

that it has historically initiated investigations of possible wrongdoing within its disciplinary jurisdiction.

First, the Exchange proposes to amend Exchange Rule 17.2(a) to make express what it represents is the Exchange's Regulatory Division's longstanding practice of initiating investigations of possible rule violations on its own whenever there is a reasonable basis to do so. For instance, among the reasons the Exchange's Regulatory Division may determine that there is a reasonable basis to initiate an investigation are: Results from the automated surveillance programs that the Regulatory Division operates that are designed to highlight particular types of misconduct, observations of the Regulatory Division's Trading Floor Liaison unit that has a consistent presence on the trading floor, regulatory referrals from Exchange committees or other self-regulatory organizations, and oral complaints from members or customers. The Exchange believes that the current language of Exchange Rule 17.2(a) could be read to suggest that the Exchange's Regulatory Division should only initiate investigations upon the order of the Board of Directors, the BCC, the President, or upon receipt of a written complaint. Although the CBOE represents that it has never interpreted Exchange Rule 17.2(a) in such a limited fashion, and believes such a reading would be inconsistent with the Exchange's obligations as a self-regulatory organization under the Act,⁴ the Exchange believes amending Exchange Rule 17.2 is appropriate.

Second, the Exchange proposes to amend Exchange Rule 17.2(a) to provide that the Exchange shall investigate possible violations within its disciplinary jurisdiction upon receipt of a complaint, whether the complaint is written or oral, provided such complaint specifies in reasonable detail the facts constituting the alleged violation. The Exchange also proposes to add an interpretation to Exchange Rule 17.2 stating that, to assist the Exchange in investigating possible violations within its disciplinary jurisdiction, complainants should identify themselves when making a complaint, whether written or oral, and

identify the specific statutes, by-laws, rules, interpretations or resolutions that allegedly have been violated. In addition, the Exchange represents that its Regulatory Services Division currently maintains, and will continue to maintain, a log of all oral complaints that it receives alleging possible violations within the disciplinary jurisdiction of the Exchange.⁵

The Exchange believes that this proposed change to Exchange Rule 17.2 is consistent with its longstanding practice of considering whether to investigate complaints, whether oral or written, and is consistent with its practice of requesting, but not requiring, that complainants identify themselves and identify the specific statutes, by-laws, rules, interpretations or resolutions that allegedly have been violated.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,⁶ in general, and specifically furthers the objectives of sections 6(b)(1),⁷ 6(b)(5),⁸ 6(b)(6),⁹ and 6(b)(7)¹⁰ of the Act, in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. It will help ensure that members and persons associated with members are appropriately disciplined when they violate those provisions.

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

The CBOE 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.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Exchange 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, as amended, 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. 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-2003-15 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48008; File No. SR-DTC-2002-08]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Unitary Action Procedures

June 10, 2003.

On June 13, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

⁴ For instance, the CBOE represents that the Act states that a self-regulatory organization ("SRO") is required to be organized so that it is able to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the SRO's own rules (section 6(b)(1) of the Act), and further that an SRO's rules must be "designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade," and in general "to protect investors and the public interest" (section 6(b)(5) of the Act).

⁵ See Amendment No. 1, *supra* note 1.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(1).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(6).

¹⁰ 15 U.S.C. 78f(b)(7).

¹¹ 17 CFR 200.30-3(a)(12).

(File No. SR-DTC-2002-08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 6, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC's rule change will clarify the procedures under which DTC's nominee, Cede & Co., will exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is required to act with respect to 100% of the securities on deposit or not act at all. Such an event is known as a "Unitary Action."

When involved in a situation that requires a Unitary Action under applicable law, DTC will attempt to follow its normal procedures for actions that are not Unitary Actions. Specifically, 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 will assign applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date, will issue an omnibus proxy, and will forward it to the issuer or trustee. DTC also will assist 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.

However, 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 but only in the form of a 100% yes or no vote or not at all, DTC will 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 each participant holding a position in a Unitary Action security such participant's pro rata share (based on the number of shares or the principal 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.

II. Discussion

Section 17A(b)(3)(F)³ of the Act requires that the rules of a clearing agency be designed, among other things, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with DTC's obligations under section 17A(b)(3)(F) because it preserves DTC's participants' ability to exercise their individual rights in corporate actions while continuing to hold their positions in a book-entry environment in situations involving Unitary Actions. This clarification should also add more certainty to the allocation of voting rights and the costs involved in Unitary Action situations.

III. Conclusion

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

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2002-08) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48035; File No. SR-NASD-98-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 14 and 15 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Short Sale Rule and Continued Suspension of the Primary Market Maker Standards Set Forth in NASD Rule 4612

June 16, 2003.

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 March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. The NASD subsequently filed several amendments to the proposed rule change. On June 11, 2003, the NASD filed Amendment No. 14 to the proposed rule change.³ On June 16, 2003, the NASD filed Amendment No. 15 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, and to grant accelerated approval of the proposed rule change, as amended.

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

The Nasdaq is proposing to extend the pilot program of the NASD short sale rule from June 15, 2003, until December 15, 2003. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker ("PMM") standards currently set forth in NASD Rule 4162 also from June 15, 2003, until December 15, 2003. The text of the proposed rule change is below. Proposed new language is italicized; deletions are [bracketed]. NASD Rule 3350

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 10, 2003 ("Amendment No. 14").

⁴ See letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division, Commission, dated June 10, 2003 ("Amendment No. 15").

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46930 (Nov. 27, 2002); 67 FR 72713.

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 17 CFR 200.30-3(a)(12).