

Dated: November 13, 1998.

**Beatrice Ezerski,**

*Secretary to the Board.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40660; International Series Release No. 1170; File No. SR-DTC-98-19]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Enhancement of the Current Link With Deutsche Borse Clearing AG

November 10, 1998.

On September 15, 1998, The Depository Trust Company ("DTC") Filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-98-19) pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 23, 1998.<sup>2</sup> The Commission received seven comment letters in response to the filing.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

Under the rule change, DTC will open an omnibus account at Deutsche Borse Clearing AG ("DBC") in order to create a two-way interface between DTC and DBC. Presently, DBC has an omnibus account at DTC which enables DBC and its participants to effect book-entry deliveries at DTC to DTC participants. The current link between DTC and DBC allows DBC and its participants to use the custody, book-entry, and delivery services of DTC for transactions involving securities that are eligible in both systems. The current link permits a DTC participant to settle a cross-border transaction with a DBC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DTC to the DBC omnibus account at DTC and by identifying the DBC participant account to which the delivered securities should be credited.<sup>4</sup> Cash

settlement of the transaction will take place outside of DTC.

However, under the current link a DBC participant cannot make a book-entry delivery of securities held in its account at DBC to a DTC participant's account at DTC. In order for a DBC participant to make a delivery of securities to a DTC counterparty's account at DTC, the DBC participant must deliver the physical securities to DTC.

The rule change will permit book-entry movements of securities from a DBC participant's account at DBC to a DTC counterparty's account at DTC. Thus, a DBC participant will be able to settle a cross-border transaction with a DTC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DBC to the DTC omnibus account at DBC and by identifying the DTC participant account to which the delivered shares should be credited.<sup>5</sup> The receiving DTC participant can then redeliver the securities within DTC through a book-entry movement on either a free of payment or against payment basis.

If required, DBC will provide subcustody services such as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at DBC in accordance with DBC procedures. Currently, DTC provides such services for securities held by DTC on behalf of DBC.

#### II. Comment Letters

The Commission received seven comment letters in response to the notice of the proposed rule change.<sup>6</sup> Five commenters, Credit Suisse First Boston Corporation, Salomon Smith Barney, Skadden Arps, Deutsche Bank, and BONY, expressed support for the proposed rule change. These comments stated generally that the proposed rule change would facilitate the efficient processing of cross-border securities

<sup>5</sup> All deliveries of securities into or out of DTC's omnibus account at DBC are on a free of payment basis.

<sup>6</sup> Letters from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services ("Thomson") (October 14, 1998); Joseph D. Fashano, Director, Credit Suisse First Boston Corporation (October 20, 1998); Thomas L. Montrone, President, The Securities Transfer Association, Inc. ("STA") (October 21, 1998); Simon M. Lorne, Managing Director, Salomon Smith Barney (October 23, 1998); J. Michael Schell, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") (October 23, 1998); Jurgen Rebouillon, Senior Vice President, and Thomas Klee, First Vice President, Deutsche Bank AG ("Deutsche Bank") (October 23, 1998); Joseph M. Velli, Senior Executive Vice President, The Bank of New York ("BONY") (October 23, 1998).

transactions and would reduce risks and costs to participants of DTC and DBC.<sup>7</sup>

The STA expressed concern that under the proposed rule change some U.S. investors may receive transfer services from transfer agents that are not fully subject to U.S. regulation. In response to the STA's letter, Skadden Arps noted that the transfer agents for DaimlerChrysler ordinary shares, BONY and Deutsche Bank, are registered under Section 17A of the Act. Skadden Arps also stated that it believed that it is not necessary to subject all cross-border exchange links to Section 17A registration.

Thomson expressed concern that the proposed rule change might result in an expansion of the scope of certain self-regulatory organization rules governing the confirmation and affirmation of institutional securities trades. Thomson requested that the Commission clarify that the proposed rule change would not affect the exemption in those rules for trades that settle outside the United States.<sup>8</sup>

#### III. Discussion

Section 17A(b)(3)(F) of the Act<sup>9</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F).

The Commission believes that the rule change should increase efficiency in the movement of securities positions and in the settlement of securities transactions among participants of DTC and DBC by reducing the need for the movement of physical securities. The link should not

<sup>7</sup> The comment letters submitted by Skadden Arps, Deutsche Bank, and BONY addressed the rule change with reference to the merger of Daimler-Benz Aktiengesellschaft and Chrysler Corporation into DaimlerChrysler AG. Skadden Arps is counsel to Daimler-Benz, and BONY and Deutsche Bank will serve as cotransfer agents for DaimlerChrysler ordinary shares.

<sup>8</sup> Specifically, Thomson referenced National Association of Securities Dealers Rule 11860, New York Stock Exchange ("NYSE") Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G-15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Stock Exchange Rule 274(b). Those rules require that for certain securities transactions the facilities of a securities depository be used for the confirmation, acknowledgment, and book entry settlement of the transactions. However, those rules also state that they are not applicable to transactions that are to be settled outside the United States. See, e.g., NYSE Rule 387(a)(5), Interpretation .10.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

<sup>2</sup> Securities Exchange Act Release No. 40445 (September 16, 1998), 63 FR 50950.

<sup>3</sup> *Infra* note 6.

<sup>4</sup> All deliveries of securities into or out of DBC's omnibus account at DTC are on a free of payment basis.

only reduce the time and expense associated with physical movements of securities positions but should also reduce the risk of loss and erroneous processing that always exists with physical movements. The Commission also believes that the procedures for the link between DTC and DBC are consistent with DTC's safeguarding obligation in that all movements into or out of DTC's omnibus account at DBC and into or out of DBC's omnibus account at DTC will be on a free of payment basis.<sup>10</sup>

The Commission has taken account of the comment letters that it received in response to the proposed rule change. The Commission believes that the rule change should not affect the obligation of any entity to register as a transfer agent pursuant to Section 17A of the Act.<sup>11</sup> In addition, the Commission believes that the rule change should not have any effect on the rules of any self-regulatory organization other than DTC.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-DTC-98-19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-30826 Filed 11-17-98; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40658; File No. SR-NASD-98-71]

#### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Proprietary Trading Data via NasdaqTrader.com

November 10, 1998.

On September 29, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, 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> to amend Rule 7010 of the Rules of the NASD, to establish a pilot program to provide proprietary trading data via Nasdaq's NasdaqTrader.com web site.

Notice of the proposed rule change was published on October 9, 1998 to solicit comment from interested persons.<sup>3</sup> The Commission received two comment letters concerning the proposed rule change.<sup>4</sup> On November 5, 1998, the NASD withdrew the proposal rule change.<sup>5</sup>

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

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

<sup>3</sup> Securities Exchange Act Rel. No. 40542 (October 9, 1998), 63 FR 55909 (October 19, 1998).

<sup>4</sup> Letters from Roland Beaulieu, President, Thomason Trading Services, Inc. ("Autex"), to Jonathan G. Katz, Secretary, SEC, dated October 22, 1998 and from Mari-Anne Pisarri, Pickard and Djinis LLP, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 13, 1998.

<sup>5</sup> Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 4, 1998.

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

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40659; File No. SR-NASD-98-69]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mutual Fund Breakpoint Sales

November 10, 1998.

On September 10, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change 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> In its filing, NASD Regulation proposed to amend Interpretive Memorandum 2830-1 ("IM 2830-1") to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies. Notice of the proposal was published in the **Federal Register** on October 6, 1998 ("Notice").<sup>3</sup> No comments were received on the proposal.

#### I. Description of the Proposal

Volume purchasers of mutual fund shares often enjoy lower sales charges when purchases reach certain levels (e.g., \$10,000, \$25,000, \$50,000, and so forth). Although funds do not have to offer such discounts under SEC or NASD rules, many funds use reduced fee schedules as a marketing tool to attract large investors. The term "breakpoint" refers to the amount of mutual fund shares that must be purchased before the volume sales charges are reduced. IM-2830-1 prohibits sales of mutual fund shares in amounts below breakpoints, if such sales are made to avoid the reduced volume sales charges. When the Association reviews a suspected violation, it looks at the facts and circumstances of a particular below-breakpoint sale to determine whether there is a bona fide reason for the sale.

NASD Regulation recognizes that the customers of NASD members, to meet their diversification needs and investment goals, may wish to allocate their portfolios among different assets, in a way that does not allow them to get the benefit of volume sales charge

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

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

<sup>3</sup> See Securities Exchange Act Release No. 40500 (September 29, 1998), 63 FR 53740 (October 6, 1998) (File No. SR-NASD-98-69).

<sup>10</sup> In addition, DTC has obtained an opinion of counsel concerning German law and DTC's participation in DBC.

<sup>11</sup> The Commission notes that the entities that will perform transfer functions for shares in DaimlerChrysler are registered transfer agents.

<sup>12</sup> 15 U.S.C. 78q-1.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).