

December 4, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## II. Description

In response to industry demand, DTC has recently developed a new service for participants that would make prospectuses and official statements relating to new issues of corporate and municipal securities ("Offering Documents") available in electronic format. The new service, the Prospectus Repository System ("PRS") will enable participants and DTC-authorized third parties (collectively referred to as "users") to view Offering Documents from a DTC-maintained Web site.<sup>3</sup>

As a new service related to DTC's underwriting services, PRS will function as a multipurpose library where users can view, download, and print preliminary and final Offering Documents for DTC-eligible securities for which the underwriters have provided DTC with Offering Documents. PRS will include Offering Documents for both corporate and municipal securities. Access to the Offering Documents posted on the website will be controlled by password protection. By posting Offering Documents in PRS, DTC intends to make access to Offering Documents easier and more efficient. PRS features will include on-line search capabilities; retrieval by ticker symbol CUSIP, or issuer; and downloadable or printable files.

All users accessing Offering Documents in PRS will be required to affirm that they have read DTC's disclaimer prior to retrieving any Offering Documents.<sup>4</sup> The disclaimer states that Offering Documents posted on the PRS website are for informational purposes only and do not constitute bids, offers, or solicitations for securities. The disclaimer also states that by virtue of offering the PRS service, DTC is not participating in any offering as an underwriter, dealer, investment advisor, or otherwise and is not providing any form of investment advice or recommendation as to any security, issuer, or offering. In addition, the disclaimer also states that DTC

disclaims responsibility for the following:

- Satisfying Offering Document delivery requirements under federal securities laws or under Municipal Securities Rulemaking Board rules;
- Informing users of PRS of restrictions or limitations on securities or participation in an offering;
- The form or content of any Offering Document posted on the PRS website;
- The accuracy or DTC's verification of information submitted to DTC;
- The responsibility to update any Offering Document posted on the website,
- Posting a final Offering Document if it posts a preliminary Offering Document;
- Posting any supplements to a final Offering Document;
- Keeping an Offering Document posted for any amount of time.

## III. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The rule change permits DTC to offer PRS which should enable users to more efficiently obtain and use information about new offerings of securities which are eligible for deposit at DTC. In so doing, PRS should assist participants, as well other PRS users involved in the processing of securities transactions, to process new offerings of securities with more efficiency, less cost, and less errors. Accordingly, the Commission finds that the rule change is consistent with DTC's obligations under Section 17A of the Act.

## 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 with the requirements of Section 17A(b)(3)(F) 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-2002-13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47395; File No. SR-MSRB-2002-15]

### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-28, on Transactions with Employees and Partners of Other Municipal Securities Professionals

February 24, 2003.

On December 20, 2002, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities & Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-MSRB-2002-15). The proposed rule change was published for notice and comment in the **Federal Register** on January 22, 2003.<sup>3</sup> The Commission did not receive comment letters on the proposed rule change.

#### I. Description of the Proposed Rule Change

The MSRB's rule change creates an exemption from Rule G-28 for transactions and accounts involving municipal fund securities. Rule G-28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer ("dealer") that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 47189 (Jan. 15, 2003), 68 FR 03073.

<sup>2</sup> Securities Exchange Act Release No. 46915, (November 26, 2002), 67 FR 72253 (December 4, 2002).

<sup>3</sup> PRS authorized third-party users will include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel and financial advisors associated with the underwriting. Individual investors will not have access to Offering Documents through the website.

<sup>4</sup> A copy of DTC's PPS disclaimer is attached to DTC's filing and is available at the Commission's Public Reference office or through DTC.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

respect to transactions in municipal securities.

The MSRB proposed the exemption because it believes that transactions in municipal fund securities appear not to present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities. Furthermore, fulfilling Rule G-28 requirements may impose an unnecessary burden in the context of municipal fund securities, particularly 529 college savings plans, without any countervailing benefit. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. Since there is no trading market in municipal fund securities, the MSRB believes the safeguards provided by Rule G-28 are not needed in the context of this market.

## II. Summary of Comments

The Commission did not receive any comment letters relating to the MSRB's proposed rule change.

## III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB.<sup>4</sup> The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, 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 in municipal securities, and, in general, to protect investors and the public interest.<sup>5</sup> The rule change is consistent with the Act in that it amends an existing MSRB rule to accommodate the unique characteristics of municipal fund securities. Furthermore, the rule change removes impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

## IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,<sup>6</sup>

that the proposed rule change (File No. SR-MSRB-2002-15) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47409; File No. SR-NYSE-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through June 30, 2003, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

February 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

The Exchange proposes to extend until June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans<sup>3</sup> is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the

"Pilot") on June 4, 1999.<sup>4</sup> The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.<sup>5</sup> The Pilot has since been extended until January 11, 2002,<sup>6</sup> March 11, 2002,<sup>7</sup> May 13, 2002,<sup>8</sup> June 30, 2002,<sup>9</sup> August 31, 2002,<sup>10</sup> October 30, 2002,<sup>11</sup> December 30, 2002,<sup>12</sup> and February 28, 2003.<sup>13</sup>

### 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 Exchange 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 Exchange 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 has had the Pilot with respect to the definition of a "broadly-based" stock option plan since June 4, 1999.<sup>14</sup> On July 13, 2000, the Exchange filed a proposed rule change seeking to

<sup>4</sup> See Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR-NYSE-98-32) ("Original Pilot Approval Order").

<sup>5</sup> See Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR-NYSE-00-32).

<sup>6</sup> See Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-37) ("2001 Extension Request").

<sup>7</sup> See Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR-NYSE-2002-03).

<sup>8</sup> See Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR-NYSE-2002-14).

<sup>9</sup> See Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR-NYSE-2002-18).

<sup>10</sup> See Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR-NYSE-2002-22).

<sup>11</sup> See Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR-NYSE-2002-42).

<sup>12</sup> See Securities Exchange Act Release No. 46747 (October 30, 2002), 67 FR 67680 (November 6, 2002) (File No. SR-NYSE-2002-57).

<sup>13</sup> See Securities Exchange Act Release No. 47084 (December 23, 2002), 67 FR 79681 (December 30, 2002) (File No. SR-NYSE-2002-67).

<sup>14</sup> See Original Pilot Approval Order note 4 *supra*.

<sup>4</sup> Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o(b)(2)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR-NYSE-2002-46).