

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50182; File No. SR-DTC-2004-05]

Self-Regulatory Organizations; the Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to the Look-Ahead Process

August 11, 2004.

On May 7, 2004, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-DTC-2004-05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on July 2, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of this filing is to allow DTC to expand the application and extend the benefits of its Look-Ahead process to all equity transactions, all valued pledge transactions, and all valued release transactions.³ DTC's Look-Ahead process is designed to reduce transaction settlement blockage. Currently, it is available only for municipal and corporate debt transactions.⁴ The Look-Ahead processing system reduces transaction settlement blockage by identifying a receive transaction pending due to a net debit cap insufficiency and determines whether there is an offsetting delivery transaction in the same security that is pending because of a quantity deficiency. The system calculates the net effect of the offsetting transactions in the accounts of the three participants involved. If the net effect of the offsetting transactions is that each of the three accounts is in compliance with DTC's risk management systems controls, the transactions will be completed.

As a result of the Look-Ahead process reducing transaction settlement blockages in municipal and corporate debt transactions, DTC participants have experienced improved timeliness of completion of transactions in the system, increased trade certainty, and

improved straight-through processing. DTC intends to extend the benefits and to expand the application of its Look-Ahead process to all equity transactions, all valued pledge transactions, and all valued release in the third quarter of 2004.

II. Discussion

Section 17A(b)(3)(F)⁵ of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By expanding the securities to which its Look-Ahead process will be applied, the proposed rule change should reduce the number of blocked transactions at DTC. As such, the proposed rule change is consistent with DTC's statutory obligation to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-DTC-2004-05) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50183; File No. SR-NASD-2004-109]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Increase the Initial Inclusion Requirements for Certain Foreign Securities Seeking To List on the Nasdaq SmallCap Market

August 11, 2004.

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 July 15,

2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to modify Rule 4320 to increase the initial inclusion requirements for non-Canadian foreign securities and American Depositary Receipts seeking to list on the Nasdaq SmallCap Market ("SmallCap Market"). Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].³

* * * * *

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)-(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the criteria set out in this subsection for inclusion in Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(1) No change.

(2) (A) For initial inclusion, *the issue shall have a minimum bid price of \$4 and the issuer shall have:*

(i)-(iii) No change.

(B)-(D) No change.

(3)-(4) No change.

(5) There shall be at least 1,000,000 publicly held shares for initial inclusion

³ Changes are marked to the text for Rule 4320 that appears in the electronic NASD Manual found at www.nasdaq.com, which was current as of the date of this filing. No other pending rule filings would affect the text of this rule. Telephone conversation between Arnold P. Golub, Associate Vice President, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, Commission on August 11, 2004.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49924 (June 28, 2004), 69 FR 40426.

³ Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. DTC-2003-07) (order allowing DTC to establish Look-Ahead processing).

⁴ *Id.*

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and 500,000 publicly held shares for continued inclusion. *For initial inclusion, such shares shall have a market value of at least \$5 million.* In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial inclusion and 100,000 publicly held shares for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6)–(20) No change.

(21)–(25) Reserved.

(f) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Currently, no initial inclusion requirements relating to share price or market value of publicly held shares are applicable to non-Canadian foreign issuers seeking to list on the Nasdaq SmallCap Market. By contrast, domestic issuers must have a bid price of at least \$4 and a market value of publicly held shares of at least \$5,000,000 for initial listing. Nasdaq proposes to amend Rule 4320 to apply these same initial inclusion requirements to non-Canadian foreign issuers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general, and with Section 15A(b)(6) of the Act,⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing this rule change to apply the same, heightened quantitative initial inclusion standards upon non-Canadian foreign issuers that currently apply to domestic and Canadian issuers.

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

Nasdaq does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

Within 35 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 90 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 the self-regulatory organization 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

No. SR-NASD-2004-109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-NASD-2004-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASD-2004-109 and should be submitted on or before September 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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⁶ 17 CFR 200.30-3(a)(12).