

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41508; File No. SR-DTC-99-07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Charges

June 10, 1999.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on March 15, 1999, 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 revises the fee schedule for DTC's services.²

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.³

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

Under the proposed rule change, DTC is adjusting the fees that it charges for various services so that the fees are aligned with their respective estimated service costs for 1999. The adjusted fees are effective with respect to services provided on and after April 1, 1999. DTC's Board of Directors has completed a review of DTC's estimated unit service costs for 1999, and DTC's service fees

have been adjusted to reflect the results of the review.

The revised 1999 fee schedule has been set to yield \$7.5 million more in operating revenue on an annual basis than the present fee schedule (which had been based on 1998 unit service costs) would have yielded. Studies of the impact of the new fees on all participants based on their monthly bills from DTC for October, November, and December 1998 shows an average monthly fee increase of 1.4%.

The revised fee schedule includes transaction based fees for DTC's custody service, which has previously been billed as a flat monthly fee that is negotiated with respect to each participant based on its projected overall usage of the service.⁴ Since DTC has completed its analysis of the various activities included in the custody service and the respective costs associated with each activity, the flat monthly fee will be replaced with individual transaction fees applied to all participants uniformly and based on the nature of the transaction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to DTC because fees will be allocated more equitably among DTC participants based on respective estimated 1999 unit service costs.

(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

Participants and other users of DTC's services were informed that DTC anticipated that annual service fees would likely increase in 1999 by \$7.5 million by an Important Notice dated July 31, 1998, (B#4612) entitled "Preliminary Projections for 1998 and Anticipated 1999 Services Fees." An Executive Important Notice dated February 5, 1999, (B#6063) entitled "1999 Revisions of DTC Service Fees" was then circulated to participants and other users of DTC services on February 5, 1999, advising them of the new fees

effective with respect to services provided on and after April 1, 1999, and inviting their questions or comment. Because participants have supported cost based fees in the past and because overall the subject fee changes are modest, a more formal period for participant comment was not considered necessary.

No written comments from participants or others have been received with respect to this proposed rule change.

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)(ii) ⁶ of the Act and Rule 19b-4(g)(2) ⁷ promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty 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.

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. 20549-0609. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-99-07 and should be submitted by July 8, 1999.

¹ 15 U.S.C. 78s(b)(1).

² The revised fee schedule is attached as Exhibit 2 to DTC's filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ Securities Exchange Act Release No. 39761 (March 16, 1998) 63 FR 13893 [File No. SR-DTC-97-09].

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

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

Margaret H. McFarland

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41510; File No. SR-NASD-99-21]

Self-Regulatory Organizations Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Creation of a Dispute Resolution Subsidiary

June 10, 1999.

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 April 26, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

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

The Association is proposing to create a dispute resolution subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), to handle dispute resolution programs; to adopt by-laws for such subsidiary; and to make conforming amendments to the Delegation Plan, the NASD Regulation By-Laws, and the Rules of the Association. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

A. The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD

Regulation, Inc. (referenced individually as "NASD Regulation"),²² [and] The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"), and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

* * * * *

B. Functions and Authority of the NASD—The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A., [and] III.A., and V.A., the NASD has delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries. In addition, the NASD expressly retains the following authority and functions:

* * * * *

4. To review the rulemaking and disciplinary decisions of the subsidiaries (See Sections II.B., [and] III.B., and V.B. below).

5. No change.

6. To resolve any disputes [between] among the Subsidiaries.

* * * * *

11. To take action "*ab initio*" in an area of responsibility delegated to NASD Regulation in Section II, [or] to Nasdaq in Section III, or to NASD Dispute Resolution in Section V.

* * * * *

D. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A., [and] III.A., and V.A. below, the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are officers, directors, employees and agents of the NASD for purposes of the Act. The books and records of NASDAQ shall be subject at all times to inspection and copying by NASD Regulation.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section 1.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. To establish and interpret rules and regulations and provide exemptions for NASD members including, but not limited to fees[,] and membership requirements[, and arbitration procedures].

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) [arbitration of disputes among and between NASD members, associated persons and customers, (ii)] public and private sale or distribution of securities including underwriting arrangements and compensation, [(iii)] (ii) financial responsibility, [(iv)] (iii) qualifications for NASD membership and association with NASD members, [(v)] (iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting members in general and securities listed on The Nasdaq Stock Market and on other markets operated by the Nasdaq Stock Market, [(vi)] (v) NASD member advertising practices, [(vii)] (vi) administration, interpretation and enforcement of Association rules, [(viii)] (vii) administration and enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and [(ix)] (viii) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

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h. [To conduct arbitrations, mediations and other dispute resolution programs.

i.] To conduct qualification examinations and continuing education programs.

j.-t. Remembered as i.-s.

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B. NASD Regulation Board Procedures

1. Rule Filings—The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board before the rule change becomes the final action of the Association if the rule

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.