

impediments to, and perfect the mechanisms of, a national market system. Moreover, the Commission believes that the Linkage Plan, as amended, satisfies the minimal requirements of the Trade-Through Disclosure rule to except broker-dealers who effect transactions on one of the linked markets from making the required disclosures under the Trade-Through Disclosure Rule, so long as each of the linked markets has adopted the required rules, discussed above.

V. Conclusion

It is Therefore Ordered, pursuant to Section 11A of the Act²² and Rule 11Aa3-2 thereunder,²³ that the proposed Linkage Plan amendment is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44491; File No. SR-DTC-00-17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Eliminate DTC's Option To Resell to Deliverers the Securities They Had Previously Delivered by Book Entry to the Account of a Participant That Has Failed To Settle Its Debit Obligation to DTC

June 28, 2001.

I. Introduction

On November 14, 2000, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-00-17) 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 April 17, 2001.² The Commission received two comment letters in support of the proposal.³ For the reasons

discussed below, the Commission is granting approval of the proposed rule change.

II. Description

If a participant fails to pay its settlement obligation to DTC at the end of the day, DTC will use its liquidity resources (all-cash participants fund and bank line of credit) to complete settlement. Currently, DTC's rules provide that if the participant is insolvent and use of the participant's participants fund deposit does not eliminate its net debit obligation, DTC may on the business day following the failure-to-settle either: (1) Resell to deliverers the securities they had delivered to the insolvent participant on the day of the failure ("resale procedure") or (2) sell in the open market those securities and other collateral in the insolvent participant's account. Under the proposed rule change, DTC would amend its Rule 9(B) to eliminate DTC's option to resell to deliverers the securities they had previously delivered by book-entry to the account of a participant that has failed to settle its debit obligation to DTC.

The resale procedure was included in DTC's rules prior to the industry's conversion to same-day funds settlement and DTC's adoption of associated risk management controls, including the collateral monitor and the imposition of net debit caps.⁴ The collateral monitor systematically prevents a participant from accruing a net debit that exceeds the value of the collateral in its account by blocking any transaction that would have that effect. For this purpose, collateral includes: (1) The participant's deposit to the participants fund, (2) the value of securities in the participant's account that it has designated as collateral, and

(3) the value of securities that are the subject of deliveries from other participants. The collateral value attributed to securities is equal to their market value minus a "haircut" determined by DTC. DTC believes that its risk management controls adequately limit DTC's risk exposure in the event of a participant insolvency and that there is no need to rely upon the resale procedure.

III. Discussion

Section 17A(b)(3)(F)⁵ 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. The Commission believes that DTC's risk management controls such as collateral monitoring and the use of net debit caps adequately limit DTC's exposure in the event of a participant failure to settle an insolvency situation. The Commission further believes that DTC's right to sell the insolvent's collateral in the open market give DTC a sufficient means to eliminate any unsatisfied net debit obligation of the insolvent participant. Therefore, the Commission finds DTC's decision to eliminate its right to resell securities to deliverers and to rely upon its risk management controls and its right to resell collateral into the open market is consistent with DTC's obligations to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible because use of the risk management controls and open market sales should provide DTC with the means to meet its financial obligations in the event of a participant's failure to settle.

IV. 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-00-17) 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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⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 200.30-3(a)(12).

²² 15 U.S.C. 78k-1.

²³ 17 CFR 240.1Aa3-2.

²⁴ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 44172, (April 10, 2001), 66 FR 19820.

³ Letters from Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers Operations and Arthur L. Thomas, Chief Operating Officer, Merrill Lynch Securities Services Division,

to Dennis Dirks, President, Depository Trust Company (June 7, 2000) ("Merrill Lynch") and from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House, to John Mancuso, Senior Systems Director, The Depository Trust & Clearing Corporation (September 22, 2000) ("NYCH").

⁴ For a description of same day funds settlement and DTC's adoption of associated risk management controls, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 [File No. SR-DTC-87-04] (order granting temporary approval to DTC's same-day fund settlement service), 26051 (August 31, 1988), 53 FR 34853 [File No. SR-DTC-88-06] (order granting permanent approval to DTC's same-day fund settlement service), 27360 (May 16, 1995), 60 FR 27360 [File No. SR-DTC-95-06] (order modifying DTC's same-day funds settlement system to accommodate the overall conversion to same-day settlement for securities transactions), and 36843 (February 14, 1996), 61 FR 6672 [File No. SR-DTC-96-03] (order granting modifications to certain DTC procedures in order to facilitate conversion to entirely same-day funds settlement system).