Act.[3] In addition, shareholders of any portfolio of Sierra Funds could exchange their shares for shares of the Trust of equal value in lieu of cash. The exchanges of shares from the Sierra Funds into shares of the Trust will comply with rule 11a–3 under the Act, except to the extent that the Trust operates as a closed-end fund. Although applicants currently do not intend to do so, the Trust may in the future offer a class of shares that will convert into shares of another class of the Trust. Except to the extent that the Trust operates as a closed-end fund, it would comply with rule 18f–3 under the Act with respect to such conversions.

Applicant's Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares might be deemed to result in the issuance of a ''senior security'' within the meaning of section 18(g) of the Act and thus be prohibited by section 18(c), and violate the equal voting provisions of section 18(i) of the Act.

2. Section 18(c) provides, in relevant part, that a closed-end investment company may not issue or sell any senior security that is stock if, immediately thereafter, the company has more than one class of senior security that is a stock. An exception to this prohibition is that any such class of stock may be issued in one or more series provided no series has a preference or priority over any other series upon the distribution of the company's assets or in respect of payment of interest or dividends. The creation of multiple classes of shares may result in shares of a class having priority over another class as to the payment of dividends because shareholders of different classes would pay different Distribution Fees, Service Fees, and other incremental expenses that should be allocated to a particular class of shares.

3. Section 18(i) provides that each share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. The System may violate section 18(i) because each class would be entitled to exclusive voting rights with respect to matters solely related to such class.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. According to applicants, the proposed arrangements would permit the Trust to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services without the Trust assuming excessive costs or unnecessary investment risks.

6. Applicants represent that if the Trust was required to organize separate investment portfolios for each class of shares, it could face liquidity and diversification problems that could prevent the Trust from producing a favorable return. Under the proposal, investors would be able to benefit, according to applicants, by investing in an established, sizable fund. In addition, shareholders may be relieved of a portion of the fixed costs of the Trust because such costs, potentially, would be spread over a greater number of shares than they would be otherwise.

7. Applicants believe that their proposal does not raise the concerns that section 18 was designed to ameliorate to any greater degree than open-end investment companies' multiple class systems. Under rule 18f–3, open-end investment companies may offer multiple classes of shares without seeking individual exemptive orders from the SEC. Applicants further believe that their arrangement does not involve borrowings and it would not adversely affect the assets of the Trust.

8. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the Trust to impose Distribution Fees in a manner similar to rule 12b–1 fees imposed by open-end investment companies. While rule 12b–1 does not apply to closed-end investment companies, there is some question as to whether section 17(d) and rule 17d–1 apply to such fees.

9. In passing upon applications submitted pursuant to section 17(d) and rule 17d–1, the SEC considers whether the participation of such registered or controlled company in such joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

10. Applicants have agreed to comply with rule 12b–1 as if the Trust is an open-end investment company. Applicants believe that any section 17(d) concerns in connection with the Trust financing the distribution of its shares should be resolved by this undertaking. By complying with rule 12b–1, applicants believe that the Trust would participate in substantially the same way and under substantially the same conditions as would be the case with an open-end investment company imposing distribution fees under rule 12b–1.

Applicants' Condition

Applicants expressly consent, in connection with this request for exemptive relief, to be subject to conditions applicable to open-end investment companies as set forth in rules 18f–3, 6c–10, and 12b–1 under the Investment Company Act, as amended from time to time, as if the rules applied to them.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[3] *See, supra,* note 1.

[Release No. 34–38285; File Nos. SR–AMEX–97–07, SR–BSE–96–11, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, SR–PSE–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and Pacific Stock Exchange, Inc., To Amend Each Exchange's Rules Concerning the Pre-Opening Application of the Intermarket Trading System

February 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1996, December 19, 1996, January 29, 1997, January 31, 1997, February 10, 1997, February 10, 1997, and February 11, 1997, respectively, the Boston Stock Exchange Incorporated (''BSE''), the Chicago Stock Exchange, Incorporated

(''CHX''), the Cincinnati Stock Exchange, Incorporated (''CSE''), the New York Stock Exchange, Incorporated (''NYSE''), the American Stock Exchange, Incorporated (''AMEX''), the Pacific Stock Exchange, Incorporated (''PSE''), and the National Association of Securities Dealers, Incorporated (''NASD'') (each individually referred to herein as a ''Participant'' and two or more collectively referred to as ''Participants'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed amendments are to enhance the operation of the Pre-Opening Application [2] by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application.[3]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The purpose of the proposed rule change is to enhance the operation of the ITS Pre-Opening Application. The Participants' ITS Pre-Opening Application rules contain basic definitions pertaining to ITS, prescribe the types of transactions that may be effected through ITS and the pricing of commitments to trade, and specify the procedures pertaining to the Pre-Opening Application, whereby an Exchange specialist (''specialist'') or a ITS/CAES market maker (''market maker'') in any ITS participant market who wishes to open his or her market in an ITS security may obtain any pre-opening interest in that security by other market makers registered in that security in other Participant markets.

The current Pre-Opening Application prescribes that, if a specialist or a market maker anticipates that its opening transaction in the security the specialist or market maker trades through ITS will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change,'' the specialist or market maker shall notify other Participant markets by sending a pre-opening notification through the ITS. The ''applicable price changes'' are:

Consolidated closing price [4]	Applicable price change (more than)
Network A: [5]	
Under $15	1/8 point.
$15 or over	1/4 point.
Network B:	
Under $5	1/8 point.
$5 or over	1/4 point.

[4] If the previous day's consolidated closing price of the security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on an exchange, the ''applicable price change'' is one point.

[5] Network A is comprised of NYSE securities; Network B is comprised of AMEX securities.

Thereafter, the specialist or market maker shall not open the market in the security until not less than three minutes after the transmission of the pre-opening notification. Once a specialist or market maker has issued a pre-opening notification, other Participant markets may transmit ''pre-opening responses'' to the specialist or market maker through the ITS that contain ''obligations to trade.'' The specialist or market maker is then obligated to combine these obligations with orders it already holds in the security, and, on the basis of this aggregated information, decide upon the opening transaction in the security.

The Pre-Opening Application also applies whenever an ''indication of interest'' is sent to the Consolidated Tape Association (''CTA'') Plan Processor prior to the opening of trading in the relevant security or prior to the reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or re-opening price is not greater than the ''applicable price change.'' The current Pre-Opening Application provides that the Pre-Opening Application applies when an indication of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment changeover, news pending and news dissemination, and for a delayed opening.

The purpose of the proposed amendments to the Participants' respective rules, to which all the Participants have agreed, is to amend the Pre-Opening Application to provide that the Pre-Opening Application would be triggered whenever an ''indication of interest'' (i.e., an anticipated opening price range) is sent to the Consolidated Tape system prior to the opening or reopening of trading in the relevant security. Under the proposed change, the Pre-Opening Application would also be triggered when indications of interest are disseminated in situations other than those five defined trading halts, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment would delete the definition of ''Trading Halt,'' which is limited to the five defined trading halt situations mentioned above, and replace all references to ''Trading Halt'' with ''halt or suspension in trading.'' As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.[6]

[1] The Commission is noticing these rule filings in one notice and will notice the proposed rule changes from the remaining self-regulatory organizations as they are filed.

[2] The Participants filed substantially similar proposed rule changes to amend their respective ITS Rules regarding the ITS Pre-Opening Application. The Commission notes that some of the proposed rule changes by the ITS Participants contain additional technical changes. In addition, the NASD is proposing to incorporate language into NASD Rule 5240 from the model Pre-Opening Application Rule contained as Exhibit A to the ITS Plan that was previously inadvertently omitted. Also, the PSE and CHX proposed amendments to their respective Pre-Opening Application rules to add a footnote from the model Pre-Opening Application Rule regarding the definition of when a market in a security is considered opened or re-opened, for purposes of pre-opening responses. The language of each proposed rule changes is on file at the Commission and at the principal offices of the various Participants. The file numbers for the rule filings are as follows: SR–AMEX–97–07; SR–BSE–96–11; SR–CHX–96–34; SR–CSE–97–03; SR–NASD–97–09; SR–NYSE–97–03; and SR–PSE–97–05.

[3] The respective Pre-Opening Application Rules that the Participants are proposing to amend are: AMEX, Rule 232; BSE, Chapter XXXI; CHX, Article XX, Rule 39; CSE, Chapter 14, Rules 14.1 and 14.3; NASD, Rule 5210, 5240 and 5250; NYSE, Rule 15; and PSE, Rule 5.20.

[6] In its proposed rule change, the NYSE notes that indications are also required pursuant to NYSE rules in other situations, including circuit breaker halts, when a stock's price will change the lesser of 10% or three points from the last sale, or five points for stocks over $100, unless the price change

2. Statutory Basis

These proposed amendments are consistent with sections 6(b)(5) and 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The amendment is also consistent with section 11A(a)(1)(D) of the Act[8] which provides that the linking of all markets for qualified securities through communications and date processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. In particular, by enhancing the linkage among all ITS Participant Markets and promoting coordinated openings and reopenings in ITS Securities, the Participants believe the proposed rule changes are consistent with the Act.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Participants do not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Participants. All submissions should refer to File Nos. SR–AMEX–97–07, SR–BSE–96–11, SR–CHX–96–34, SR–CSE–97–03, SR–NASD–97–09, SR–NYSE–97–03, and SR–PSE–97–05 and should be submitted by March 14, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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is less than one point. The NYSE notes that NYSE rules would continue to govern when NYSE specialists would be required to issue indications of interest. *See* NYSE filing SR–NYSE–97–03. Similarly, AMEX notes that in connection with a reopening following a ''circuit breaker'' halt, AMEX's rules require dissemination of an indication in the same circumstances as the NYSE. AMEX notes that its proposed amendments are intended to conform to the amendment to the ITS Plan agreed to by the Participants. *See* AMEX filing SR–AMEX–97–07.

[7] 15 U.S.C. 78f(b)(6); 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(D).

[Release No. 34–38272; File No. SR–DTC–96–24]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revision of Fees

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 1996, 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 amends DTC's schedule of fees to establish a 3.5 percent surcharge on all service fees DTC charges to participants, pledge banks, limited participants, and other DTC users (''participants and users'').

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.[2]

(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 establish a surcharge of 3.5 percent on all service fees DTC charges to its participants and users beginning on January 1, 1997. According to DTC, the surcharge is necessary to recover the costs of upgrading its systems to recognize data fields containing dates incorporating the year 2000 and the years thereafter (''Year 2000 Project''). DTC estimates that the total cost of its compliance initiatives will range from $25 million to $35 million over the duration of the Year 2000 Projects. These costs reflect new staff to be hired for year 2000 conversion efforts, the cost associated with diverting present DTC staff from service-related development, other staff related costs, and the cost of consulting assistance. The cost of the Year 2000 Project for 1996 has been charged against DTC's excess revenues for the year.

DTC will list the surcharge as a separate line item on its monthly bill to its participants and users and will continue the surcharge indefinitely until all compliance costs have been

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.