

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42013; File No. SR-DTC-99-11]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Liability With Respect to Affiliated Entities

October 15, 1999.

On May 12, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-99-11) 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 August 3, 1999.<sup>2</sup> On August 9, 1999, DTC amended the proposed rule change.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The Boards of Directors of DTC and the National Securities Clearing Corporation ("NSCC") have initiated a plan to integrate DTC and NSCC. As a step in the integration plan, a holding company has been established which will own DTC and NSCC as operating subsidiaries.<sup>4</sup> DTC has informed the Commission that a consideration in the DTC/NSCC integration plan is to insulate DTC and NSCC from the risks and obligations of the other.

The rule change adds a new section 7 to DTC Rule 2 to provide that notwithstanding any affiliation between DTC and any other entity, including any clearing agency, except as otherwise expressly provided by written agreement: (1) DTC shall not be liable for any obligations of such other entity; (2) the participants fund or other assets of DTC shall not be available to such

other entity; (3) such other entity shall not be liable for any obligations of DTC; and (4) any assets of such other entity shall not be available to DTC. The Commission has approved similar revisions to NSCC's rules.<sup>5</sup>

As a separate matter, DTC's rules currently provide that if it were to cease providing some or all of its services, DTC's participants fund would be available to cover any DTC wind down costs not otherwise defrayed by service fees or other available resources. The rule change amends Section 1 of DTC Rule 4 to make it clear that the required funds deposits of participants would be increased if necessary to cover such costs.

#### II. Discussion

Section 17A(b)(3)(F) of the Act<sup>6</sup> requires that the rules of a clearing agency assure the safeguarding of securities and funds which are in the custody of control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should ensure that DTC's assets, including its participants fund, are not diminished as a result of its affiliation with NSCC. In addition, the proposed rule change should ensure that DTC would have available to it funds sufficient to cover its costs if it were to voluntarily cease operations. This should help to ensure that any voluntary liquidation of DTC would be carried out in an orderly manner.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's 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-99-11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42020; File No. SR-DTC-99-21]

### Self-Regulatory Organizations; The Depository Trust Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

October 15, 1999.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 29, 1999, The Depository Trust Corporation ("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 from interested persons on the proposed rule change.

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

The proposed rule change revises DTC's fee schedule to add a fee for training customers on DTC's TradeSuite<sup>®</sup> software at the customer's office.

#### 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

The purpose of the proposed rule change is to establish fees for training customers at the customers' sites on DTC's TradeSuite<sup>®</sup> software.<sup>3</sup> DTC's windows-based TradeSuite software is available for investment managers,

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> The TradeSuite<sup>®</sup> training fee will be \$650 for the first training day at the customer's site and \$350 for each subsequent training day at the customer's site.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 41663 (July 27, 1999), 64 FR 42157.

<sup>3</sup> The amendment represented technical amendments to the proposed rule change and as such did not require republication of notice.

<sup>4</sup> For a description of the holding company structure, refer to Securities Exchange Act Release No. 41786 (August 24, 1999), 64 FR 47882 [File No. SR-DTC-99-17].

<sup>5</sup> Securities Exchange Act Release No. 42014 (October 15, 1999), [File No. SR-NSCC-99-07]

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

broker-dealers, and custodians. The software enables them to utilize various features of the DTC TradeSuite family of products. The proposed fees are designed to recover DTC's estimated service costs and will be effective October 1, 1999.

The proposed rule change is consistent with the requirements of the Act<sup>4</sup> and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants.

*(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 that is 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 comments on the proposed rule change were solicited or received. 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)(ii)<sup>5</sup> of the Act and pursuant to Rule 19b-4(f)(2)<sup>6</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such 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**

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-99-21 and should be submitted by November 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42016; File No. SR-EMCC-99-10]

**Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Requirements for a Class I, II, or III Director**

October 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 24, 1999, the Emerging Markets Clearing Corporation ("EMCC") 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 EMCC. 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 will delay the implementation of certain requirements for Class I, II, and III directors.

**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 proposed 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 these statements.<sup>2</sup>

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

EMCC's by-laws currently provide that from and after the 1999 annual meeting of shareholders, individuals elected to Class I, II, or III directorships must be an officer or partner of a shareholder or of an affiliate or subsidiary of a shareholder.<sup>3</sup> Similarly, EMCC's amended and restated shareholder agreement provides that from and after the 1999 annual meeting, directors elected to these classes must be an officer or partner of a "participant shareholder" (i.e., a shareholder that is also an EMCC participant) or of an affiliate of a participant shareholder.<sup>4</sup>

The purpose of the proposed rule change is to amend the by-laws and the amended and restated shareholder agreement to postpone the effectiveness of these requirements until the 2000 annual meeting of shareholders. According to EMCC, its membership is not yet as large as its management had anticipated, and there are a number of shareholders and other industry participants who have not yet completed either applying for membership or acquiring EMCC shares. EMCC believes it is important to continue its developmental momentum and at the same time to maintain the continuing broad-based representation of industry participants on the EMCC Board.

In addition, when EMCC was originally organized, it was expected that an entity that became a shareholder would also be the participant. As EMCC's business has developed while the financial services industry continues to consolidate, participants have indicated that they may prefer that the shareholder and the participant be

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

<sup>3</sup> Article II, Section 2.2 of the by-laws.

<sup>4</sup> Section 1(A) of the amended and restated shareholder agreement.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. § 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(e)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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