

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 will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR-DTC-2002-02 and should be submitted by June 28, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46018; File No. SR-DTC-2002-03]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to the New York Window Service Allowing Participants to Custody Sealed Envelopes at DTC

June 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 8, 2002, 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 persons.

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

The proposed rule change provides an enhancement to the New York Window service<sup>2</sup> of DTC, which is part of DTC's Custody service.<sup>3</sup> The enhancement, "the Sealed Envelope Service," allows DTC participants to custody sealed envelopes at DTC.

#### 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.<sup>4</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 enhance DTC's New York Window service, which is part of DTC's Custody service. The proposed rule change expands upon a service currently offered by DTC's New York Window service, pursuant to which sealed envelopes are received from participants for immediate delivery to other participants but are not held in custody. As part of DTC's role in supporting the securities industry goal of immobilization, DTC's participants have requested that DTC expand the number of instruments it holds in custody. The instruments that could be deposited in the Sealed Envelope Service are paper documents that are not securities otherwise eligible for DTC's Custody service which include, but are not be limited to, wills, deeds, bills of sale, confirmations, mortgages, letters of credit, vouchers, option agreements, annuities, loan agreements, and other contracts. DTC will not accept any assets in the Sealed Envelope Service that are not documents, such as gold bars, jewelry, coins, *etc.*

<sup>2</sup> For additional information on DTC's New York Window service, see Securities Exchange Act Release No. 40179 (July 8, 1998), 63 FR 30543 [File No. SR-DTC-98-9].

<sup>3</sup> For additional information on DTC's Custody service, see Securities Exchange Act Release No. 37314 (June 14, 1996), 61 FR 29158 [File No. SR-DTC-96-8].

<sup>4</sup> The Commission has modified parts of these statements.

The instruments will be deposited in sealed envelopes, which will be held in one of DTC's vaults. The contents of the envelopes cannot be viewed when sealed. DTC retains the right to reject any deposited envelope that it considers not properly sealed. Each envelope will be assigned by DTC a user number for tracking and record keeping purposes. Depositing participants will be required to list the contents of the envelope on the outside of the envelope; however, DTC will not verify the contents of the envelope. Participants will balance their sealed envelopes daily with DTC in the same manner as they presently do with securities held in the Custody service.

DTC will not open any sealed envelopes. If the depositing participant wants to view the contents of a sealed envelope that has been deposited with DTC, the participant must withdraw the envelope, using the normal Custody service withdrawal procedures. For security purposes, DTC reserves the right to x-ray all sealed envelopes sent to DTC.

Due to the nature of these instruments and the fact that the contents of the sealed envelopes cannot be verified, DTC's liability with respect to the sealed envelopes will be strictly limited. The liability and indemnity standard applicable to the Sealed Envelope Service is based on the standard currently applicable to the New York Window service.<sup>5</sup>

DTC will apply its current Custody service fees to envelopes deposited in the Sealed Envelope Service. Those fees are a long position fee of \$.56 per month per envelope, a deposit fee of \$.486 per envelope, and a withdrawal fee of \$16.91 per envelope.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it supports the securities industry goal of immobilization. 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 since the operation of the New York Window service, which is part of the Custody service as modified by the proposed rule change, will be similar to the current operation of the New York Window and Custody services.

<sup>5</sup> The standard of liability is attached as Exhibit 2 to DTC's filing. Basically, as between DTC and a participant using the Sealed Envelope Service, the participant shall be solely responsible for and shall bear any loss, cost, damage, or expense which the participant may suffer or incur on account of or as a result of any use by the participant of the Sealed Envelope Service.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

*(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*

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

**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) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the 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 will also be available for

inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR-DTC-2002-03 and should be submitted by June 28, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46006; File No. SR-NASD-2002-66]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Limit Order Protection and the Facilitation of Other Customer Orders on a Riskless Principal Basis**

May 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 2002, 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, 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 Substance of the Proposed Rule Change**

Nasdaq proposes to establish a riskless principal customer facilitation exemption to NASD Interpretative Material 2110-2-Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Manning"). Proposed additions are italicized.

**IM-2110-2. Trading Ahead of Customer Limit Order**

(a)-(b) No Change.

<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.

*(c) Exemption for the Facilitation on a Riskless Principal Basis of Other Customer Orders*

*A member shall be exempt from the obligation to execute a customer limit order in a manner consistent with this interpretation if such member engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the "facilitated order"), provided that all of the following requirements are satisfied:*

*(1) The handling and execution of the facilitated order must satisfy the definition of a "riskless" principal transaction, as that term is defined in NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B);*

*(2) A member that relies on this exemption to this interpretation must give the facilitated order the same per-share price at which the member accumulated or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent or other fee;*

*(3) A member must submit, contemporaneously with the execution of the facilitated order, a report as defined in NASD Rules 4632(d)(3)(B)(ii), 4642(d)(3)(B)(ii) and 4652(d)(3)(B)(ii) to the Automated Confirmation Transaction Service;*

*(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal account in a consistent manner and within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD Regulation to accurately and readily reconstruct, in a time-sequenced manner, all orders which a member relies in claiming this exemption.*

*Any transaction handled by a member on other than an agency basis that does not satisfy all of the above requirements remains a transaction that, where required by this interpretation, gives rise to the obligation to protect and execute customer limit order(s). This exemption applies only to the actual number of shares that are required to satisfy the facilitated order.*

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

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