

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-98-13 and should be submitted by August 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>5</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40191; File No. SR-DTC-98-5]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Shared Control Accounts

July 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 7, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to allow DTC to make shared control accounts available to its participants.

#### 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 such statements.<sup>2</sup>

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

New York State recently enacted revised Article 8 of the Uniform Commercial Code ("UCC"). Revised Article 8 gives priority in certain situations to a pledgee that has control over pledged securities (or other financial assets). According to DTC, a pledgee has control over securities when it has the ability to have the securities sold or transferred without further consent by the pledgor. The control of the pledgee need not be exclusive. The pledgor can retain the right to redeliver or make substitutions for the pledged securities.

Currently, when a participant pledges securities to the pledgee account of a pledgee at DTC, the securities are under the sole control of the pledgee. Therefore, only the pledgee can redeliver or release the securities.

The purpose of the proposed rule change is to make shared control accounts available at DTC as an alternative to the use of pledgee accounts.<sup>3</sup> As a result of the rule change, a DTC participant will be able to establish a shared control account and to designate any DTC pledgee as the pledgee for the shared control account. A pledgee will have control over securities delivered by a participant to the participant's shared control account at DTC because the pledgee will have the ability to redeliver the securities without further consent by the participant. However, the participant also will have the ability to redeliver or to make substitutions for the securities without obtaining the pledgee's release of the securities. DTC states that, except as modified by the procedures for DTC

shared control accounts,<sup>4</sup> the operation of a shared control account will be identical to the operation of a DTC pledgee account and all DTC procedures applicable to pledgee accounts are applicable to shared control accounts.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it is consistent with DTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible.<sup>5</sup>

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

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

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

The proposed rule change was developed through discussions with several participants. No written comments have been solicited or received.

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

Section 17A(b)(3) of the Act requires that the rules of a clearing agency be consistent with its obligation to safeguard securities and funds in its custody or control or for which it is responsible.<sup>6</sup> The Commission believes that the rule change is consistent with this obligation because the proposal should help facilitate the processing of secured transactions through DTC's facilities. In addition, the operation of shared control accounts will be essentially identical to the operation of pledgee accounts which are currently available at DTC. Therefore, DTC's experience in the operation of pledgee accounts will help enable DTC to operate shared control accounts in a safe and efficient manner.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of this filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because

<sup>4</sup> The procedures for DTC shared control accounts are attached as Exhibit 2 to DTC's proposed rule change (File No. SR-DTC-98-5) which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

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

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

<sup>3</sup> Pledgee accounts will continue to be available at DTC.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

accelerated approval will permit DTC to immediately make shared control accounts available to its participants and to make its procedures reflect revised Article 8 as recently enacted by the State of New York.<sup>7</sup>

#### 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. 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. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-98-5 and should be submitted by August 6, 1998.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-98-5) be and hereby is approved on an accelerated basis.

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. 34-40190; International Series Release No. 1145; File No. SR-EMCC-98-5]

#### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changing Relating to Warrant Processing

July 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 28, 1998, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to provide a mechanism whereby EMCC may process cash payments made with respect to warrants for which there are outstanding fail receive and deliver obligations and to permit EMCC to pair-off outstanding warrant fail receive obligations with fail deliver obligations.

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

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC 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

From time to time, issuers of warrants may declare a money distribution on their warrants ("warrant payment"). If EMCC is notified that a warrant

payment has been declared by a warrant issuer, those members with a fail deliver or fail receive obligation relating to such warrant will receive a report from EMCC. The report will specify the amount each member is obligated to pay/receive. EMCC will also instruct the qualified securities depository<sup>2</sup> of each such member to appropriately debit and/or credit each member's account on payable date with the amount(s) specified on the report. (Fail deliver obligations will result in debits, and fail receive obligations will result in credits.)

EMCC will not guarantee warrant payments. EMCC's willingness to pay members with fail receive obligations is contingent on its ability to collect these amounts from members with fail deliver obligations. If a member with a fail deliver obligation does not pay EMCC the cash owed with respect to a warrant payment, the proposed rule change (i) permits EMCC to reverse the payment made to the member with the fail receive obligations that was the original counterparty to the transaction underlying such fail deliver obligation and (ii) obligates the member with the fail deliver obligation that did not pay EMCC such monies owed, to compensate EMCC for such non-payment.

The proposed rule change also provides that the member with the fail receive obligation will be entitled to compensation for its late receipt of the warrant payment if EMCC collects from the member with the fail deliver obligation that failed to make timely payment. The proposed rule change provides that if a member with a fail receive obligation does not receive a warrant payment or if such a warrant payment is reverse and, EMCC has ceased to act for the member with the fail deliver obligation, the member with the fail receive obligation may request that EMCC file a claim for the payment with the estate of the member with the fail deliver obligation. Any such action shall be taken at the sole cost and expense of the member with the fail receive obligation.<sup>3</sup>

EMCC states that, historically, fail rates with respect to warrant transactions are high. Firms would periodically employ a process by which they bilaterally paired-off outstanding warrant receive and deliver obligations

<sup>7</sup> The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between Kristen Wells, Senior Analyst, Division of Reserve Bank Operations, Board of Governors of the Federal Reserve System, and Jeffrey Mooney, Special Counsel, Division of Market Regulation, Commission (July 9, 1998).

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

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

<sup>2</sup> Currently, the Cedel Bank, Societe anonyme and the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York, are the only qualified securities depositories.

<sup>3</sup> This approach is similar to that taken with respect to fail obligations relating to warrants, as set forth in Rule 8, Sections 7(f) and 8(f).