

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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-97-64 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39590; File No. SR-DCC-97-12]

### Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify Procedures Relating to Collateral Substitution and Termination

January 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> notice is hereby given that on December 31, 1997, Delta Clearing Corp. ("DCC") 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 primarily prepared by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The purpose of the proposed rule change is to clarify certain procedures for repurchase agreement transactions

with respect to collateral substitution and termination.

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

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and any comments received by DCC on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

On June 28, 1996, the Financial Accounting Standards Board issued Statement No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("FASB 125"). FASB institutes new accounting rules for generally accepted accounting principles applicable to all transactions involving transfers of financial assets, including repurchase agreements and buy-back/sell-back transactions. FASB 125 became effective on January 1, 1998.

Under FASB 125, the accounting treatment of repurchase transactions may differ based on the specific terms of each transaction. For example, where the repurchase agreement provides the purchaser with the right to sell or to repledge the underlying collateral and the seller does not have the right to substitute the securities used as collateral or to terminate the agreement on short notice (i.e., no control over the collateral), FASB 125 will require the seller to classify the securities used as collateral as a "receivable for securities pledged" and not as "securities in inventory" as they are currently classified.

In response to the FASB 125, many participants in the repurchase market, with the assistance of the Bond Market Association, have adopted amendments to their master repurchase agreements that contain a provision that grants to the seller a right of substitution or termination. Pursuant to such provisions, if a buyer rejects a seller's attempt to substitute collateral, the seller has a right to terminate the repurchase agreement. If the seller exercises its right of termination, it must pay the buyer its costs (e.g., to enter into

a replacement transaction and to terminate hedging transactions or related transactions with third parties) and any losses incurred. These provisions will provide the seller with effective control over the securities used as collateral and therefore will mitigate the impact of FASB 125.

While incorporation of this amendment is optional, DCC believes that many of its participants will use agreements that contain this new substitution and termination provision beginning January 1, 1998. Therefore, DCC is proposing to amend its rules and procedures to recognize the use of agreements that contain this substitution and termination provision and to clarify DCC's existing notice requirements involved in the exercise of the right of substitution and termination pursuant to such provisions.

Pursuant to DCC's procedures, if the buyer elects not to accept the substitute collateral, it must notify DCC by the close of the business day unless the notice of substitution was given by the seller after 10:15 a.m., in which case the buyer must notify DCC prior to the close of business on the next business day. With the notice of rejection, the buyer must provide to DCC its calculation of the expenses that it will incur as a result of the termination of the transaction. If the seller exercises its right of termination, the seller must pay DCC the buyer's computation of expenses by the close of the business day on the day of termination.

DCC believes the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act<sup>3</sup> and the rules and regulations promulgated thereunder because the proposed rule change will clarify procedures with respect to substitution and termination.

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

DCC does not believe that the proposed rule change will impact or impose a burden on competition.

##### 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

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1994).

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

<sup>2</sup> The Commission has modified such summaries.

<sup>3</sup> 15 U.S.C. 78q-1.

19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(e)(4) thereunder<sup>5</sup> in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or person using the service. At any time within sixty days of the filing of the 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.

#### 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, 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 Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the File No. SR-DCC-97-12 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39583; File No. SR-NYSE-97-38]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend its Rule 13 to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

January 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change seeks to amend Rule 13 to provide that if a percentage order is marked "Immediate Execution or Cancel Election," the elected portion of a percentage order with this designation is to be executed immediately in whole or in part at the price of the electing transaction. If the elected portion cannot be so executed, the election shall be deemed cancelled, and shall revert back to the percentage order and be subject to subsequent election or conversion. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

#### 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 NYSE 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. The NYSE 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

Currently, NYSE Rule 13 provides for three types of percentage orders: straight limit, last sale (which pursuant to a recently approved amendment, can be further designated "last sale cumulative volume"), and "buy minus/sell plus." The election provisions of each type of percentage order operate as follows:

**Straight Limit:** When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at a price within the overall limit on the order. Typically, the limit price is above the market when the order is entered (in the case of an order to buy), or below the market (in the case of an order to sell).

**Last Sale:** When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at the price of that trade, or at a better price, within the overall limit of the order. If the order is further designated "last sale cumulative volume," an elected portion of such order can move with the market and become a held limit order executable at the price of subsequent transactions that are higher (in the case of a buy order) or lower (in the case of a sell order), within the overall limit price on the order. Typically, the limit price is above the market when the order is entered (in the case of a buy order) or below the market (in the case of a sell order).

**"Buy Minus/Sell Plus":** When a trade takes place, an amount of shares equal to the size of the trade is elected, and becomes a "held" order executable only on stabilizing ticks. An order of this type must be further qualified by placing an overall limit price on the order.

The Exchange believes that the application of the election provisions do not meet the interests of some investors placing percentage orders, particularly straight limit and last sale percentage orders:

**Straight Limit:** Investors entering percentage orders seek to trade along with the trend of the market, without initiating price changes or otherwise influencing the equilibrium of buying and selling interest. When a straight limit percentage order is elected, it will typically receive an execution in one of two ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is, as a held order whose limit is above the market (in the case of a buy order) or below the market (in the case of a sell order), required to be immediately executed (or stopped) against the contra side of the market.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.