

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act<sup>3</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder.<sup>6</sup> At any time within 60 days of the filing of such 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 purpose of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing 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 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-99-13 and should be submitted by October 12, 1999.

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. 34-41862; File No. SR-DTC-99-16]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Implementation of the Profile Modification System Feature of the Direct Registration System

September 10, 1999.

On June 17, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on July 22, 1999, and August 31, 1999, as amended a proposed rule change (File No. SR-DTC-99-16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the original proposal and first amendment were published in the **Federal Register** on June 23, 1999,<sup>2</sup> and on July 29, 1999,<sup>3</sup> respectively. The Commission received twenty-two comments in response to the proposed rule change.<sup>4</sup> The Commission

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Securities Exchange Act Release No. 41535 (June 17, 1999), 64 FR 33539 (July 23, 1999).

<sup>4</sup> Securities Exchange Act Release No. 41643 (July 22, 1999), 64 FR 41171 (July 29, 1999).

<sup>5</sup> Telephone conversation between Jerome J. Claire, John Cirrito, and Don Kittel, Securities Industry Association, with Robert Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission (July 20, 1999). Letters from Vickie Dear, Department Leader, and Mark Leverenz, Principal, Edward Jones (July 6, 1999); Timothy J. Carlin, Senior Counsel, Wells Fargo & Company (July 13, 1999); Frank M. Ciavarella, First Vice President, Prudential Securities (July 13, 1999); John Morelli, First Vice President, The Cashiers' Association of Wall Street, Inc. (July 13, 1999); Robert Dietz, President, STA (July 14, 1999); Jerome J. Claire, Chair, SIA Operations Committee, and John Cirrito, Chair, SIA Subcommittee on DRS, SIA (July 15, 1999); William Talbot, Vice President, Pershing, (July 15, 1999); Eric D. Kamback, Senior Vice President, The Bank of New York (July 15, 1999); Fred Enriquez, President, Securities Operations Division (July 16, 1999); Kenneth F. Kaplan, Vice President and Chief Financial Officer,

is publishing this notice and order to solicit comments on the August 31, 1999, amendment from interested persons and to grant accelerated approval of the proposal.

## I. Description

The Direct Registration System ("DRS"), as developed by the DRS Committee,<sup>5</sup> is a facility that allows investors the ability to hold their securities on the issuer's books, through the issuer's transfer agent, rather than holding in street name or in certificated form.<sup>6</sup> Instructions to create investors' book-entry positions in DRS or to move those positions are transmitted through an electronic system. The DRS facility is administered by DTC and uses DTC's systems to effect DRS transactions.<sup>7</sup> The DRS Committee meets on a regular basis to discuss the on-going development of DRS and to form the policies, systems, and operational procedures needed to implement these developments.

The purpose of DTC's filing is to resolve an impasse that developed

Regal-Beloit Corporation (July 19, 1999); Patricia Trevino, Chair, Securities Industry Committee, American Society of Corporate Secretaries (July 19, 1999); Jerome J. Claire, Chair, SIA Operations Committee, and John Cirrito, Chair, SIA Subcommittee on DRS, SIA (August 11, 1999); Robert E. Smith, Assistant Corporate Secretary, Reliant Energy (August 11, 1999); Jason Korstange, Senior Vice President, TCF Financial Corporation (August 16, 1999); Scott A. Ziegler, Ziegler & Altman LLP (August 17, 1999); Joseph F. Spadaford, President of First Chicago Trust Division and Charles V. Rossi, President of Boston EquiServe Division, EquiServe (August 19, 1999); American Stock Transfer & Trust Company, The Bank of New York, ChaseMellon Shareholder Services, Continental Stock Transfer & Trust Company, EquiServe, First Union, Harris Trust & Savings Bank, Norwest Shareowner Services (August 20, 1999); Richard P. Randall, Vice President, Associate General Counsel, Assistant Corporate Secretary, Avery Dennison (August 23, 1999); Warren G. Andersen, Attorney and Assistant Secretary, General Motors Corporation (August 25, 1999); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (August 26, 1999); Ian Yewer, President and Chief Operating Officer, American Securities Transfer and Trust, Inc. (August 30, 1999).

<sup>5</sup> The DRS Committee is an industry committee responsible for designing DRS. Its members include the Securities Transfer Association, the Securities Industry Association, the Corporate Transfer Agents Association, and DTC.

<sup>6</sup> For a history of DRS and a description of the original DRS concept, see Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release relating to the direct registration system) ("Concept Release"). As described in the Concept Release, DRS was determined to be a means to reducing systemic risk in the marketplace by reducing the timeframes for settling securities transactions. The Commission continues to believe DRS will be an important element in achieving a shorter settlement periods. Cf. Section 17A(e) of the Act.

<sup>7</sup> Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR-DTC-96-15] (order relating to the establishment of DRS).

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> In reviewing the proposal, the Commission considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78f(b).

among members of the Securities Transfer Association ("STA") and the Securities Industry Association ("SIA") relating to the implementation of the Profile Modification System feature ("Profile")<sup>8</sup> of DRS. Profile will allow a DTC participant (*i.e.*, a broker-dealer) upon instructions from the participant's customer to electronically request that a "DRS limited participant" of DTC (*i.e.*, a transfer agent)<sup>9</sup> to move the customer's DRS positions to the participant's account at DTC.<sup>10</sup> Profile will be available through both DTC's Participant Terminal System ("PTS") and DTC's Computer-to-Computer Facility ("CCF").

Representative members of the STA reported to the DRS Committee that some transfer agents may not be able to implement Profile until some time in calendar year 2000. Members of the SIA, on the other hand, expected Profile to be implemented during the third quarter of 1999 and are concerned that implementation will be delayed indefinitely. Because of differing views on the implementation schedule for Profile, no industry consensus has emerged on whether DRS should continue to operate as it does today or whether use of DRS should be restricted in some manner until Profile is implemented.

As an industry utility and administrator of the systems used to facilitate DRS activity between participants and DRS limited participants, DTC initially filed and amended its proposed rule change to request guidance from the Commission in resolving the impasse between members of the STA and the SIA. DTC proposed four options on how to proceed in the implementation of Profile.<sup>11</sup> The options included:

(1) if all DRS limited participants are not able to implement Profile by September 13, 1999,<sup>12</sup> no additional securities issues would be made eligible after September 13, 1999, for inclusion in DRS until sometime in the first quarter of 2000 when all DRS limited participants are able to implement Profile using either DTC's PTS, or its CCF;

(2) securities issues would continue to be made eligible for inclusion in DRS in the manner in which they are currently make eligible for inclusion;

(3) securities would continue to be made eligible for inclusion in DRS provided that each DRS limited participant could be the DRS limited participant for no more than two new issues per month. If all DRS limited participants are not able to implement Profile by using PTS or CCF by March 31, 2000, no additional securities issues would be made eligible for inclusion in DRS until such time as all DRS limited participants are ready to use Profile; or

(4) if a DRS limited participant implements Profile by September 15, 1999,<sup>13</sup> either through PTS or CCF, that DRS limited participant will be allowed to continue to make securities eligible for inclusion in DRS. Any DRS limited participant that does not implement Profile either through PTS or CCF by September 15, 1999, will not be allowed to make additional securities eligible for DRS until such time as it implements Profile after January 15, 2000.

DTC also amended the proposed rule change to clarify its description of Profile by adding language indicating that Profile was developed to

limited participant to make additional issues eligible. [See letter from Jerome Clair, Chair, SIA Operations Committee, to Jonathan Katz, Secretary, Commission (July 14, 1999).] As a result of these developments, DTC amended its proposed rule change to add an additional option, Option (4), to its recommendations.

<sup>12</sup> DTC originally proposed a deadline of August 31, 1999. However DTC amended its proposed rule change to change the deadline to September 13, 1999. Securities Exchange Act Release No. 41643 (July 22, 1999), 64 FR 41171 (July 29, 1999).

<sup>13</sup> In both amendments, DTC proposed to require use of Profile by September 13, 1999, in Option (4). However, DTC recently filed a proposed rule change addressing Year 2000 system concerns in which it plans to close its systems on September 15, 1999, to any system changes, testing of its systems with participants not currently using a specific DTC system, and new participants. Securities Exchange Act Release No. 41799 (August 27, 1999), 64 FR 48690 (September 7, 1999) [File No. SR-DTC-99-20]. DTC is extending the date in Option (4) of the DRS filing to September 15, 1999, in order to have consistent cutoff dates. Conversation with Jeffrey T. Waddle, Associate Counsel, DTC, with Susan Petersen (September 9, 1999). Since adding new DRS limited participants or permitting current DRS limited participants to use Profile requires DTC to test its systems with the DRS limited participant, DTC's general September 15, 1999, systems cutoff date applies to DRS applications.

incorporate the use of an "electronic medallion guarantee."<sup>14</sup>

On August 31, 1999, DTC filed its second amendment to withdraw Options (1), (2), and (3). Based on the comment letters it received and on its discussions with Commission staff, DTC believes that Option (4) represents the most equitable option.

## II. Comment Letters

The Commission received twenty-one comment letters.<sup>15</sup> Five commenters, representing primarily broker-dealers or associations representing broker-dealer interests, support limitations on making additional issues eligible if all DTC limited participants are not able to implement Profile by August 31, 1999, [*i.e.*, Option (1)]. While generally supporting the concept of DRS, these commenters state that their understanding of the DRS concept includes the ability of shareholders to "recover" their shares once the issuer places the securities in DRS. The commenters contend that the current system is not working because it is labor intensive, error-prone, confusing to investors, and causing unreasonable delays in confirming receipt of customers' positions, transferring customers' shares, and crediting customers with sale proceeds.<sup>16</sup> One of the five commenters stated it experiences an average "turnaround time" of twenty-six to thirty days.<sup>17</sup>

One commenter supports limitations on making additional issues eligible applicable to those agents that are not using Profile by September 13, 1999, [*i.e.*, Option (4)].<sup>18</sup> This commenter states that requiring the use of Profile will not impose any significant system changes on most DRS limited participants (this is particularly true if the DRS limited participant receives instructions through PTS) and is preferable to the current paper-based

<sup>14</sup> *Supra* note 3.

<sup>15</sup> *Supra* note 4.

<sup>16</sup> Because DRS limited participants are currently not using Profile to receive instructions, brokers or their customers must submit requests to move DRS shares by sending a transaction advice to the DRS limited participant generally through the U.S. mail or a commercial delivery service. Once the transaction advice is received by the transfer agent and processed, the transfer agent delivers the shares through DTC's Delivery Order system to the broker's account at DTC.

<sup>17</sup> The commenter's reference to turnaround time refers to the time between when that broker submits the transaction advice to the transfer agent for transfer and when the position is credited to the broker-dealer's account at DTC.

<sup>18</sup> The SIA submitted two letters. One letter addressed the proposed rule change which recommended Options (1) through (3). The second letter addressed DTC's first amendment which added Option (4). (See letters from Jerome J. Claire and John Cirrito, SIA.)

<sup>8</sup> Profile is an electronic communication system through DTC which allows participants and DRS Limited Participants to send instructions to each other regarding the movement of DRS shares.

<sup>9</sup> For a description of DRS limited participants, refer to Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) [File No. SR-DTC-96-15].

<sup>10</sup> Profile will also allow a DRS limited participant upon instructions from a customer to electronically request a participant to move the customer's positions from the participant's account at DTC to the customer's account at the DRS limited participant.

<sup>11</sup> DTC initially proposed three options. Options (1) through (3), on making additional securities issues eligible for inclusion in DRS. However after publication of the proposed rule change, several DRS limited participants indicated that they may be operationally able to implement the Profile feature by the proposed deadline of August 31, 1999, or shortly thereafter. In addition, the SIA submitted a comment letter supporting the concept of permitting any DRS limited participant capable of using the Profile feature by the August 31, 1999, deadline to be able to do so and to allow that DRS

processing because DRS limited participants will receive instructions in a uniform manner. Furthermore, this commenter states that because some transfer agent representatives on the DRS Committee recently reopened issues the commenter believes had been addressed and agreed upon by the DRS Committee, it believes that transfer agents are not operating in good faith to resolve the outstanding operational and liability issues facing DRS.

Thirteen commenters, representing primarily issuers and transfer agents, support continuation of DRS as it is currently operating [*i.e.*, Option (2)]. These commenters believe that the unrestricted ability to allow issues to be made eligible in DRS is in the public interest. They contend that DRS as it is operating today (*i.e.*, without Profile) benefits the marketplace by providing shareholders with another option on how to hold their securities and by providing issuers and their transfer agents with cost savings from not having to issue and process physical certificates.

Three of these twelve commenters do not support the use of Profile in DRS at this time due to the number of unresolved issues surrounding its use in the marketplace.<sup>19</sup> They contend that there are fundamental flaws with Profile in its current form, including insufficient protection for both issuers and investors against fraudulent transfers. One of these three commenters said it would oppose a system that allows transfers without direct instruction from the shareholder or its legal agent.<sup>20</sup> Another of these three commenters suggests that use of Profile as proposed may constitute an invalid transfer and that this issue should also be carefully considered in light of both domestic and foreign law.<sup>21</sup>

Seven commenters generally accept the use of Profile as part of DRS but do not support its implementation until such time as the outstanding issues concerning liability are resolved. One of

these seven commenters believes Profile should not be a condition of participating in DRS and that issuers should be given an option as to whether to use Profile for their issues. The three remaining commenters do not take a position on Profile but believe discussions regarding use of Profile in DRS should proceed separately from DRS use and eligibility requirements.

Finally, one commenter supports allowing transfer agents to make two or three issues eligible per month, and if all agents are not using Profile by an established date in 2000,<sup>22</sup> to discontinue allowing any new issues to be made eligible until such time as all agents are using Profile [*i.e.*, Option (3)]. This commenter conditioned its comment in favor of this option on DTC revising the cut-off date from March 31, 2000, to June 30, 2000. This commenter contends that the DRS Committee needs additional time to resolve outstanding issues that are critical to operating DRS efficiently and effectively. Delaying implementation until these issues are resolved, this commenter believes, will benefit both investors and the industry.

### III. Discussion

Section 17A(b)(3)(F) of the Act<sup>23</sup> requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions<sup>24</sup> and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F).

By permitting only those DRS limited participants that use Profile to continue to make issues eligible for DRS, a more efficient mechanism for the transfer of DRS positions between an investor's broker-dealer and the transfer agent should be promoted. Currently, there is substantial evidence to indicate that the transfer of DRS positions, which is presently a multi-step, paper-based process, is labor intensive and slow. For an investor to move a DRS position from a DRS limited participant to a broker, the investor must have a transaction

advice signature guaranteed and physically delivered to the DRS limited participant. When the transaction advice is received, the DRS limited participant enters the information into its system to process the instructions. Only after the DRS limited participant completes its processing is the investor's DRS position moved to the broker. In addition, since the information contained on the transaction advices is not standardized throughout the industry, investors (or brokers sending the transaction advices on behalf of their customers) do not always provide the correct or complete information necessary to process the instructions. Furthermore, an investor generally can not sell, pledge, tender, or otherwise dispose of a DRS position until the broker's account at DTC has been credited with the shares.<sup>25</sup>

Using Profile, DRS participants will send standardized information which thereby should reduce the possibility that the instruction will be rejected due to errors or incomplete information. Because Profile is an electronic system that eliminates the need for the information to be physically delivered, it should make the processing of DRS instructions more efficient and should give investors the ability to execute transactions using their DRS positions in a time frame that is at least as fast as when using certificate. In short, Profile should reduce the time it takes for the DRS limited participant to receive and process DRS instructions.

Accordingly, while several DRS limited participants believe that DRS is working well today and that there should not be any changes made or conditions imposed on making issues DRS eligible, the Commission believes that DTC's decision to require a DRS limited participant to use Profile before making any additional issues DRS eligible is consistent with DTC's statutory obligations under Section 17A of the Act because by adding efficiencies and reducing the potential for errors, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission also finds that requiring those participating in DRS to use the Profile feature is consistent with the general purposes of Section 17A of the Act. When enacting Section 17A, Congress set forth its findings that the

<sup>19</sup> One of these commenters, the STA, submitted an extensive comment letter expressing its opinion on a number of issues including perceived legal defects in DTC's filing and unaddressed liability risks to issuers and transfer agents in the movement of shares through DTC's systems and its recommendations on issues that the STA believes should be resolved prior to implementing Profile.

<sup>20</sup> On this issue, the commenter does not address the argument that the broker may be considered as the customer's legal representative for purposes of conveying its customer's instruction to move the DRS positions from the issuer's books to the broker's account at DTC.

<sup>21</sup> The Commission staff is working with the DRS Committee and the New York Stock Exchange to address issues regarding the application of the Uniform Commercial Code to the use of Profile and the underlying electronic medallion guarantee.

<sup>22</sup> The commenter believes June 30, 2000, to be a more reasonable date than March 31, 2000, in light of the system changes the commenter believes DRS limited participants will have to undertake before they will be able to implement Profile. (See letter from Timothy J. Carlin, Wells Fargo & Company.)

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>24</sup> Pursuant to Section 17A(a)(1)(A) of the Act, the prompt and accurate settlement of securities transactions includes the transfer of record ownership of securities.

<sup>25</sup> In contrast, an investor with a stock certificate can immediately sell, pledge, tender, *etc.* her shares with a broker.

prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, is necessary for the protection of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors; and that new data processing and communications techniques create the opportunity for more efficient, effective and safe procedures for clearance and settlement.<sup>26</sup> Profile accomplishes these objectives by providing a more efficient mechanism for the movement of investors' securities positions than the current multi-step, paper-based DRS processing.

Participation in DRS by issuers or DRS limited participants is not mandatory.<sup>27</sup> Issues regarding risks and liabilities to issuers or transfer agents<sup>28</sup> are internal business issues and should be addressed prior to an issuer or transfer agent's decision to participate or participate further in DRS. On the other hand, participation in DRS by investors is not always voluntary. Although it was originally contemplated that shareholders would initiate their participation by individually choosing to hold their securities as DRS positions, DRS has developed so that in most situations issuers and transfer agents are making the decision for investors by establishing DRS positions on their books instead of issuing certificates. The vast majority of shares issued to shareholders as DRS positions have been the result of corporate actions (e.g., splits, mergers, and spin-offs) without any election by the shareholders.

The Concept Release indicated that although industry participants would be free to decide for themselves whether they wanted to offer investors the services that comprise DRS, once the service is offered, its implementation and operation must be efficient, safe, and largely transparent to investors.<sup>29</sup> Therefore, DRS should not materially disadvantage shareholders when compared with the current processing of physical securities. The delays caused by requiring shareholders to either

contact the DRS limited participant directly or to send transaction advices through the mail, as suggested by some commenters as the preferable method to process shareholder requests for transferring their shares to a broker, generally precludes shareholders holding DRS positions from executing transactions on the same basis as investors holding certificates. The use of Profile in DRS should reduce these delays.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing of DTC's second amendment. The Commission finds good cause for so approving the proposed rule change because Option (4) was previously published in its entirety and the public had an opportunity to comment on its merits. The Commission believes accelerated approval will allow DRS participants to prepare for any operational changes that may be necessary in light of DTC's Year 2000 shutdown date of September 15, 1999.

#### 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, N.W., Washington, D.C. 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, 450 Fifth Street, N.W., Washington, D.C. 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 No. SR-DTC-99-16 and should be submitted by October 12, 1999.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A 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-99-16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41875; File No. SR-NASD-99-41]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Opening of Day-Trading Accounts

September 14, 1999.

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 August 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to amend the 2300 Series of the Rules of the NASD to include new Rule 2360 and Rule 2361 regarding the opening of day-trading accounts. Below is the text of the proposed rule change. Proposed new language is in *italics*.

#### *Rule 2360. Approval Procedures for Day-Trading Accounts*

*(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure*

<sup>30</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>26</sup> 15 U.S.C. 78q-1(a)(1) (A), (B), and (C).

<sup>27</sup> However, once an issuer and DRS limited participant decided to participate in DRS, use of Profile, which includes such things as the acceptance of the electronic medallion guarantee, is required.

<sup>28</sup> In their comment letters to DTC's proposed rule change, some transfer agents contend there are business risks and liability concerns associated with use of the Profile feature. Because participation in DRS is not mandatory, the Commission is not addressing these issues in this order. The Commission urges representatives of the issuer, transfer agent, and broker-dealer community to continue discussions to resolve the outstanding DRS issues relative to processing and liability.

<sup>29</sup> *Supra* note 6.