

acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

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

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

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

The rule change described herein is designated by the Exchange as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore, has become effective immediately pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e) thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 Section, 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-95-35 and

should be submitted by September 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-20402 Filed 8-16-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36093; File No. SR-DTC-95-13]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

August 11, 1995.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 26, 1995, 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

DTC is filing the proposed rule change in order to reduce the monthly usage fees charged to its participants for issuing/paying agent ("IPA") accounts from \$565 to \$245.

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.²

¹ 17 CFR 200.30-3(a)(12) (1994).

² 15 U.S.C. 78s(b)(1) (1988).

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

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

The purpose of the proposed rule change is to reduce the monthly usage fees charged to DTC participants for IPA accounts from \$565 to \$245 per month. DTC's Money Market Instrument ("MMI") programs require that IPAs have a DTC account reserved solely for MMI issuance and paying agency activity. DTC's current usage charge is \$565 per month for each account up to five accounts. For each account over five, the fee is \$245 per month.

On August 21, 1995, medium-term notes ("MTNs") and short-term bank notes ("STBNs") will become part of DTC's MMI programs. This will necessitate the creation of separate IPA accounts by MTN and STBN IPAs that do not already have a separate IPA account for other existing MMIs such as commercial paper and institutional certificates of deposit. These may include IPAs that previously have conducted their MTN and STBN issuance/payment activity through an existing participant account. The charge for these new accounts and all existing IPA accounts now will be \$245 per account per month.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants.

(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

No comments on the proposed rule change were solicited or 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)(ii)³ of the Act and pursuant to Rule 19b-4(e)(2)⁴ promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any

³ 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

⁴ 17 CFR 240.19b-4(e)(2) (1994).

time within sixty days of the filing of such 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. 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 Section, 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 DTC. All submissions should refer to File No. SR-DTC-95-13 and should be submitted by September 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵
[FR Doc. 95-20397 Filed 8-16-95; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-36088; File No. SR-NASD-95-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation

August 10, 1995.

On June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule relating to the failure to honor settlement agreements

obtained in connection with an arbitration or mediation.² The Commission published notice of the proposed rule change in the **Federal Register** on June 20, 1995.³ The Commission received one comment in response to the notice.⁴ The Commission has reviewed the comment received, and for the reasons discussed below, approves the proposed rule change.

I. Description

The amendments to the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") makes clear that the following acts constitute a violation of Article III, Section 1 of the Rules of Fair Practice: (a) a failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The rule change also amends Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

II. Discussion

The Commission agrees with the NASD's judgment that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a NASD mediation should have the same consequences as the failure to pay an arbitration award.⁵ The

² The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, and one amendment reporting the final count of votes cast by members in favor of the rule change. The text of these amendments may be examined in the Commission's Public Reference Room. See Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments; and Letter from Frank J. Formica, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulations, SEC (July 13, 1995).

³ Securities Exchange Act Release No. 35847 (June 14, 1995), 60 FR 32190.

⁴ Letter from Paul J. Dubow, Chairman, Arbitration Subcommittee of the Litigation Section, Securities Industry Association ("SIA") to Secretary, SEC (July 11, 1995).

⁵ The Resolution, adopted in 1973, states that "it may be deemed * * * a violation of Article III,

Commission is concerned that a failure by a NASD member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce agreements where parties fail to honor settlement agreements and additional fees connected with short-notice cancellation of hearing. The NASD reports that is Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the credibility of the arbitration process will suffer if NASD members and their associated persons delay the resolution of a dispute by failing to honor a settlement agreement.

This rule change amends the Resolution to clarify that the failure by a member or associated person to honor a written and executed settlement agreement is actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. The amendment is limited to settlement agreements that have been reduced to writing and have been executed. The amendment, therefore, will not encompass unexecuted settlements.

In its comments,⁶ the SIA argues against adoption of the rule because: (1) The NASD has not established a problem exists with respect to failing to honor settlement agreements that warrants a rule change; (2) it is not balanced or even-handed in that there are no provisions in the rule that could be used to sanction non-members who fail to honor a written settlement agreement; and (3) it proposes to impose sanctions for failure to honor settlement agreements in connection with arbitrations held at other forums. The Commission finds the SIA's arguments unpersuasive.

With respect to the SIA's first comment, the NASD, in its response to the SIA, points out that while the problem of failure to honor a settlement agreement may not be a pervasive problem, it is nonetheless a problem that needs to be addressed.⁷ This rule addresses the problem before it becomes more serious.

The SIA's second comment describes the rule as not balanced because it fails

Section 1 of the Rules of Fair Practice for a member or person associated with a member to * * * fail to honor an [arbitration] * * *." This Resolution applies to awards rendered in NASD sponsored arbitration, as well as arbitration sponsored by the American Arbitration Association ("AAA") and other SROs.

⁶ See note 4, *supra*.

⁷ Letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (July 19, 1995) (NASD "response").

⁵ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).