

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43125; SR-DTC-00-09]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Surety Program as Part of the Profile Modification System Feature of the Direct Registration System

August 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 29, 2000, The Depository Trust Company ("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 will establish a surety program, the DTC Profile Surety Program, which will be part of the Profile Modification System feature ("Profile") of the Direct Registration System ("DRS") of DTC.<sup>2</sup> As more fully described below, under the Profile Surety Program, all users of Profile who agree to a Participant Terminal System ("PTS") screen-based indemnity as part of their use of DRS must procure a surety bond relating to their obligations under such indemnity.

#### 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>3</sup>

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

Profile allows a DTC participant to electronically submit to a transfer agent who is a DRS limited participant an investor's instruction that the investor's share position be moved from the investor's DRS account with the DRS limited participant to the investor's broker-dealer's participant account at DTC ("participant Profile instruction"). Likewise, Profile allows a DRS limited participant to electronically submit an investor's instruction that the investor's share position be moved from the investor's broker-dealer's participant account at DTC to an account at the DRS limited participant ("limited participant Profile instruction").

A participant submitting a participant Profile instruction to a DRS limited participant must agree to a PTS screen-based indemnity substantially in the following form (the "participant indemnity"):

(1) Participant represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the participant's records or (b) a third party who has actual authority to act on behalf of the registered owner on the participant's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of participant, such information is accurate and complete; and

(2) Participant indemnifies the issuer, its transfer agent and their respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

A DRS limited participant submitting a limited participant Profile instruction to a participant must agree to a PTS screen-based indemnity substantially in the following form (the "limited participant indemnity"):

(1) Transfer agent represents that it has the authority and consent for the request appearing on the following screen from either (a) the registered owner on the transfer agent's records or

(b) a third party who has actual authority to act on behalf of the registered owner on the transfer agent's records, and that all information shown is accurate and complete, except that, with respect to the taxpayer identification number included in such information, to the best knowledge of transfer agent, such information is accurate and complete; and

(2) Transfer agent indemnifies the participant and its respective officers, directors, shareholders, employees, agents, representatives, subsidiaries, parents, affiliates, successors and assigns against any breach of such representations in connection with the transaction that is the subject of such request.

At the time that DTC filed the proposed rule change for the establishment of Profile,<sup>4</sup> it was contemplated that an electronic medallion program would be developed by a party that currently administers a medallion program in connection with transfers of physical certificates and that such an electronic medallion program would become part of Profile. At a meeting held on April 20, 2000, representatives from the DRS Committee<sup>5</sup> and the New York Stock Exchange decided that because of its role in DRS, DTC would be a logical party to administer a surety program. At that meeting, it was apparent that recipients of Profile instructions wanted the benefits of a surety bond underlying the participant indemnity and the DRS limited participant indemnity that would be applicable where the obligor under one of the indemnities did not honor its obligations.

As a result, DTC is proposing to implement and administer the Profile Surety Program. Under the Profile Surety Program, any entity using DRS will be required to procure a surety bond in order to send electronic instructions through Profile. The surety company issuing the surety bond will either be a company selected by DTC as the administrator of the Profile Surety Program or, at the election of the entity participating in DRS, another surety company. If an entity participating in DRS elects to use another surety company, the surety company will be required to issue the surety bond in accordance with the terms and

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

<sup>2</sup> For a description of the DRS and Profile, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 [File No. SR-DTC-96-15] (order relating to the establishment of DRS); 41862 (September 10, 1999), 64 FR 51162, [File No. SR-DTC-99-16] (order relating to implementation of Profile); 42366 (January 28, 2000) 65 FR 5714, [File No. SR-DTC-00-01] (order relating to an interpretation of an existing rule pertaining to DRS); and 42704 (April 19, 2000), 65 FR 24242 [File No. SR-DTC-00-04] (order relating to incorporation of an electronic screen-based indemnification).

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242, [File No. SR-DTC-00-04].

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

conditions established by DTC for the Profile Surety Program. For example, the surety bond must have a coverage limit of \$2 million per occurrence and an aggregate limit of \$6 million. DTC will also require that all companies issuing surety bonds must be rated A – or better by the A.M. Best Company. DTC plans to implement the Profile Surety Program by October 1, 2000.<sup>6</sup>

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will give participants more efficient usage of DRS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

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

DTC perceives no adverse impact on competition by reason of the proposed rule change.

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

The proposed rule change has been developed through discussions with several participants and DRS limited participants. Written comments from participants or others have not been solicited or received on the proposed rule change.

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

Within thirty-five days of the date of the 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 the 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 20549–0609. 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. section 553, 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 offices of DTC. All submissions should refer to File No. SR–DTC–00–09 and should be submitted by September 1, 2000.

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

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

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**SECURITIES EXCHANGE COMMISSION**

[Release No. 34–43091; File No. SR–MSRB–00–09]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules G–8 and G–15; Correction**

August 7, 2000.

In FR Document 00–19771, the Release Number was incorrectly stated. The Release Number should read as follows: (Release No. 34–43091; File No. SR–MSRB–00–09)

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

[FR Doc. 00–20411 Filed 8–10–00; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–43066A; File No. SR–MSRB–00–06]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Municipal Fund Securities; Corrections**

August 4, 2000.

In FR Document 00–19448, beginning on page 47530 for Wednesday, August 2, 2000, on page 47531, Rule D–12 was incorrectly stated. This provision should read as follows:

*“Rule D–12. “Municipal Fund Security”*

*The term “municipal fund security” shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.”*

On page 47532, Rule G–8(g)(i) was incorrectly stated. This provision should read as follows:

*“(g) Transactions in Municipal Fund Securities.*

*(i) Books and Records Maintained by Transfer Agents. Books and records required to be maintained by a broker, dealer or municipal securities dealer under this rule solely with respect to transactions in municipal fund securities may be maintained by a transfer agent registered under Section 17A(c)(2) of the Act used by such broker, dealer or municipal securities dealer in connection with such transactions; provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records.”*

On page 47533, Rule G–15(a)(i)(A)(7)(c) was incorrectly stated and should read as follows:

*“(c) Municipal fund securities. For municipal fund securities, the purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;”*

On page 47534, Rule G–15(a)(viii)(D) was incorrectly stated and should read as follows:

*“(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; and”*

On page 47534, Rule G–15(a)(viii)(E)(3) was incorrectly stated and should read as follows:

<sup>6</sup>Letter from Jeffrey T. Waddle, DTC (August 1, 2000).