

basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX, as amended, without the interruption that would result if the pilot program were allowed to expire on March 1, 1997 without permanent approval of the program in place. Moreover, both the Enhanced SuperMAX and Timed Enhanced SuperMAX have operated without any significant problems as pilot programs since July, 1995. Finally, the Commission received no comments on the Exchange's earlier request for permanent approval of the pilot, which was published for comment on November 20, 1996.<sup>17</sup> The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6(b)(5) of the Act.<sup>18</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to File No. SR-CHX-97-02 and should be submitted by March 26, 1997.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-38340; File No. SR-DTC-22]

### Self-Regulatory Organization's; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 4, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-96-22) 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 persons.

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

The proposed rule change amends DTC's charge back and return of funds policies ("Policy")<sup>2</sup> to shorten from ten business days to one business day the period within which a paying agent can request that DTC return principal and income ("P&I") payments that have been allocated to participants.

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

In its filings 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 such statements.<sup>3</sup>

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

The Policy<sup>4</sup> currently authorizes DTC to return P&I payments to paying agents

after the funds have been credited to the accounts of DTC participants, which is commonly referred to as a "clawback," if the paying agent notifies DTC in writing within ten business days of the payable date that: (i) The issuer has failed to provide the paying agent with sufficient funds to cover the payments; or (ii) the issuer has become bankrupt.<sup>5</sup> The proposed rule change will reduce the period within which a paying agent can request DTC to return funds to such paying agent from ten business days to one business day.<sup>6</sup> Furthermore, the Policy provides that if an agent requests the return of a P&I payment more than ten business days after a payable date, DTC will work with the agent and participate to resolve the matter. However, DTC will not return the allocated payments without the participant's consent.

PSA The Bond Market Trade Association ("PSA") has expressed concern with the current policy and the associated risk of loss placed on DTC participants in the event a payment is returned to a paying agent.<sup>7</sup> In response, DTC convened a joint working group of

Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR-DTC-03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR-DTC-86-4] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR-DTC-88-17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back proceedings apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR-DTC-95-03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

<sup>5</sup> The Policy also allows DTC to return previously credited payments upon written request from a paying agent within ten business days of the payable date due to an error by the paying agent. The proposed rule change does not alter this position of the Policy.

<sup>6</sup> Under the proposed rule change, although the time within which a paying agent can request a reversal of allocated funds will be reduced from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable ("P+1"), DTC would likely notify its participants' on the morning of the following business day ("P+2"). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participant's daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation between Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC; Mark Steffensen, Special Counsel, Division of Market Regulation ("Division"), Commission; and Jeffrey Mooney, Attorney, Division, Commission (December 18, 1996).

<sup>7</sup> Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

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

<sup>2</sup> A copy of the Policy marked to show the specific changes to DTC's procedures is attached as Exhibit C to DTC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> For a complete description of the procedures relating to the Policy, refer to Securities Exchange

<sup>17</sup> Securities Exchange Act Release No. 37497 (November 13, 1996), 61 FR 59124.

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12)

paying agents, PSA representatives, and other interested parties.<sup>8</sup> In October 1996, the working group concluded that DTC should reduce the period within which DTC may return funds to paying agent's from ten business days to one business day.

DTC concurs with the working group's recommendation and proposes to amend the Policy accordingly. Although the current Policy may encourage paying agents to make more timely payments to DTC by offering them more flexibility with regard to the return of funds if an issuer defaults, DTC believes that it has received only one default-related return of funds request since the Policy was promulgated in 1986.<sup>9</sup> Due to the Policy's infrequent use, DTC proposes to finalize P&I payments sooner and minimize the uncertainty and risk of loss that the Policy currently places on DTC's participants.<sup>10</sup> DTC proposes to implement the proposed rule change for all P&I payments made after April 30, 1997.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>11</sup> and the rules and regulations thereunder because the proposal promotes the prompt and accurate clearance and settlement of transactions in securities. In addition, DTC believes that the proposed rule change will result in increased protection to investors by providing finality of payment within a substantially shorter period of time.

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

DTC perceives no 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*

The proposed rule change has been endorsed by the PSA and was recommended by a special industry

working group comprised of PSA representatives, paying agents, and other interested parties.

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

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(A) By order approve such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-96-22 and should be submitted by March 26, 1997.

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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[Release No. 34-38341; File No. SR-Phlx-97-01]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the U-SAVE Program**

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 15, 1997 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 by the self-regulatory organization. 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 Phlx proposes to implement a program that will calculate and then display on the execution reports sent to member firms the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

**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 self-regulatory organization 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 self-regulatory organization 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 purpose of the proposed rule change is to implement a program for calculating and displaying, on a PACE execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any

<sup>8</sup>The working group is composed of representatives from the Corporate Trust Advisory Board of the American Bankers Association, the Bank Depository User Group, the Corporate Trust Advisory Committee of the Corporate Fiduciaries Association of New York City, the New York Clearing House—Securities Committee, PSA, the Securities Industry Association, and DTC.

<sup>9</sup>In September 1996, a paying agent requested the return of a single payment \$30,000 due to nonpayment by an issuer.

<sup>10</sup>DTC has notified its participants, paying agents, trustees, and issuers of the proposed rule change in DTC Important Notice B# 2068-96 (November 26, 1996) and DTC Important Notice B# 2069-96 (November 26, 1996), which are attached as Exhibit B to DTC's proposed rule change.

<sup>11</sup> 15 U.S.C. 78q-1.

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

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