

principal office of the Exchange. 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 Number SR-NYSEArca-2008-79 and should be submitted on or before August 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58252; File No. SR-DTC-2008-05]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Establishing a New Money Market Instrument Procedure Disincentive Fee

July 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 5, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on July 16, 2008, amended the proposed rule change and 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, as amended, from interested persons.

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

The proposed rule change would establish a new disincentive fee for DTC's Money Market Instrument ("MMI") settlement services.

#### 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.

#### 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 add a new \$10,000 disincentive fee for "reversal of a failure or refusal to pay instruction" that will be listed in DTC's fee schedule for settlement services under the heading "Money Market Instruments (MMI) by Book Entry Only."

As background, DTC automatically sweeps all maturing money market instruments' ("MMIs") positions each morning from investors' custodian accounts and generates the appropriate maturity payment ("MP"). The MMIs are then delivered to the account of the appropriate issuer paying agent ("IPA"). DTC debits the IPA's account in the amount of the MP for settlement that day and credits the same MP amount to the investor's custodian account for payment that day to the investor.

However, because MPs are processed automatically and randomly against the IPA's DTC account, IPAs can refuse to pay a specific issuer's MP if that issuer defaults on its obligation to the IPA. An IPA that refuses payment on an MMI must communicate its intention to do so to DTC by using the MP Refusal function on DTC's Participant Terminal System ("PTS"). This communication is referred to as an Issuer Failure/Refusal to Pay and it allows the paying agent to enter refusal to pay notifications for a particular defaulting issuer through PTS until 3:00 p.m., eastern time, on the maturity date. The paying agent understands that entering such a notification will cause DTC to follow its Defaulting Issuer procedures, which include devaluing the collateral value of all of the defaulting issuer's MMIs to zero, reversing all of the issuer's issuances and maturities processed that day, notifying DTC participants of the default, and blocking all further issuances by the issuer from entering DTC. If, thereafter, an IPA contacts DTC to complete all of the transactions that it previously cancelled through the MP Refusal Function, DTC must undo all the actions it took under its Defaulting Issuer procedures. This process of reversing a refusal or failure to pay instruction and effectively resettling the security is an operational burden to DTC and of great financial concern to investors and their custodians. Accordingly, DTC is proposing to

implement a disincentive \$10,000 fee to each IPA that requests such reversal. Additionally, DTC expects such fee to serve as a disincentive to IPAs that request such reversal.

DTC states that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>2</sup> and the rules and regulations thereunder applicable to DTC because the disincentive fee is designed to deter the practice of requesting a refusal or failure to pay instruction, thereby promoting 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 have any impact or 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 relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments it receives.

#### 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. 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](mailto:rule-comments@sec.gov). Please include File

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78q-1.

No. SR-DTC-2008-05 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2008-05. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at [http://www.dtcc.com/legal/rule\\_filings/dtc/2008.php](http://www.dtcc.com/legal/rule_filings/dtc/2008.php). 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. DTC-2008-05 and should be submitted on or before August 28, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>3</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58275; File No. SR-NASDAQ-2008-025]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change, and Amendment No. 2 Thereto, Relating to the Establishment of the Equity Value Indicator Cross

July 31, 2008.

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> notice is hereby given that on March 20, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 substantially prepared by the Exchange. On July 23, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. On July 30, 2008, Nasdaq withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. Amendment No. 2 replaces the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq is proposing to establish a crossing mechanism for EVI securities, which is designed to allow issuers of employee stock options a market-based way of measuring the cost of such options. The text of the proposed rule change is below. Proposed new language is *italicized*; deletions are bracketed.<sup>3</sup>

\* \* \* \* \*

6300. [RESERVED] *Nasdaq Equity Value Indicator Cross*

(a) *Definitions. For the purposes of this rule the term:*

(1) *"Imbalance" shall mean the amount of Eligible Interest that may not be matched with other orders at a particular price at any given time.*

(2) *"Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination.*

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

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

<sup>3</sup> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaq.complinet.com>.

*The Order Imbalance Indicator shall disseminate the following information:*

(A) *"Current Reference Price" shall mean the highest price at which the maximum amount of Eligible Interest can be paired.*

(B) *the amount of Eligible Interest that is paired at the Current Reference Price;*

(C) *the size of any Imbalance at the Current Reference Price; and*

(D) *the buy/sell direction of any Imbalance.*

(3) *"Nasdaq EVI Cross" shall mean the process for determining the price at which Eligible Interest shall be executed. All prices referred to in this rule shall be in minimum increments of one penny.*

(4) *"Eligible Interest" shall mean any priced order that may be entered into the system for the EVI Cross.*

(5) *"EVI" shall mean any Equity Value Indicator Tracking Security which is issued for the purpose of generating a market-based value of employee stock options for purposes of FASB Statement of Financial Accounting Standards No. 123(R), Share-Based Payment. The number of EVIs made available via the EVI Cross, the limit price, if any, of the EVIs, and the terms of the EVIs shall be determined by the EVI issuer which shall make that information available to the public at the earliest time practicable.*

(b) *Processing of Nasdaq EVI Cross.*

(1) (A) *No later than 4:00 p.m. EST on the day of the scheduled EVI Cross, a Nasdaq member authorized to act for the EVI Issuer shall direct in writing that Nasdaq enter into the System a single sell order with the quantity and limit price if any of EVI Eligible Interest. The sell order may not be modified after 4 p.m. and may be cancelled after 4:00 p.m. only in connection with a cancellation of the EVI Cross as set forth in subsection (c) below.*

(B) *Beginning at 8 a.m. and continuing until 4:59:59 p.m. Nasdaq members may enter buy orders into the System. Except as provided below, once entered, buy orders may be cancelled but may not be modified.*

(C) *The EVI Cross shall occur at 5 p.m. EST. in the manner set forth below unless the time of execution is extended. The time of execution of the EVI Cross shall be extended only if the Current Reference Price of the EVI security changes by 1 percent or more between 4:59 p.m. and 5 p.m. in which case the time of the EVI Cross will be extended by 2 minutes. The time of execution of the EVI Cross shall be extended for an additional 2 minutes if the Current Reference Price of the EVI Security changes by 1 percent or more in the final minute of a two-minute*

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