

opening series of options; and (3) to clarify and reorganize Rules 5.4, 5.5, 5.6, and 5.7.

In addition, in SR-CBOE-97-23 CBOE also inadvertently and unintentionally deleted from Rule 5.4 two Interpretations that were then numbered .07 and .08. The deletion of these two Interpretations was neither discussed in the proposed rule change CBOE submitted, nor in the SEC order granting accelerated approval of the proposed rule change. Interpretations .07 and .08 read:

.07 When there is no open interest in a series the Exchange may delist such series. Delisting shall be preceded by a notice to member organizations concerning the delisting.

.08 Where a class of options contracts is open for trading on another national securities exchange, the Exchange may delist such class of options contracts. Delisting shall be preceded by a notice to member organizations concerning the delisting.

CBOE now proposes to add former Interpretation .07 to the current version of Rule 5.4 as Interpretation and Policy 12, and to add a new Interpretation and Policy .13 which is nearly identical to former Interpretation .08. In the proposed new Interpretation .13, CBOE describes the process for delisting option classes that are traded on more than one exchange, and also adds language describing the process for delisting option classes that are traded solely on CBOE.

The Exchange notes that proposed new Interpretation .12 is identical to American Stock Exchange Rule 903, Commentary .02 and Pacific Exchange Rule 6.4(a), Commentary .02.

## 2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and in demand without sacrificing any investor protection. Accordingly, the proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of section 6(b)(5)<sup>7</sup> in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

### *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**

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>10</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the CBOE must file notice of its intent to file the proposed rule change at least five business days beforehand. The CBOE has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> The proposal merely replaces rule text that was inadvertently deleted. Also, the proposed rule change is consistent with the rules of other option exchanges that the Commission previously approved. For these reasons, the Commission

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

designates the proposed rule change as effective and operative immediately.

### **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 in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file No. SR-CBOE-2003-04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47410; File No. SR-DTC-2002-13]**

### **Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Establish the Prospectus Repository System**

February 26, 2003.

#### **I. Introduction**

On September 11, 2002, The Depository Trust Company filed with the Securities and Exchange Commission ("Commission") a proposed rule change File No. SR-DTC-2002-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on

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

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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).