access to customer funds and securities, and can direct the movement of such assets by placing orders with clearing firms.[6] Customers are often unaware of or unable to distinguish between introducing and clearing firms, and tend to rely heavily upon the representations of brokers at introducing firms. A higher net capital requirement will help ensure the financial integrity of such introducing firms and thereby help to protect investors.

Similarly, better capitalized introducing firms are less likely to become insolvent. In the event that such a firm does become insolvent, customers will be better protected by higher minimum net capital requirements. The failure of an introducing firm can strand an investor, who may be unable to place orders directly with a clearing firm because the clearing firm regards the investor as the customer of the introducing firm. Such a customer would be unable either to liquidate or open new positions until the introducing firm is wound up or the customer opens a new account with a different broker. Higher net capital levels would likely result in a quicker, easier sale of the introducing firm and would help to minimize the impact of such a failure on the investing public.

Finally, the Exchange believes that raising the minimum net capital level for members will further the antifraud provisions of the federal securities laws. Members have access to customer securities and funds either directly, as in the case of a clearing firm, or indirectly, as in the case of an introducing firm that places orders with a clearing firm on behalf of its customers. In either case, member firms are presented with an opportunity to convert customer assets for personal or other inappropriate use. Higher net capital levels will help ensure adequate firm resources to address such problems. In addition, higher net capital levels may create a disincentive toward such activity by ensuring sufficient operating capital. That is, a firm with sufficient net capital may be less likely to attempt to convert customer funds for the firm's use.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will help ensure greater financial stability of the Exchange's members by requiring those members to maintain higher capital levels. In the event of adverse market movements, these capital reserves will help protect members and their customers by helping to ensure that funds are available to cover securities positions.

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

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No comments were solicited in connection with the proposed rule change.

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

Within 35 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 90 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–97–09 and should be submitted by September 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[6] Securities Exchange Act Rel. No. 31512 (Nov. 24, 1991), 57 FR 57027 (Dec. 2, 1992).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38964; File No. SR–DTC–97–05]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of Procedures to Distinguish Repurchase Transactions and Other Financing Transactions From Securities Pledges

August 22, 1997.

On May 14, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–97–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on July 15, 1997.[2] The Commission received no comment letters in response to the filing. On August 7, 1997, DTC amended the proposed rule change.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends DTC's Collateral Loan Program (''CLP'') procedures[4] to enable DTC's participants to distinguish repurchase transactions (''repos'') and other types of financing transactions from pledges of securities. The CLP's current procedures do not differentiate between a securities transaction that involves the transfer of the entire interest in securities (*i.e.*, as in a repo transaction) from a securities transaction that involves the transfer of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38820 (July 7, 1997), 62 FR 37947.

[3] The amendment was technical in nature and therefore did not require republication of the notice.

[4] A copy of DTC's procedures for repo accounts is attached as Exhibit 2 to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

a security interest or other limited interest in the securities (*i.e.*, a pledge).[5]

Under the proposed rule change, any organization that is eligible to establish a pledgee account (*i.e.*, ''receiver'') at DTC may establish a repo account. Consequently, a participant engaging in a repo or other type of financing transaction will be able to deliver securities to the receiver's repo account instead of the receiver's pledgee account.[6] DTC will deem instructions to deliver securities to a repo account as instructing DTC to transfer to the receiver the entire interest in the securities and not just a security interest or other limited interest.[7]

DTC will accept instructions solely from a receiver with respect to the disposition of securities credited to the receiver's repo account. The receiver may instruct DTC to deliver securities credited to its repo account to its DTC participant account if the receiver is also a DTC participant or to any other DTC participant account.[8] Any receiver that instructs DTC to deliver securities credited to its repo account to another receiver or to a DTC participant other than the original delivering participant will be required to provide DTC with certain warranties and must indemnify DTC, its stockholders, and certain employees against potential liability.[9]

II. Discussion

Section 17A(b)(3)(F)[10] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in DTC's custody or control or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act because the new procedures should enable DTC participants to avoid any confusion as to whether a securities transfer is actually the sale of a security or the pledge of a security as collateral. Consequently, the procedures should reduce the potential for the inadvertent delivery of dividend payments, proxy materials, or other items to the wrong party.

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–97–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[5] According to DTC, many of its participants use the CLP to effect repos.

[6] The instructions for a delivery of securities to a repo account use the same data fields as the instructions for a pledge to a pledgee account, which includes a mandatory hypothecation code field. A participant delivering securities to a repo account must enter the number seven, eight, or nine in the hypothecation code field. The entry of the number seven, eight, or nine in the hypothecation code field of instructions for a delivery to a repo account does not constitute a notice or representation as to any matter by the delivering participant. The entry of the number seven, eight, or nine in the hypothecation code field of such instructions is merely an action needed to effect the delivery through DTC's facilities. A participant pledging securities to a pledgee account must continue to enter the number one, two, or three, whichever is applicable, in the hypotecation code field. Participants are responsible for entering the appropriate number in the hypothecation field for all transactions. Letter from Carl Urist, Deputy General Counsel, DTC (August 7, 1997).

[7] According to DTC's proposed procedures for repo accounts, the operation of a repo account will be identical to the operation of a pledgee account. As with a pledgee account: (1) the voting rights on securities credited to a repo account will be assigned to the participant that delivered the securities to the repo account; (2) cash dividend and interest payments and other cash distributions on the securities will be credited to the account of the delivering participant; (3) distributions of securities for which the exdistribution date is on or prior to the payable date or in which the distribution is payable in a different security will be credited to the account of the delivering participant; and (4) any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date will be credited to the repo account of the receiver. Also, the reports and statements that DTC sends to participants and receivers for transactions involving repo accounts will be the same as the reports that DTC generates for a pledgee account except that such reports and statements will carry a repo account number.

[8] According to DTC, there are a small number of non-member banks that maintain pledge accounts at DTC. Conversation with Carl H. Urist, Deputy General Counsel, DTC (August 22, 1997).

[9] The indemnification provides protection from liability that may arise in the event that, unknown to DTC, at the time of the transfer there was a filing by the Securities Investor Protection Corporation or other court order that prohibited such transfer. *Id.*

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38961; File No. SR–NASD–97–16]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Relating to the Revision of the Criteria for Initial and Continued Listing on The Nasdaq Stock Market, Inc.

August 22, 1997.

I. Introduction

On March 3, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to revise its listing and maintenance standards for Nasdaq National Market (''NNM'') and SmallCap designated issuers. On March 27, 1997, the NASD filed Amendment No. 1 to the proposal.[3] On April 1, 1997, the NASD filed Amendment No. 2 to the proposal.[4] On June 17, 1997, the NASD filed Amendment No. 3 to the proposal.[5]

Notice of the substance of the proposed rule change and Amendment Nos. 1 and 2 was provided by issuance of a release[6] and by publication in the **Federal Register**.[7] Eight comment letters regarding the proposed rule change

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (March 27, 1997) (''Amendment No. 1''). Amendment No. 1 makes technical and conforming changes to the proposed rule filing.

[4] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (April 1, 1997) (''Amendment No. 2''). Amendment No. 2 makes technical and conforming changes to the proposed rule filing.

[5] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Commission (June 17, 1997) (''Amendment No. 3''). Amendment No. 3 makes technical and conforming changes to the proposed rule filing, correcting clerical errors and defining terms used in the rule language. For example, Amendment No. 3 defines two abbreviations used in the rules, as well as the terms ''Market Value'' and ''Country of Domicile.''

[6] Exchange Act Release No. 38469 (April 2, 1997).

[7] 62 FR 17262 (April 9, 1997).