

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, in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-98-53 and should be submitted by September 1, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-98-53), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41657; File No. SR-DTC-99-17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-99-17) 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.

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

The proposed rule change filed by DTC involves proposed arrangements to integrate DTC and National Securities Clearing Corporation ("NSCC"). The proposal provides for the following:

- DTC and NSCC will form a New York corporation ("Holding Company") for the purpose of owning directly all of the outstanding stock of NSCC and owning indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.
- After receipt of all necessary regulatory approvals, the Holding Company will conduct exchange offers in which current DC stockholders will have the opportunity to exchange their DTC shares for newly-issued Holding Company common stock on a one-for-one basis and the two current stockholders of NSCC will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares ("Exchange Offers").

- The Holding Company will elect as the Directors of DTC and NSCC the persons elected by the stockholders of the Holding Company.

- As subsidiaries of the Holding Company, DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.

- The Holding Company itself will not engage in clearing agency activities. Certain support functions, including Human Resources, Finance, Audit, General Administration, Corporate Communications, and Legal will be centralized in the Holding Company, and the Holding Company will provide those services to each of the two subsidiary clearing agencies pursuant to service contracts.

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

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

At their meetings in February 1999, the Boards of Directors of DTC and NSCC voted to proceed with a plan for the integration of the two clearing agencies. A principal goal of the plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at DTC and NSCC for the clearance and settlement of both institutional and broker transactions. This strategy is intended to accommodate shortened settlement cycles and increased volumes, to improve risk management, and to lower transaction processing costs.

An initial step in the plan was the identification from among the incumbent directors of both Boards of a single group of individual to serve as the Board of Directors for each of the two companies. Since simply adding the membership of DTC's Board of NSCC's Board would have resulted in certain user and marketplace organizations having more than one representative, each of these organizations was asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management Directors, a group of twenty-seven persons was identified. That group has been elected as NSCC Board of Directors by NSCC's stockholders. Since federal banking law applicable to DTC limits the maximum size of DTC's Board to twenty-five members, two of the persons to NSCC's Board will participate in DTC Board meetings as non-voting advisors. The remaining twenty-five persons have been elected as DTC's Board of Directors by DTC stockholders.³ The next steps in the integration plan, conducting the Exchange Offers and implementing certain stock ownership and corporate governance arrangements for the Holding Company, are the subjects of the proposed rule change.

The Holding Company will issue two classes of stock in connection with the Exchange Offers: common stock to be owned initially by current DTC stockholders and preferred stock to be owned in equal amounts by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the current stockholders of NSCC. As explained in more detail below, DTC believes that DTC and NSCC will satisfy the fair representation requirement of Section

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

³ See Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 [File No. SR-DTC-99-08] (order approving proposed rule change).

17A(b)(3)(C) of the Act⁴ in the Holding Company structure by (1) giving participants and members of DTC and NSCC the right to purchase shares or Holding Company common stock on a basis that reflects their use of the services and facilities of DTC and NSCC (based on a system analogous to the system now employed by DTC for reallocating entitlements to purchase shares of DTC stock) and (2) selecting individuals to be directors of the Holding Company (who will also be directors of DTC and NSCC) on a basis that will insure that all major constituencies in the securities industry will have a voice in the business and affairs of DTC and NSCC (based on a process analogous to the process now employed by the two clearing agencies for selecting their directors).

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement will be amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) Any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.⁵

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")⁶ contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A of the Act. In this regard, the Basic Documents provide for the following.

⁴ 15 U.S.C. 78q-1(b)(3)(C).

⁵ DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

⁶ DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Director of the Holding Company, and that person will also serve on the Boards of DTC and NSCC. All other Directors will be elected annually by the owners of Holding Company common stock.

- As discussed above, the rights to purchase Holding Company common stock will be reallocated to the users of both clearing agencies based upon the users' usage. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.

- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

With respect to the nomination process, each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and nonmembers of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Since the Basic Documents provide for cumulative voting, one or more owners of Holding Company common stock could arrange to elect a person not on the slate nominated for election by the Board.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it is designed to coordinate further the activities of DTC and NSCC in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry.

(B) Self-Regulatory Organization's Statement of burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act. DTC and NSCC are utilities created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members complete with one another.

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

Written comments from DTC participants have not been solicited or received on the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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, NW, Washington, DC 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, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submission should refer to File No. SR-DTC-99-17 and should be submitted by September 1, 1999.

For the Commission by Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41704; File No. SR-NASD-99-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Margin for Exempted Borrowers, Good Faith Accounts, Joint Back Office Arrangements and Options Transactions

August 4, 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 January 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. NASD Regulation amended its proposal on June 1, 1999, July 7, 1999, and July 15, 1999.³ The Commission is publishing this notice to solicit comments on the

⁷ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 1, 1999 ("Amendment No. 1"); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated July 7, 1999 ("Amendment No. 2"); and Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated July 15, 1999 ("Amendment No. 3"). Amendment No. 1 conforms several provisions of NASD Rule 2520 to New York Stock Exchange ("NYSE") Rule 431. Among other things, Amendment No. 1 indicates that, for purposes of the joint back office provisions of NASD Rule 2520, the NASD will interpret the terms "carrying and clearing member" and "carrying member" in the same manner as NYSE. Amendment No. 1 also provides additional information regarding the proposed changes to the provisions of NASD Rule 2520 governing control and restricted securities. Amendment Nos. 2 and 3 make technical changes to the text of NASD Rule 2520.

proposed rule change, as amended, from interested persons.

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

NASD Regulation is proposing to amend NASD Rule 2520, "Margin Requirements," to revise the margin requirements for exempted borrowers, good faith accounts, joint back office arrangements and options transactions. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

* * * * *

(3) The term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member extends, arranges or maintains any credit. The term will not include *the following: (A) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member or its customers [.]*, or *(B) and "exempted borrower" as defined by Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"), except for the proprietary account of a broker-dealer carried by a member pursuant to paragraph (e)(6) of this Rule.*

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in Regulation T [of the Board of Governors of the Federal Reserve System]; or

* * * * *

Withdrawals of cash or securities may be made from any account which has as debit balance, "short" position or commitments, provided it is in compliance with Regulation T [of the Board of Governors of the Federal Reserve System] and after such withdrawal the equity in the account is at least the greater of \$2,000 or an amount sufficient to meet the maintenance margin requirements of this paragraph.

(c) Maintenance Margin

The margin which must be maintained in [margin] *all*⁴ accounts of customers, *except for cash accounts subject to other provisions of this rule*, shall be as follows:

* * * * *

[(5) In the case of securities listed on the Emerging Company Marketplace of the America Stock Exchange (AMEX), 100 percent of the market value in cash, of each security held "long" in the account, unless the AMEX determines that the security satisfies the criteria enumerated in Sections 220.17(a) and (b) of Regulation T of the Board of Governors of the Federal Reserve System for inclusion and continued inclusion on the List of OTC Margin Stocks, except for the requirement relating to the number of dealers in Sections 220.17(a)(1) and (b)(1)].

* * * * *

(e) Exceptions to Rule

The foregoing requirements of this [paragraph] *Rule*⁵ are subject to the following exceptions:

* * * * *

(2) Exempted Securities, Marginable Corporate Debt Securities and Baskets

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(C) Non-Convertible Corporate Debt Securities

On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond," as defined in Section 220.2(t) of Regulation T [of the Board of Governors of the Federal Reserve System], the margin to be maintained shall be 20 percent of the current market value or 7 percent of the principal amount, whichever amount is greater, except on mortgage related securities as defined in Section 3(a)(41) of the Act the margin to be maintained for an exempt account shall be 5 percent of the current market value. For purposes of this subparagraph, and exempt account shall be defined as a member, non-member broker/dealer, "designated account" or any person having net tangible assets of at least sixteen million dollars.

* * * * *

(3) Joint Accounts in Which the Carrying Member or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or

⁴ See Amendment No. 1, *supra* note 3.

⁵ See Amendment No. 2, *supra* note 3.