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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(2) thereunder[6] as establishing or changing a due, fee, or other charge paid solely by members of the NASD. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

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. 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 File No. SR–NASD–2001–62 and should be submitted by October 31, 2001.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(F)(2).

[7] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–44888; File No. SR–NYSE–2001–38)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading Ordinary Shares of Deutsche Bank on the Exchange

September 28, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The NYSE proposes to adopt interpretations of certain rules of the Exchange's Listed Company Manual (''Manual'') to accommodate the trading of ordinary shares of Deutsche Bank Aktiengesell shaft (''Deutsche Bank'').[3] These interpretations pertain to Deutsche Bank's proxy procedures and form of shares.

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

[2] 17 CFR 240.19b–4.

[3] These interpretations are generally similar to those approved by the Commission in respect of trading of ordinary shares of DaimlerChrysler AG and Celanese AG, each a stock corporation incorporated under laws of the Federal Republic of Germany. *See* Securities Exchange Act Release No. 40597, 63 FR 58435 (October 30, 1998); Securities Exchange Act Release No. 43044, 65 FR 45808 (July 25, 2000).

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

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

In 1998, the Exchange facilitated the trading of the ordinary shares of DaimlerChrysler AG (''DaimlerChrysler'') by adopting interpretations of certain existing rules of the Manual.[4] The Commission approved those interpretations.[5] In 2000, the Exchange facilitated the trading of the ordinary shares of Celanese AG (''Celanese'') by adopting interpretations that were substantially similar to those made in connection with the trading of the ordinary shares of DaimlerChrysler. The Commission also approved those interpretations.[6]

The Exchange's experience indicates that since their original listing on the Exchange, the ordinary shares of each of DaimlerChrysler and Celanese have traded on the Exchange without difficulty. The Exchange now proposes to adopt similar interpretations to accommodate the listing and trading on the Exchange of Deutsche Banks's ordinary shares. Because of the developments in German law and business practices, as well as evolution of the Exchange's rules, the Exchange proposes to adopt an additional interpretation relating to form of shares of Deutsche Bank that would allow the Ordinary Shares to be in a book-entry only format, provided that the securities

[4] Specifically, the Exchange accepted a form of stock certificate that complied with requirements of the Frankfurt Stock Exchange (''FSE'') notwithstanding its variation from some of the requirements in Paras. 501 and 502 of the Manual. The Exchange also interpreted Paras. 401.03 and Para. 402 of the Manual to permit DaimlerChrysler to solicit proxies in a manner that combined characteristics of both German and U.S. markets.

[5] *See* Securities Exchange Act Release No. 40597, 63 FR 58435 (October 30, 1998).

[6] *See* Securities Exchange Act Release No. 43044, 65 FR 45808 (July 25, 2000).

are ''depository eligible'' as is required by Exchange Rule 227.

Deutsche Bank is a stock corporation incorporated under the laws of the Federal Republic of Germany. Deutsche Bank's share capital consists of ordinary shares issued in registered form without par value (''Ordinary Shares''). The Ordinary Shares will trade on both the FSE and the NYSE under the symbol ''DB.'' The register for the Ordinary Shares will be administered by registrar services GmbH, Deutsche Bank's transfer agent and registrar in Germany, and by Deutsche Bank AG, the company's ''named'' transfer agent and registrar in the United States, as well as Mellon Investor Services LLC (''Mellon'' or ''U.S. Transfer Agent''), the ''record keeping transfer agent'' in the United States. Transactions in the Ordinary Shares will be cleared through the central clearing systems of both countries, The Depository Trust Company (''DTC'') in the United States and Clearstream Banking AG Frankfurt [7] in Germany.

To facilitate the trading of Ordinary Shares of Deutsche Bank on the Exchange, the Exchange proposes to adopt the following interpretations of the Exchange's rules:

Voting

Under German law, only stockholders who hold shares on the date of the stockholders' meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, the Exchange's rules require 10 days' notice of a record date and 30 days' interval between record and meeting dates. Deutsche Bank will accommodate the notice period in the United States.

In Germany, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. Deutsche Bank has agreed to prepare and mail shareholder-meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the currently accepted time frame. Deutsche Bank also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. To address the issue of possible double voting, both the U.S. Transfer Agent and Automatic Data Processing (''ADP''), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is mailed out and the date of the meeting. These procedures will be designed (i) to cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. A purpose of the proposed interpretation is to accept these procedures as being in compliance with NYSE procedures.

Both the U.S. Transfer Agent and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The U.S. Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the U.S. Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be canceled. If new holders appear, proxy materials will be mailed to them by the U.S. Transfer Agent, in the case of registered owners, and by ADP, in the case of beneficial owners. The shareholder lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders on a best effort basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automataic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be permitted to exceed the total position so held.

In addition, Deutsche Bank shareholders can vote in person at a shareholders' meeting. Under Deutsche Bank's Articles of Association, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date. Deutsche Bank will solicit proxies in a manner consistent with the Exchange's rules applicable to non-U.S. issuers.

Form of Shares

The Exchange has been advised that it has become a standard market practice for German listed stock corporations not make share certificates available.[8] Consistent with this practice, Deutsche Bank's shareholders generally have no right to individual shares in certificate form.

The Exchange proposes to adopt an interpretation that would allow the Ordinary Shares to be in a book-entry only format, provided that the securities are ''depository eligible'' as is required by Exchange Rule 227. Investors will be able to hold their interest in the Ordinary Shares in ''street name'' or in their own name through a system for direct registration of shares (''DRS'') in the United States.

Under the book-entry only system, the Ordinary Shares are represented by one or more global certificates deposited with Clearstream Banking AG Frankfurt, the German central depository. No individual physical certificates will generally be issued. It is expected that U.S. holders of the Ordinary Shares would hold their interest in the global certificates in street name through DTC in the United States. Investors who choose to hold their interest in the Ordinary Shares through DRS will be able to update ownership information directly with the U.S. Transfer Agent.

In the event individual certificates in respect of the Ordinary Shares are issued, they will comply with applicable interpretations relating to the form of stock certificates developed for DaimlerChrysler.[9]

Based on the foregoing, the Exchange believes that it is appropriate to approve ordinary shares of Deutsche Bank for listing and trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [10] in general, and with Section 6(b)(5) in particular,[11] in

[7] Clearsteam International is a clearing and settlement company that is a product of a merger between Deutsche Börse Clearing and Luxemburg's Cedel International, which became effective in January 2000. Clearstream Banking AG Frankfurt is a subsidiary of Clearsteam International.

[8] Under the German Stock Corporation Act (Aktiengesetz), a stock corporation is permitted to restrict or exclude the shareholders' right to request the issuance of share certificates. Such restriction or exclusion must be provided in the stock corporation's articles of association. If the articles of association provide for such restriction or exclusion, the shareholders' rights will be represented by an interest in one or more global share certificates representing the entire share capital of the stock corporation.

[9] Note that the recent elimination of the Exchange's printing and engraving requirements will affect that interpretation. *See* Securities Exchange Act Release No. 44592, 66 FR 39809–01 (August 1, 2001). The interpretation regarding the form of stock certificate developed for Daimler Chrysler permitted vignettes not to be fully steel engraved and permitted the form of endorsement to provide for German registry. As part of the elimination of the Exchange's printing and engraving requirement, vignettes are no longer required by the Manual.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade.

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

The Exchange 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

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. 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. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–2001–38 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. [12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest. [13] The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of Deutsche Bank (rather than American depositary receipts) while maintaining the standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to permit Deutsche Bank shares to be in book-entry format only, provided that the securities are ''depository eligible'' as required by Exchange Rule 227. The interpretation is necessary to accommodate the fact that Deutsche Bank shareholders generally have no right to individual shares in certificate form. In the event that individual certificates are issued, the Commission believes that it is reasonable for the Exchange to interpret the Manual to permit it to list shares of Deutsche Bank despite differences from the Manual's standards for endorsement.

The Commission also believes that it is reasonable for the NYSE to interpret the Manual to accept Deutsche Bank's proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, Deutsche Bank will give shareholders the same type of advance notification provided for in the Manual. Moreover, Deutsche Bank's proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding Deutsche Bank appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the proposal in the FEDERAL REGISTER. According to the Exchange, the trading of Deutsche Bank shares is scheduled to commence as early as October 3, 2001. The Exchange states that approval of the rule change by the date will facilitate the maintenance of an orderly market in the shares of Deutsche Bank. The Exchange further states that without accelerated approval of this proposed rule change, there will be uncertainty in the market regarding the form of Deutsche Bank certificates and the procedures governing Deutsche Bank proxies.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, [14] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is necessary to approve the NYSE's proposal on an accelerated basis to permit the public to begin to trade the newly issued Deutsche Bank shares on the NYSE without doubts about whether the book-entry only shares are acceptable under NYSE rules, and without question about how Deutsche Bank will conduct proxy voting.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [15] that the proposed rule change (SR–NYSE–2001–38) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3367]

State of Florida

DeSoto, Flagler, Putnam and Sarasota Counties and the contiguous counties of Alachua, Bradford, Charlotte, Clay, Glades, Hardee, Highlands, Manatee, Marion, St. Johns and Volusia in the State of Florida constitute a disaster area due to damages from heavy rainfall, winds and severe flooding caused by Tropical Storm Gabrielle, which made landfall on September 14, 2001. Applications for loans for physical damage may be filed until the close of business on November 30, 2001 and for economic injury until the close of business on July 1, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office,