

in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

If a participant fails to pay its settlement obligation to DTC at the end of the day, DTC will use its liquidity resources (all-cash participants fund and bank line of credit) to complete settlement. Currently, DTC's rules provide that if the participant is insolvent and use of the participant's fund deposit does not eliminate its net debit obligation, DTC may on the business day following the failure-to-settle either: (1) Resell to deliverers the securities they had delivered to the insolvent participant on the day of the failure ("resale procedure") or (2) sell in the open market those securities and other collateral in the insolvent participant's account.

The resale procedure was included in DTC's rules prior to the industry's conversion to same-day funds settlement and DTC's adoption of associated risk management controls, including the collateral monitor and the imposition of net debit caps.<sup>4</sup> The collateral monitor systematically prevents a participant from accruing a net debit that exceeds the value of the collateral in its account by blocking any transaction that would have that effect. For this purpose, collateral includes: (1) The participant's deposit to the participant's funds, (2) the value of securities in the participant's account that it has designated as collateral, and (3) the value of securities that are the subject of deliveries from other participants. The collateral value attributed to securities is equal to their market value minus a "haircut" as determined by DTC.

DTC believes that its risk management controls adequately limit DTC's risk exposure in the event of a participant insolvency and that there is no need to rely upon the resale procedure. In addition, the proposed rule change will help clarify that book-entry deliveries on DTC's books are final.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by clarifying that book-entry deliveries once effected are final.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason 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 Depository Trust & Clearing Corporation's ("DTCC") July 2000 White Paper on the goals of straight-through processing and T+1 settlement identified the subject of the proposed rule change as one of the changes that would be required to achieve these goals. DTCC received two favorable comment letters expressing views on the subject proposal.<sup>6</sup> These comment letters are attached as Exhibit 2 to DTC's filing.

**III. Date of Effectiveness of the Proposed Rule 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 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. 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 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 submissions should refer to File No. SR-DTC-00-17 and should be submitted by May 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44176; File No. SR-DTC-01-02]

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Enhancement of the End-of-Day Settlement Process of the Depository Trust Company**

April 11, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 24, 2001, 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 on the proposed rule change from interested parties.

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

The proposed rule change consists of an enhancement to the end-of-day

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> For a description of same day funds settlement and DTC's adoption of associated risk management controls, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 [File No. SR-DTC-87-04] (order granting temporary approval to DTC's same-day fund settlement service) and 26051 (August 31, 1988), 53 FR 34853 [File No. SR-DTC-88-06] (order granting permanent approval to DTC's same-day fund settlement service).

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> Letters from Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers Operations and Arthur L. Thomas, Chief Operating Officer, Merrill Lynch Securities Services Division, to Dennis Dirks, President, Depository Trust Company (June 7, 2000), and from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House, to John Mancuso, Senior Systems Director, The Depository Trust & Clearing Corporation (September 22, 2000).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

settlement process of DTC. The enhancement will enable settling banks to use the Federal Reserve Bank's ("Fed") National Net Settlement Service ("NSS") as an alternative vehicle to satisfy their net-net debit balances at DTC.<sup>2</sup> As described more fully below, NSS permits DTC to submit instructions to have the Fed accounts of participating settling banks charged for their DTC net-net debit balance. Utilization of NSS will serve to eliminate the need for a settling bank to initiate a wire to DTC's Fed Account in satisfaction of a net-net debit balance and therefore will reduce the risk a settling bank may incur a late payment fee due to a delay in wiring funds to DTC. Fees connected with DTC's end-of-day settlement process remain unchanged with respect to the NSS enhancements.

## 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 these statements.<sup>3</sup>

### (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 provide settling banks with additional flexibility in the end-of-day settlement process of DTC. Currently, settling banks settle their DTC end-of-day net-net balances over the Fedwire system. If, however, a settling bank chooses to utilize NSS, once the settling bank acknowledges its net-net debit balances, DTC will transmit a file to the Fed with instructions to charge the participating settling bank with a net-net debit.<sup>4</sup> DTC will receive a message from the Fed when the file is successfully processed and balances updated. If a settling bank's Fed account does not have sufficient funds to complete the charge, DTC will be

notified by the Fed, and DTC will contact the settling bank directly to obtain required funding.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC because the proposed rule change will give participants more efficient usage of DTC's settlement processes. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the new operation of DTC's settlement processes, as modified by the proposed rule change, will enhance the current operation of the function.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason 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 proposed rule change has been developed through discussions with several participants. Written comments from participants or others have not been 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)(iii)<sup>6</sup> of the Act and Rule 19b-4(f)(4)<sup>7</sup> promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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, 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 20549-0609. 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 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 submissions should refer to File No. SR-DTC-01-02 and should be submitted by May 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44174; File No. SR-NASD-00-78]

### Self Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending the Nasdaq By-Laws

April 11, 2001.

#### I. Introduction

On January 22, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a

<sup>2</sup> DTC implemented NSS on February 5, 2001.

Thirteen settling banks currently use the service.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> Settling banks in a net-net credit situation will continue to be credited via the Fedwire system outside of NSS in accordance with DTC's current procedures.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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