

other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the affected Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from the provisions of section 17(a) of the Act to permit Covered Shareholders to redeem their shares in-kind from the Funds. The requested order will not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the requested relief satisfies the requirements of sections 6(c) and 17(b). Applicants assert that neither an affected Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standard and that the in-kind redemptions are consistent with the investment policies of the Funds. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Covered Shareholder would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Covered Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding: (a) securities which could not be publicly offered or sold in the United States without registration under the Securities Act of 1933; (b) certain portfolio positions (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with an institutional counterparty to the transaction; (c) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); (d) other assets which are not readily distributable (including receivables and prepaid expenses); and (e) portfolio securities representing fractional shares, odd lot securities and accruals on such securities. Cash will be paid for the portion of the in-kind distribution represented by assets set forth in (a)-(e) less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered Shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Trust's Board, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its prospectus. In addition, the Board will make and approve such changes in the procedures as it deems necessary for monitoring the Fund's compliance with the terms and conditions of this application.

5. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of each such

redemption setting forth the identity of the Covered Shareholder, a description of each security distributed in-kind, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41526; File No. SR-CHX-99-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

June 15, 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 May 10, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 the Exchange. On May 28, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,⁴ which render the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Kathleen M. Boege ("Boege"), Associate General Counsel, Exchange to Joseph Morra ("Morra"), Attorney, Division of Market Regulation ("Division"), SEC, dated May 26, 1999 ("Amendment No. 1"). Amendment No. 1 corrected Section II(C) of the proposal, to acknowledge that the Exchange solicited input from firms that serve as CHX specialists for Nasdaq issues that are traded on the CHX pursuant to unlisted trading privileges, and that there was unanimous consent to the proposal by those firms. Amendment No. 1 was filed on May 28, 1999, following several interchanges between Division staff and Exchange staff. The Commission processed Amendment No. 1 on the same day. Consequently, the proposal is deemed to have been filed as of May 28, 1999.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ The filing date of this proposed rule change is May 28, 1999. *see supra* footnote 3.

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 Exchange proposes to amend its membership dues and fees schedule,

Technical Equipment (per month)

Tools of the Trade Access

Server and Network Infrastructure Charges

Tools of the Trade and Nasdaq Connection Charges

(b) Not applicable.

(c) Not applicable.

effective with the May billing statements. The text of the proposed change is below. Additions are in italics; deletions are in brackets.

Membership Dues and Fees

Four Screen Rich Units	\$250.00
Three Screen Rich Units	\$208.35
Two Screen Rich Units	\$166.65
Max Floor Broker Terminals	\$37.95
Floor Broker Printer	\$49.95
Specialist Back Post MAX Terminals	\$37.95
OTC/UTP Equipment	
Pentium 450 PC	\$100.00
Two 21" CRTs	\$110.00
Two 15" flat-panel monitors	\$140.00
Two 18" flat-panel monitors	\$250.00
[Specialist] Printer (Listed or OTC/UTP Specialist)	\$49.95

Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.

All Server and Network Infrastructure Charges and all Tools of the Trade and Nasdaq Connection Charges (i.e., the costs of providing access to and use of the Exchange's Nasdaq and Tools of the Trade servers to facilitate OTC/UTP trading) shall be located pro rata on a monthly basis among all specialist firms engaged in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm.

(e) Equipment/Technology/Space Charges

* * * * *

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 IV 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

The purpose of the proposed rule change is to amend the Exchange's schedule of membership dues and fees to pass on to Exchange specialists engaged in trading certain securities on an over-the-counter basis pursuant to unlisted trading privileges (collectively, the "OTC/UTP" specialists) those costs associated with providing new technology and dedicated equipment to the Exchange's OTC/UTP community.

The CHX maintains that due to the recent explosive growth in OTC/UTP trading at the Exchange and the corresponding increase in related technological demands, the Exchange has had to augment its existing CHX computer equipment and network infrastructure, solely to accommodate the Exchange's OTC/UTP specialists. Because the rapid expansion of the OTC/UTP program has necessitated, and will continue to demand, significant expenditures of the Exchange's capital and personnel resources, the Exchange's Finance Committee has determined that the Exchange should not continue to absorb all of the costs incurred by the Exchange in connection with the OTC/UTP program. Accordingly, the Exchange proposes to commence rebilling OTC/UTP specialists for these costs.

The CHX rules expressly authorize the Exchange to "* * * fix and impose other charges or fees to be paid to the Exchange by members and member organizations * * * for the use of equipment or facilities * * *."⁶ Proceeding under this authority, Exchange management developed a proposed fee schedule, identifying the costs that will be passed on to OTC/UTP specialists. The proposed fee schedule

was discussed with specialist firms that will be affected thereby; none of these firms (nor any individual co-specialist) opposed the Exchange's proposal. In light of this consensus, the CHX Finance Committee approved the proposed amendment at its April 13, 1999 meeting and the CHX Board of Governors concurred at its April 15, 1999 meeting.

As reflected in the proposed text set forth above, the costs that the Exchange seeks to pass on to OTC/UTP co-specialists consist of three principal categories. Each category is comprised of costs that are incurred by the Exchange solely on account of the OTC/UTP program. Accordingly, the Exchange believes that it is appropriate to limit pass-through of these costs to OTC/UTP co-specialists on a pro rata basis. The first category, "Server and Network Infrastructure Charges" and "Tools of the Trade and Nasdaq Connection Charges" consists of the costs (including ongoing maintenance and service costs) relating to the Exchanges' new Nasdaq and Tools of the Trade⁷ servers. The second

⁶ Tools of the Trade is a proprietary software enhancement licensed to CHX by Financial Systemware, Inc. This software operates as an overlay on existing OTC/UTP systems and provides for increased functionality and enhanced capacity

⁶ Article XIV, Rule 7(a).

category, "Technical Equipment" assesses the OTC/UTP co-specialist with the cost of computer equipment, monitors and printers dedicated to an OTC/UTP co-specialist's own trading environment. Finally, the "Tools of the Trade Access" category provides for direct rebilling of actual access charges incurred by the Exchange when a co-specialist uses Tools of the Trade for the particular issues traded by the co-specialist.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

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

The CHX held a meeting on March 29, 1999, which was attended by the principals of all UTP Specialist Firms, at which time CHX management outlined the proposed fee structure contained in this proposal, and the rationale for imposition of such fees. There was unanimous consent of the UTP Specialist Firms to the imposition of the proposed fees. Subsequently, the proposal was approved unanimously by the CHX committee (referred to as the OTC Committee) responsible for matters having an impact on unlisted trading at the Exchange.⁹

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

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change (May 28, 1999), 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

with respect to automated quotation display and trade execution.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Amendment No. 1.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

in furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Exchange. All submissions should refer to file number SR-CHX-99-02, and should be submitted by July 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99-15845 Filed 6-21-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41529; File No. SR-DTC-99-08]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Amendments to Organization Certificate and By-Laws

June 15, 1999.

On March 18, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on April 12, 1999, amended a proposed rule change (File No. SR-DTC-99-08) 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 April 23, 1999.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC is amending its Organization Certificate and By-Laws to increase the size of its Board of Directors, to redesignate its capital stock, and to modernize its Certification of Organization. The amendments are subject to stockholder approval.

A. Increasing the Number of Board Directors

The Boards of Directors of DTC and the National Securities Clearing Corporation ("NSCC") have decided to integrate DTC and NSCC. An initial step in the integration is to propose at this year's annual shareholders' meeting the reelection of DTC's Board of Directors.³ Subject to regulatory approval, the Boards of DTC and NSCC will be restructured so that the same group of individuals will serve as the Board of Directors for each of the two companies.⁴ Through this process and with the inclusion of DTC and NSCC management directors, the Board of Directors for each company will be comprised of twenty-seven people.⁵

DTC's Organization Certificate and By-Laws currently provide for the number of directors of the Board to be not less than five nor more than twenty. In order to accommodate the number of directors resulting from the consolidated plan described above, paragraph "SEVENTH" of the Organization Certificate (which after elimination of paragraph "FOURTH," as described below, will become paragraph "SIXTH") and Article II, Section 2.1 of the By-laws will be amended to provide that the number of directors be not less than seven nor more than twenty-five. Section 2.1 by the By-Law will also be

² Securities Exchange Act Lease No. 41305 (April 16, 1999), 64 FR 20034.

³ The Commission recently approved a similar proposal submitted by NSCC. Securities Exchange Act Release No. 41520 (June 11, 1999) [File No. SR-NSCC-99-08].

⁴ Simply combining DTC's current Board to NSCC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards. As a result, each organization represented will be asked to select only one representative.

⁵ Under the Federal Reserve Act, DTC may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

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

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).