

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41635; File No. SR-DTC-99-10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding a New Service for the Deposit of Securities Subject to Transfer Restrictions

July 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 30, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-99-10) 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 purpose of the proposed rule filing is to allow for the deposit and processing of restricted securities using DTC's Restricted Deposit Service ("RDS").

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.²

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

DTC's proposed RDS will: (i) Allow participants to deposit restricted securities in a participant's segregated account within DTC's existing Custody Service, (ii) facilitate the processing of a transfer of all or a portion of the securities once the restriction is lifted, (iii) subsequently register the

unrestricted securities (or portion thereof) in the name of Cede & Co., DTC's nominee, and (iv) if requested, deliver the restricted portion of the securities as directed by the depositing participant.³

Under the proposed rule change, a participant may deposit restricted securities into the participant's segregated account until the applicable restriction has been lifted and the full or partial sale of the securities is complete. Securities credited to this account will not be registered in the name of Cede & Co. and therefore will not be available for book-entry transfer.

The process will be initiated when a participant enters and transmits restricted securities deposit information to DTC through the new Restricted Deposit Service by Participant ("RDSP") function on DTC's Participant Terminal System ("PTS").⁴ This information will include the CUSIP number, quantity and certificate number of each certificate to be deposited, deposit type (e.g., partial sale), the sold and unsold quantities of the securities, registration instructions for the restricted and unsold portion of the securities, and whether the issuer's opinion of counsel will accompany the deposit or will be sent directly to the transfer agent. After DTC reviews the deposit information,⁵ an RDS deposit ticket will be transmitted to the participant's PTS printer. The RDS deposit ticket and the securities will then be delivered to DTC.

After receiving and examining the deposited securities, DTC will credit the participant's segregated account for the quantity of the deposit. DTC will use two subaccounts in the process. One subaccount will be used for the quantity of unrestricted (sold) securities and the other for the quantity of restricted (unsold) securities. At this stage, no positions in either subaccount will be available for book-entry transfer by the participant. The securities and detailed transfer instructions will then be sent to the transfer agent for processing.⁶ The transfer agent will continue to approve the transfers contemplated by the new

service based on the same requirements that exist today (e.g., receipt of opinion from issuer's counsel).

An inquiry option of the RDSP PTS function will enable the depositing participant to view the current status of the securities, including information DTC has received from the transfer agent as to when the transfer is expected to be completed. DTC believes that this option will give the participant greater control over the processing of the securities than that which exists today.

For deposited securities in DTC-eligible issues, the sold and unrestricted portion of the transferred securities will be registered in DTC's nominee name, Cede & Co. When the transfer is completed and the newly transferred securities are returned to DTC, the quantity of unrestricted securities registered in DTC's nominee name, Cede & Co., will be removed from the participant's segregated account and added to the participant's general free account. The quantity of restricted securities, if any, will also be removed from the participant's segregated account. At the same time the restricted portion of the securities will be sent to the destination specified by the depositing participant in its original RDSP instruction. That is, the restricted securities will either be made available for pick-up by the participant, mailed directly to the registered holder, or deposited into DTC's Custody Service for the account of the depositing participant.

Additionally, DTC believes that the service will accommodate certificate denomination breakdowns for restricted securities, transfer agent approval reregistrations of restricted securities (e.g., "gifting" transactions, where the restricted security may be reregistered into the name of the spouse of the original owner), and reregistrations of unrestricted securities into Cede & Co.'s name once the restriction is lifted.

The proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder applicable to DTC because it will facilitate the efficient processing of partial and full sale of restricted securities where the applicable restriction has been lifted by or on behalf of the issuer by streamlining the mechanics of the physical process that currently occurs outside of DTC. Under the proposed rule change, the current control on the transfer of restricted securities will remain with the transfer agent. The proposed rule change will improve the safeguarding of securities and funds in

³ DTC will charge its customary fee for restricted transfers of \$45.48.

⁴ In the future DTC plans to enhance the Custody Service to provide participants with the capability to transmit RDS instructions via the "CUST" function on PTS and via computer-to-computer transmissions.

⁵ DTC will review the deposit information entered by the participant to make sure that the security in question is DTC-eligible and that all appropriate fields have been populated.

⁶ While the securities are still at the agent, the participant may enter and transmit amended transfer instructions through the RDSP PTS function (e.g., the sold portion of the deposit has been increased). DTC will then communicate the amended transfer instructions to the transfer agent.

⁷ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

DTC's custody or control or for which it is responsible because it will give participants greater control over the processing of full or partial sales of restricted securities.

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

DTC does not believe that the proposed rule change will 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

The substance of the proposed rule change is supported by and was developed in conjunction with a group of participants and transfer agents. Additionally, the substance of the proposed rule change was presented to and endorsed by DTC's Operations Advisory Committee.

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 DTC 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 is consistent with the Act. Persons making written submissions should file six copies thereof with 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 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-99-10 and should be submitted by August 18, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41626; File No. SR-NYSE-99-19]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Interpretation of Rule 35 ("Floor Employees To Be Registered")

July 20, 1999.

I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a new interpretation of Exchange Rule 35 ("Floor Employees to be Registered"). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.³ The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed new interpretation of Rule 35 is to prescribe the qualification requirements (*i.e.*, training and examination) for Front Line Specialist Clerks ("FLS Clerks"). In addition to dictating the terms under which employees of members or member organizations may be admitted to the Exchange Trading Floor, Rule 35 mandates compliance by both employer and employee with such requirements as the Exchange may determine. The proposed interpretation of Rule 35 will require FLS Clerks to pass a new examination, developed by the Exchange in cooperation with a

committee of Floor representatives (members, Specialists, and FLS Clerks) called the Front Line Specialist Clerk Qualification Examination ("Series 21"). The examination is intended to ensure that FLS Clerks have the basic knowledge and skills necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, opening the display book, preparing for the market close, and generating trade reports. Though the requirement to take and pass the proposed Series 21 examination will apply to all prospective and current FLS Clerks, qualification requirements will differ as follows:

Prospective FLS Clerks

Individuals not currently functioning as FLS Clerks will be required to pass the Series 25 qualifying examination as a prerequisite to taking the Series 21 examination. Upon passing the Series 25, the prospective FLS Clerk must complete a training program to become eligible for the Series 21 examination. The training program shall consist of a minimum of six months of "on-the-job" experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

Current FLS Clerks

Individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 examination (Trading Assistant Qualification Examination) is a prerequisite to taking the Series 21 examination, but no training program will be required for these individuals since they already are acting in the capacity of FLS Clerks.

III. Discussion

The Commission finds that the requirement is consistent with the requirements of the Act and the rules and required thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41514 (June 10, 1999), 64 FR 32912 (June 18, 1999).

⁴ In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).