

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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CSE-2002-17 and should be submitted by December 27, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,¹⁰ and, in particular section 6(b)(5) of the Act.¹¹ As discussed above, through the Instant Exemption Letter, the Division has extended the relief granted by the Amended Exemption Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and expedite the protection of customer limit orders in subpenny increments in listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CSE-2002-17) is hereby approved on an accelerated basis for a pilot period through May 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46930; File No. SR-DTC-2002-08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Unitary Action Procedures

November 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 13, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-2002-08) as described in Items I, II, 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

DTC proposes to adopt procedures to enable its nominee, Cede & Co., to exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is permitted to act with respect to 100% of the securities on deposit or not act at all under applicable law. (This is known as a "Unitary Action" situation.) When involved in a situation that purports to require a Unitary Action under applicable law, DTC would still attempt to follow the procedures it applies when exercising rights that do not purport to require a Unitary Action.

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

Under DTC's current procedures in situations not involving Unitary Actions for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC assigns applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date and issues an omnibus proxy and forwards it to the issuer or trustee. DTC also assists its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

When involved in a situation that purports to require a Unitary Action under applicable law, DTC would nevertheless attempt to follow the procedures described in the preceding paragraph. If, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC from Cede & Co. but only in the form of a 100% yes or no vote or not at all, DTC would attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (e.g., hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge back to each participant holding a position in Unitary Action security such participant's pro rata share (based on the number of shares or the principal

¹⁰ In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 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.

amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will clarify the procedures that DTC will follow in situations calling for Unitary Actions and thereby promote the prompt and accurate clearance and settlement of securities transactions.

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.

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.³

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 such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published 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 Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-2002-08 and should be submitted by December 27, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46933; File No. SR-ISE-2002-22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. ("ISE") Relating to Pilot Fee Waivers

December 2, 2002.

On October 3, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to waive certain fees on a pilot basis. The proposed rule change, as amended, would waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the \$.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund. The ISE filed an amendment to the proposed rule change on October 9, 2002.³ The proposed rule

change, as amended, was published for notice and comment in the **Federal Register** on October 28, 2002.⁴ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission believes that the proposed fee waivers, to be effective until May 31, 2003, are reasonable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change, as amended (SR-ISE-2002-22), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30915 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46931; File No. SR-NSCC-2002-05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating To Clearing Fund Requirements and Letters of Credit Collateralization

November 27, 2002.

I. Introduction

On July 16, 2002, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, and November 25, 2002, amended a proposed rule change File No. SR-NSCC-2002-05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the

the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

⁴ Securities Exchange Act Release No. 46698 (October 21, 2002), 67 FR 65818.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

³ Previously, DTC had filed another proposed rule change to establish procedures for Unitary Actions. Securities Exchange Act Release No. 34-45316 (Jan. 18, 2002), 67 FR 4299 (Jan. 29, 2002) (File No. SR-DTC-2001-05). In response to a comment letter from the Corporate Actions Division of the Securities Industry Association (Mar. 25, 2002) and conversations with Board members of that Division, DTC withdrew that proposed rule change and submitted the present filing.

⁴ 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 Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of