonious commercial code provisions governing their extensive dealings. In addition, the Commission believes that being governed by New York law offers numerous advantages, including: (i) New York has well-established commercial law principles; (ii) GSCC is established under the New York Business Corporation Law; (iii) GSCC is located in New York; and (iv) the majority of GSCC's members have their principal office in New York.

III. 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 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-GSCC-00-03) be, and hereby is, approved.

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. 34-43190; File No. SR-NASD-00-47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to a Reduction in National Quotation Data Service Market Data Fees for Non-Professionals

August 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 17 CFR 200.30-3(a)(12).

¹² DTC Rule 4, Section 2(h); DTC Rule 4, Section 1(h) provides for the return of the participants fund deposit to a party ceasing to be a participant.

¹³ 15 U.S.C. 78q-1(b)(3)(F).