event electronic contracts are held to be invalid or unenforceable by reason of their having been entered into or administered electronically. Because the law on electronic contracts is still developing, OPRA believes it is reasonable to ask those vendors who wish to use electronic contracts to assume any risk that such contracts may be found to be unenforceable or invalid.

The Rider also provides OPRA with the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice concerning electronic contracts or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason. In light of the continuing evolution of the law of electronic contracts, OPRA believes it should be able to amend or withdraw permission to use electronic contracts if such contracts are likely to be held invalid or unenforceable or are otherwise found to be deficient.

III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[3] Specifically, the Commission believes that the proposed amendment, which accommodates the use of electronic contracts by vendors, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require a number of conditions intended to ensure that OPRA's interests are protected, regardless of the type of contract used by its vendors. First, OPRA limits the use of electronic contracts to those vendors that allow their customers to enter into other agreements electronically. Second, vendors must submit for OPRA's approval an ''Attachment A,'' describing the vendors' procedures and systems.[4] Third, OPRA requires vendors to use OPRA's forms for electronic contracts, except that vendors may use their own forms for Dial-Up Customers, subject to OPRA's approval. Fourth, vendors must keep detailed records of all electronic contracts, and make such records available for review by OPRA. Fifth, the vendor must give the customer notice and make the text of the electronic contract available for the customer's review every time the customer accesses the Options Information Service. Sixth, vendors must indemnify OPRA against loss due to a determination that any electronic contract is invalid or unenforceable. Finally, the amendment also grants OPRA the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason.

The Commission believes that, in the absence of substantial historical experience with electronic contracts and given the current unsettled state of the law in this area, it is reasonable for OPRA to take precautions, such as those proposed, to protect its interests. The Commission believes that the above-mentioned conditions imposed by OPRA on vendors desiring to use electronic contracts are reasonable and consistent with the Act. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA vendors by allowing them to use electronic contracts under certain circumstances while providing OPRA with the contractual protections that it requires.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act, that the proposed Plan amendment (SR–OPRA–98–1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[3] In approving this rule, the Commission has considered the proposed Plan Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[4] In its review of vendors' Attachment A, OPRA will consider ''the reasonableness of the procedures that the vendor plans to use to identify its customers, to ensure that those customers are who they say they are, and to keep track of the exact form of agreement that is assented to by each customer'' in light of the then-current industry practices. OPRA will also review the security procedures that vendors will use. *See* Letter from Lisa Winger, Schiff, Hardin & Waite, to Deborah Flynn, Division of Market Regulation, Commission, dated October 21, 1998.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40696; File No. SR–DTC–98–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Validation Testing

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 1, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will require that its participants successfully complete a Year 2000 validation test.

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 III below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.[2]

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

On January 1, 2000, certain computer programs may misinterpret the Year 2000 as the Year 1900. Because DTC depends on computer technology to allow its participants to input and retrieve settlement transaction reports and to complete the daily settlement of securities transactions, such a misinterpretation could have serious

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

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

consequences for DTC and its participants. Accordingly, DTC is assessing its own Year 2000 readiness as well as the Year 2000 readiness of all its participants.

Under the proposed rule change, DTC is setting forth a policy statement with respect to DTC's Rule 2. That rule provides the standards and obligations that entities must meet to become DTC participants and to retain their status as participants. Pursuant to Rule 2, a participant must furnish to DTC upon DTC's request information that demonstrates the participant has satisfactory operational capability.

In accordance with Rule 2, DTC will require participants that provide input to DTC through a computer to computer link to conduct a Year 2000 validation test directly with DTC at some point during the first nine months of 1999. Because DTC recognizes the importance in obtaining assurances that participants are individually prepared to receive settlement transaction reports from DTC, input settlement transactions to DTC, and complete settlement, DTC's validation testing process will focus on a limited number of scripted transactions in certain settlement-related areas. The validation test will require participants to process a series of scripted transactions and to balance with DTC's position and settlement statements. DTC will require that each participant provide DTC with a standard testing acknowledgment, signed by a senior internal auditor, that the participant has balanced to the position and settlement statements and has done so in a Year 2000 compliant environment.[3]

In DTC's view, a participant's failure to successfully complete the Year 2000 validation test will constitute a failure to demonstrate the sufficient operational capability required by Rule 2.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because the proposed validation testing will reduce the risk of participant failures caused by computer programs that misinterpret the Year 2000 as the Year 1900. The Year 2000 validation test will help ensure that DTC participants have sufficient operational capability to properly interface with DTC before, on, and after the Year 2000.

[3] If a participant does not have an internal auditor, the testing acknowledgment may be executed by a senior compliance officer or other equivalent officer.

(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 Year 2000 validation test requirement has been received positively by the Securities Industry Association (''SIA'') Year 2000 Steering Committee. A draft testing acknowledgment has been reviewed without comment by SIA's Legal and Compliance subcommittee as well as the New York Clearing House Year 2000 Committee.

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

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the Year 2000 validation test should allow DTC to address any potential problems associated with its participants' Year 2000 readiness. As a result, DTC should be able to continue to provide for the prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should allow DTC and its participants to immediately begin to prepare for DTC's Year 2000 validation testing.

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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–98–18 and should be submitted by December 21, 1998.

[4] 15 U.S.C. 78q-1(b)(3)(F).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–98–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40700; File No. SR–DTC–98–16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Modifying the Initial Public Offering Tracking System

November 20, 1998.

On August 19, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–16) 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 October 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies DTC's Initial Public Offering (''IPO'') tracking system.[3] Under the rule change, DTC

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

[2] Securities Exchange Act Release No. 40552 (October 14, 1998), 63 FR 56279.

[3] For a detailed description of the IPO tracking system, refer to Securities Exchange Act Release No.