

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2002-64 and should be submitted by September 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46391; File No. SR-DTC-2002-07]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Filing of the "About Deposits" Service Guide

August 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 21, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change consists of the implementation of a Service Guide pertaining to deposits.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January of 2001, DTC submitted a rule filing which constituted a restatement of certain sections of DTC's Participant Operating Procedures ("POP") and Participant Terminal System ("PTS") Manual.<sup>3</sup> Both the POP and the PTS Manual are hardcopy, multi-volume manuals that, among other things, provide participants with procedures and information pertaining to a number of DTC services and describe and document functions and applications of DTC systems.

In that rule filing, DTC explained that both the POP and the PTS Manual would better serve participants and other authorized users if they were restated together utilizing modern electronic media. As a result, DTC is developing Service Guides to replace all POP and PTS Manual documentation, and DTC has filed Service Guides for the following DTC services: Custody, Dividends, Reorganization, Settlement, and Underwriting.

In this filing, a new Service Guide is being added for deposits. The "About Deposits" Service Guide will replace POP Section B (Deposits) as well as POP Section L (Depository Facilities). However, no substantive changes to DTC's procedures are being made at this time.

The Service Guide updates will be implemented upon filing and are available to participants and other authorized users through CD-ROM,

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> Securities Exchange Act Release No. 44719 (August 17, 2001), 66 FR 44656 [SR-DTC-2001-01].

which contains current Service Guides, POP, and PTS Manual information, and through the Internet at DTC's web site <http://www.dtc.org/>. The two formats contain the same information and are similar in functionality. DTC updates such information on its web site on a monthly basis and distributes CD-ROM updates on a quarterly basis.<sup>4</sup>

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC because the proposed rule change will contribute to the ease of use of DTC's services. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances the utilization of DTC's existing services.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Rule filing SR-DTC-2001-01 dealt with the original Service Guides which were developed through discussions with a number of participants. This rule filing deals with a new guide which replaces certain portions of POP but makes no substantive changes to current DTC procedures. Therefore, written comments from participants or others have not been solicited or received on this proposed rule change. DTC will notify the Commission of any written comments received by DTC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)<sup>6</sup> of the Act and Rule 19b-4(f)(1)<sup>7</sup> promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self regulatory organization. At any time within sixty days of the filing of such

<sup>4</sup> DTC will provide the Commission with above-mentioned CD-ROMs upon issuance each quarter. The Commission has been granted access to those screens on DTC's web site which contain the Service Guides and related information.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

proposed rule change, the Commission may summarily abrogate such 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.

#### IV. Solicitation of Comments

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46385; File No. SR-NSCC-2002-06]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Imposition of Fines

August 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 26, 2002, National Securities

Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 proposed rule change would clarify NSCC's rules with regard to the imposition of fines upon its members and would more specifically identify the actions or inactions of members that would result in fines being imposed upon them.<sup>2</sup> In addition, a technical correction is proposed to be made to NSCC Rule 48, Disciplinary Proceedings, to conform the rule to other changes that were made effective by Release No. 34-36866.<sup>3</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, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their

financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule and in furtherance of NSCC's responsibility, NSCC periodically requests that its members provide financial and operational information about their business. While many members comply with these requests, some do not. The lack of this information could create risk for NSCC. To address this concern, NSCC proposes to fine members who fail to timely respond to requests for information.

In connection with imposing fines for failure to timely provide requested financial and operational information, NSCC would notify all members that it requires certain information on an ongoing basis and that failure to provide the information would result in a fine being imposed with such fining commencing three months after the Commission approves the proposed rule change. For a period of one year from that date, members that fail to timely provide information would be issued one warning letter prior to the imposition of the fine. At the conclusion of the one-year period, NSCC would discontinue the warning letters prior to fining.

In addition to the above, members have an affirmative duty to notify NSCC on an ongoing basis of certain internal conditions that may cause NSCC to reevaluate the member's continued participation. NSCC is proposing to fine members that fail to meet these notification requirements. Upon learning of an event upon which the member failed to provide timely notification, NSCC would impose a fine. No reminder letter would be sent in this context.

Participants would continue to have the ability to contest fines, as currently provided for within NSCC's rules and procedures. Fines imposed against settling members would be collected through a miscellaneous charge in the member's monthly statement of charges. Fines imposed against settling bank members may be collected through an adjustment to the settling bank's end-of-day settlement balance, through a separate fed wire, or through checks made payable to NSCC. Alternatively, if the settling bank maintains additional memberships with NSCC, the fine may be collected through a settling account under its additional membership.

In conjunction with the above, NSCC proposes making a technical correction to Rule 48 Disciplinary Proceedings. In Release No. 34-36866, the Commission approved an NSCC rule change to accommodate same-day funds

<sup>2</sup> Exhibit 1 to this notice sets forth NSCC's proposed revisions.

<sup>3</sup> Securities Exchange Act Release No. 36866 (February 27, 1996), 61 FR 7288 [File No. NSCC-96-03] (order modifying NSCC's Rules and Procedures to accommodate same-day funds settlement).

<sup>4</sup> The Commission has modified parts of these statements.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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