

within ten business days of a payable date that an issuer failed to provide the paying agent with sufficient funds to cover the payments or that an issuer was bankrupt,⁶ DTC would return P&I payments to the paying agent after the funds had been credited to the accounts of DTC participants.⁷ However, PSA The Bond Market Trade Association ("PSA") expressed concern with the previous procedures and the associated risk of loss placed upon DTC participants in the event a payment was returned to a paying agent.⁸ In response, DTC convened a joint working group of paying agents, PSA representatives, and other interested parties.⁹ In October 1996, the working group concluded that DTC should reduce the period within which DTC will return funds to paying agents from ten business days to one business day. DTC concurred with the working group's recommendation and has amended its procedures accordingly.

II. Comment Letter

The Commission received one comment letter in response to DTC's notice of a proposed rule change.¹⁰ The commenter strongly supports the rule change and believes that the rule change will make significant progress toward achieving finality of payment that it believes the market expects. The commenter also noted that DTC's previous policy was inconsistent with

Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR-DTC-86-03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR-DTC-86-04] (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 procedures 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).

⁶ DTC's procedures also allows DTC to return previously credited payments due to an error by the paying agent upon written request from a paying agent within ten business days of the payable date. The rule change does not alter this portion of DTC's procedures.

⁷ The return of P&I payments to paying agents after the funds have been credited to the accounts of DTC participants is commonly referred to as a "clawback."

⁸ Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

⁹ 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.

¹⁰ *Supra* note 2.

market perceptions regarding the finality of DTC payments and contrary to widely accepted payment principles favoring finality.

III. Discussion

Section 17A(b)(3)(F)¹¹ of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's rule change is consistent with DTC's obligations under the Act because the amended procedures should finalize P&I payments sooner which should reduce the uncertainty and potential risk of loss DTC's previous procedures placed on its participants.

IV. 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-96-22) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-11793 Filed 5-6-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38567; File No. SR-NYSE-97-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Consisting of an Information Memo Relating to Electronic Delivery of Information to Customers by Exchange Members and Member Organizations

May 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 24, 1997² the New York Stock

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² On April 24, 1997, the NYSE amended the Information Memo, attached as Exhibit A to this notice. See letter from James E. Buck, Senior Vice

Exchange, Inc. ("NYSE" or "Exchange") 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 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 Exchange has filed with the Commission an Information Memo ("Memo") setting forth the Exchange's policy regarding electronic delivery of information required under Exchange rules to be furnished to customers.

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. 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 Commission, in Release Nos. 34-37182³ and 33-7233,⁴ set forth standards whereby broker-dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media provided that they comply with certain prescribed standards.

The Information Memo (attached as Exhibit A to this notice) establishes Exchange policy regarding electronic

President and Secretary, NYSE, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 24, 1997.

³ See, Securities Exchange Act Release No. 37182, May 9, 1996; 61 FR 24644, May 15, 1996, (Commission's interpretation concerning the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Act and the rules thereunder).

⁴ See, Securities Act Release No. 7233, Oct. 6, 1995; 60 FR 53458, Oct. 13, 1995, (Commission's interpretation concerning the use of electronic media as a means of delivering information required to be disseminated pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940).

delivery of information required under Exchange rules to be furnished to customers. Under this proposed Exchange policy, members and member organizations will be allowed to electronically transmit documents required to be furnished to customers under Exchange rules, provided that they adhere to the Commission's established standards. The Memo summarizes the Commission standards, which address format, content, access, evidence of receipt of delivery, and consent for delivery of personal financial information. The Memo also sets forth a list of current Exchange rules that require members and member organizations of furnish specific information to customers for which electronic delivery may be used in accordance with the Commission Releases. The Exchange believes this list is complete. Further, it is the Exchange's intention that the policy outlined in this Memo cover all communications required to be sent to customers by firms pursuant to Exchange rules. The list includes:

a. *Rule 382(c) (Carrying Agreements)* requires notification to each customer, whose account is introduced on a fully disclosed basis, of the existence of a clearing agreement, the relationship between the introducing and carrying organization, and the allocation of responsibilities between the respective parties.

b. *Rule 409 (Statements of Accounts to Customers)* requires delivery of statements of accounts showing security and money positions and entries at least quarterly to all accounts having an entry, money, or security position during the preceding quarter.⁵

c. *Rule 451 (Transmission of Proxy Material)* requires member organizations to transmit proxy materials and annual reports to beneficial owners of stock which stock is in the member's possession and control or to others specified in the Rule.

d. *Rule 465 (Transmission of Interim Reports and Other Material)* requires transmittal of interim reports of earnings and other material to beneficial owners of stock which stock is held by the member organization.

e. *Rule 721(c) (Opening of Accounts)* requires that background and financial information on every new options account customer be sent to such customer for verification within fifteen days after the account is approved for options transactions.

f. *Rule 721(e)(5) (Uncovered Short Options—Disclosure)* requires that a written description of the risks inherent in writing uncovered short option transactions be furnished to applicable customers.

g. *Rule 725 (Confirmations)* requires member organizations to furnish customers with a written confirmation of each transaction in options contracts.

h. *Rule 726(a) (Delivery of Options Disclosure Document)* requires delivery of a current Options Disclosure Document to a customer at or prior to the time the account is approved for trading options. Thereafter, delivery must be made of amendments or revisions to the Options Disclosure Document to every customer approved for trading the kind of option covered by the Disclosure Document.

i. *Rule 726(b) (Prospectus)* requires that a current prospectus of The Options Clearing Corporation shall be delivered to each customer who requests one.

j. *Rule 730 (Statements of Options Accounts)* requires that monthly statements be sent to options account holders.

k. *Rule 781(a) (Allocation of Exercise Assignment Notices)* requires notification to customers of the method used to allocate exercise notices in customer's accounts.

The Exchange believes that use of electronic media to satisfy delivery requirements is beneficial to both customers and members and member organizations and will be effective and efficient when conducted in accordance with Commission standards.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁶ which requires that the rules of the Exchange be designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal complies with the Act by providing standards under which members and member organizations may effectively and efficiently supply required documents to customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not 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

Written comments were neither solicited nor received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization 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 USC 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 28, 1997.

Jonathan G. Katz,
Secretary.

Exhibit A—Information Memo

To: All Members and Member Organizations

Note: Please Route to your Compliance Officer/Chief Operating Officer

Subject: Electronic Delivery of Information to Customers by Members and Member Organizations

This information Memo sets forth the Exchange's policy applicable to electronic delivery of information required to be provided to customers by members and member organizations pursuant to New York Stock Exchange Rules.

⁵ See, Securities Exchange Act Release No. 37182 at p. 24648, (stating that confirmations of transactions are covered pursuant to Rule 10b-10 of the Act).

⁶ 15 USC 78f(b)(5).

On May 9, 1996, the Securities and Exchange Commission ("SEC" or "Commission") issued Release No. 34-37182 to publish its views respecting the use of electronic media by broker-dealers. The Commission stated that broker-dealers may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in Release No. 33-7233 dated October 6, 1995.

The Exchange will permit members and member organizations that wish to electronically transmit documents that they are required to furnish to customers under NYSE Rules to do so provided they adhere to the standards contained in the SEC Releases. Members and member organizations are urged to review these releases in their entirety to ensure they comply with all electronic delivery requirements. The SEC standards are summarized below:

- Electronic delivery must result in customers receiving information that is substantially equivalent to the information these customers would have received if the required information were delivered in paper form, *i.e.*, the electronically transmitted document must convey all required information. For instance, if a paper document is required to present information in a certain order, then the information delivered electronically should be in substantially the same order.

- A person who chooses to receive a document electronically, must be provided with the information in paper form, upon request.

- Customers who are provided information through electronic delivery from broker-dealers must be able to effectively access the information provided. Also, person to whom information is sent electronically should have an opportunity to retain the information through the selected medium or have ongoing access equivalent to personal retention.

- Broker-dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Broker-dealers may be able to evidence satisfaction of delivery obligations, for example, by:

- (1) obtaining the intended recipient's informed consent to delivery through a specified electronic medium, and ensuring that the recipient has appropriate notice and access;

- (2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt or by confirmation that the information was accessed, downloaded, or printed; or

- (3) disseminating information through certain facsimile methods.

- Prior to delivering personal financial information (*e.g.*, confirmations and account statements) electronically, the broker-dealer must obtain the intended recipient's informed consent. The customer's consent may be either by a manual signature or by electronic means.

The SEC release stated that the above standards are intended to permit broker-

dealers to comply with their delivery obligations under the federal securities laws when using electronic media. While compliance with the guidelines is not mandatory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, the Exchange believes adherence to the guidelines should be considered, especially with respect to documents furnished pursuant to agreements or other specific arrangements with customers. Further, the SEC stated that broker-dealers should evaluate the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means.

A list of current Exchange rules which require members and member organizations to furnish specific information to customers for which electronic delivery may be used in accordance with the SEC releases is set forth below. The Exchange believes the list is complete and intends that the policy outlined in this Information Memo covers all communications that firms are required to send to customers pursuant to Exchange rules. Further, the summary of delivery obligations provided in intended for reference only and does not purport to be a statement of all requirements under the rules listed.

- *Rule 382(c) Carrying Agreements* requires notification to each customer whose account is introduced on a fully disclosed basis of the existence of a clearing agreement, the relationship between the introducing and carrying organization and the allocation of responsibilities between the respective parties.

- *Rule 409 (Statements of Accounts to Customers)* requires delivery of statements of accounts showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See Release No. 34-37182 which covers confirmations of transactions pursuant to SEC Rule 10b-10).

- *Rule 451 (Transmission of Proxy Material)* requires member organizations to transmit proxy materials and annual reports to beneficial owners of stock which is in its possession and control or to others specified in the Rule.

- *Rule 465 (Transmission of Interim Reports and Other Material)* requires transmittal of interim reports of earnings and other material to beneficial owners of stock held by the member organization.

- *Rule 721(c) (Opening of Accounts)* requires that background and financial information on every new options account customer be sent to such customer for verification within fifteen days after the account is approved for options.

- *Rule 721(e)(5) (Uncovered Short Options—Disclosure)* requires that a written description of the risks inherent in writing uncovered short option transactions must be furnished to applicable customers.

- *Rule 725 (Confirmations)* requires member organizations to furnish customers with a written confirmation of each transaction in options contracts.

- *Rule 726(a) (Delivery of Options Disclosure Document)* requires delivery of a current Options Disclosure Document to a customer at or prior to the time the account is approved for trading options. Thereafter, delivery must be made of amendments or revisions to the Options Disclosure Document to every customer approved for trading the kind of option covered by the Disclosure Document.

- *Rule 726(b) (Prospectus)* requires that a current prospectus of The Options Clearing Corporation shall be delivered to each customer who requests one.

- *Rule 730 (Statements of Options Accounts)* requires that monthly statements be sent to options account holders.

- *Rule 781(a) (Allocation of Exercise Assignment Notices)* requires notification to customers of the method used to allocate exercise notices in customer's account.

Questions relating to Exchange matters may be directed to Rudolph J. Schreiber at (212) 656-5226 or Mary Anne Furlong at (212) 656-4823.

Salvatore Pallante,

Senior Vice President.

[FR Doc. 97-11842 Filed 5-6-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38551; File No. SR-NYSE-97-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Three-Month Extension of Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

April 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1997, the New York Stock Exchange, Inc. ("NYSE" 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 proposed rule change extends for three months (until July 24, 1997) the pilot program most recently extended in Securities Exchange Act Release No. 37812 (October 12, 1996), 61 FR 54477 (October 18, 1996) (File No. SR-NYSE-