

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 provides a more efficient manner in which industry participants may process BA transactions while potentially reducing the risks associated with current industry processing methods. Furthermore, DTC has put in place sufficient safeguards to protect the interests of other DTC participants engaged in the clearance and settlement of securities.<sup>8</sup>

The Commission previously examined the risk management features of the MMI program when DTC proposed to add it to DTC's Same-Day Funds Settlement system<sup>9</sup> and when permanent approval was sought.<sup>10</sup> At those times, the Commission found and continues to believe that the risk management controls adopted by DTC are sufficient to address the risks associated with processing BAs. Furthermore, with the inclusion of DTC's additional risk management efforts incorporated by this rule, namely requiring OFAC compliance and establishing insolvency procedures, the Commission believes that any additional risks that may arise as a result of DTC processing fungible BAs are also sufficiently addressed.

### III. 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-97-21) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40379; File No. SR-NASD-98-58]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Elimination of the Requirement for Personal Service of Decisions in Cases Involving Bars and Expulsions

August 27, 1998.

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 7, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory 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 filing was subsequently amended on August 18, 1998 and August 20, 1998.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Rules 9269 and 9360 of the Code of Procedure of the NASD, to eliminate the requirement for personal service of decisions in cases involving bars and expulsions.<sup>4</sup> The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

9000. Code of Procedure

9200. Disciplinary Proceedings

9269. Default Decisions

(a) through (c).  
No change.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 18, 1998 and E-mail from Eric Moss, Office of General Counsel, NASD Regulation, to Mandy Cohen, Division of Market Regulation, Commission, dated August 20, 1998. All amendments are included in this Notice.

<sup>4</sup> NASD Regulation has also filed a related rule change with the Commission in Exchange Act Release No. 40378 (August 7, 1998) (File No. SR-NASD-98-57). The text of the proposed rule change contained herein treats SR-NASD-98-57 as already having been approved.

(d) Final Disciplinary Action of the Association; Effectiveness of Sanctions.

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. *The Association shall serve the decision on a Respondent by overnight courier, facsimile or other means likely to obtain prompt service when the sanction is a bar or an expulsion.*

\* \* \* \* \*

#### 9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective [on a date established by the Chief Hearing Officer, which shall not be earlier than] 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified therein. The Association shall [take reasonable steps to obtain personal service of] *serve the decision on a Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.*

\* \* \* \* \*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections A, B,

<sup>8</sup> DTC's BA program has been designed in consultation with and with the approval of the Federal Reserve Bank of New York.

<sup>9</sup> *Supra* note 3.

<sup>10</sup> *Id.*

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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 proposed change to Rules 9269 and 9360 would establish that in cases involving bars or expulsions, service of decisions should be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9269 does not presently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. Rule 9360 currently requires that the Chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to personally serve (hand delivery) all final decisions imposing a bar or expulsion. Rule 9360's personal service provision for final decisions imposing bars or expulsions was created because these decisions become effective immediately.

The Association believes that with respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) generally would not be successful. Default decisions are often entered because respondents cannot be located. If and when such respondents become aware that a default has been entered against them, Rule 9269(c) provides an expeditious means for such respondents to move to set aside the default decision.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with Section 15A(b)(7) in that it provides for reasonable means to notify parties of default decisions. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

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

NASD Regulation does not believe that the proposed rule change will result

in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*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 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 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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-97-58 and should be submitted by September 24, 1998.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-23762 Filed 9-2-98; 8:45 am]

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40372; File No. SR-NASD-98-52]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Supervision of Correspondence**

August 27, 1998.

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 July 24, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASDR"), 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 NASDR. The NASDR has designated the portion of the proposal relating to the extension of the effective date as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> which renders the rule effective upon the Commission's receipt of this filing. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> 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 NASDR is proposing to amend NASD Rule 3010 to state that firms must<sup>5</sup> review incoming, non-electronic correspondence to identify customer complaints and funds. Below is the text of the proposed rule change. Proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 24, 1998 ("Amendment No. 1"). In Amendment No. 1, NASDR proposes to replace the word "should" in the text of the proposed rule with the word "must" to clarify that NASD member firms are required to develop written procedures for the review of incoming, non-electronic correspondence directed to registered representatives for purposes of identifying and handling customer complaints and funds.

<sup>5</sup> See Amendment No. 1, *supra* note 4.