

future deliveries through the NDO function and the reintroduction of dropped deliveries.⁶ At the participant's option, the system could require reauthorization of reintroduced "drops" before they are resubmitted for processing on the following day.

If approved by the Commission, IMS will be implemented in two phases. Three initiatives, (1) the replacement of ANE, (2) warehousing, and (3) the reintroduction of dropped deliveries, will be available in Phase I. Phase I is scheduled to begin in July 2003. Phase II, scheduled to be implemented in December 2003, will create an optional customized delivery and recycle profile.⁷

A participant can choose to authorize its deliveries either actively or passively. In the active mode, deliveries will not be processed unless an authorization is sent. Authorizations and exemptions can be on a trade-for-trade basis or a global basis. Global authorization or exemption capabilities will also be available via the Participant Browser System display screens. The new passive mode authorization option will immediately authorize a delivery when it is received and process it on its settlement day unless the participant exempts it.

Recognizing the need for flexibility and options, a participant will be able to create authorization profiles for the following asset classes: equity, municipal debt, corporate debt, and money market instruments. Within each asset class, a participant can choose which authorization mode it would like applied as its default for the different transaction types.⁸ For example, for the asset class equities, a participant could choose to use active mode authorization for matched institutional deliveries and passive mode authorization for CNS deliveries.

Participants would not be required to make systemic changes and can

have a future settlement date of the next business day or earlier. The IMS warehouse feature will store deliveries on its database and direct these deliveries into the processing system as NDOs that are due to settle on the appropriate settlement day.

⁶ "Dropped" deliveries are deliveries from the previous day that were incomplete. Under this new option, "drops" would be automatically retained and reintroduced into the system for processing on the following day.

⁷ DTC will file another proposed rule change for Commission approval before implementing Phase II.

⁸ In Phase I, authorization modes can be assigned for the following transaction types:

- (1) Institutional deliveries from a matching utility;
- (2) CNS;
- (3) NDOs;
- (4) Reintroduced drops; and
- (5) ACATS auto deliveries.

continue to process their deliveries as they do today. All IMS features will be optional, and participants will be able to migrate to any or all features they deem valuable. As a result of this new system, participants will be able to centrally manage their own settlements and achieve higher levels of straight through processing.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act⁹ and the rules and regulations thereunder applicable to DTC because it will permit the accurate clearance and settlement of securities by allowing participants to centrally manage their own settlements and control the order and timing of their deliveries earlier in the settlement cycle.

(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 that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

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

DTC has discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed IMS system.

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.

⁹ 15 U.S.C. 78q-1.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-DTC-2002-19. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR-DTC-2002-19 and should be submitted by June 11, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47875; File No. SR-DTC-2003-08]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Rule 4A, Pledge of Property to the Corporation and Its Lenders

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 6, 2003, 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

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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 would modify DTC's Rule 4A, Section 1, and would make a technical correction to the definition of the term pledge in DTC's Rule 1.

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

Each DTC participant pays or receives the net debit or net credit balance in its DTC money settlement account at the end of each day. DTC's principal risk is the possible failure of one or more participants to settle their net debit obligations. To assure that it is able to complete its settlement obligations each day, DTC maintains liquidity resources, including a committed line of credit in the maximum amount of \$1.75 billion with a consortium of banks that is part of a combined syndicated facility with National Securities Clearing Corporation ("End of Day Facility").

The End of Day Facility matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, DTC's lenders have requested that Section 1 of DTC's Rule 4A, "Pledge of Property to the Corporation and its Lenders," be clarified. This provision currently provides that for the purpose of securing loans to DTC, DTC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the participants fund and all securities, repurchase agreements, or deposits in which such cash is invested, (ii) net additions, including any security entitlements of participants in net

additions, and (iii) preferred stock. This section provides that any such loan to DTC may be on such terms as DTC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any participant in DTC. It further provides that no lender shall be obligated to return any pledged collateral prior to the full repayment of any loan secured thereby.

DTC is proposing to add language to Section 1 of Rule 4A to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no participant may assert a claim against the lender for the return of any collateral pledged by DTC as security therefore.³ Subject to the foregoing and the terms of any such loan, the obligation of DTC to return any items of pledged collateral to its participants or to permit substitutions and withdrawals thereof remains unaffected.

In addition, the proposed rule change would make a technical correction to the definition of the term "pledge" in Rule 1 necessitated by the recent revisions to Article 9 of the New York Uniform Commercial Code ("NYUCC"). Currently, the definition of "pledge" refers to section 9-115 of the NYUCC. As proposed, the references to that specific section would be deleted so the definition would refer to the NYUCC in general.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will assist DTC in maintaining a committed end-of-day line of credit to facilitate completion of daily money settlement and as such will assist DTC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

³ The proposed language would state, "No Participant shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect, of any such collateral Pledged by the Corporation to such secured Lender (or its collateral agent), so long as any loans made by such Lender to the Corporation or other obligations, secured by such collateral, are unpaid and outstanding."

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

Comments from DTC participants or others have not been solicited or received on the proposed rule change.

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 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, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-DTC-2003-08. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 DTC. All submissions should refer to the File No. SR-DTC-2003-08 and should be submitted by June 11, 2003.

² The Commission has modified parts of these statements.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-12732 Filed 5-20-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47857; File No. SR-NASD-2003-77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System®

May 14, 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 April 30, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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. On May 2, 2003, Nasdaq filed a letter to correct a typographical error in the proposal.³ Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act,⁴ which renders the rule effective upon the Commission's receipt of this filing. Nasdaq began assessing fees pursuant to the revised fee schedule beginning on May 1, 2003. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex"). Nasdaq will implement the proposed rule change on May 1, 2003. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010(r). Nasdaq Application of the Primex Auction System

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

- (1) Transaction Charges:
 - Execution Services—for all participants:
 - Order entry—No fee.
 - Auction Response (per share, per execution). *—\$[.005] .003
 - Matching Rights—Primex Auction Market Makers (PAMMs) only:
 - 50 Percent Match—No fee.
 - Two-Cent Match (per share, per retained order—\$2.50 Maximum). ** —\$.0025
 - Revenue Sharing—PAMMs only.
 - Each order executed: ***— $\frac{1}{3}$ of transaction fee.
- (2) Monthly Access fees [No change.]

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

* This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis.

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

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the auction response fee from \$.005 to \$.003 per execution, per share.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were established in 2000.⁵ Nasdaq represents that since that time transaction prices in the overall market have decreased. As a result, Nasdaq believes that the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the auction response fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. Nasdaq represents that these fees will be charged consistently to all members that choose to use Primex.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ See Securities Exchange Act Release No. 45285 (January 15, 2002), 67 FR 3521 (January 24, 2002). In the filing establishing the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. On July 31, 2002, Nasdaq filed a proposed rule change revising the original fee schedule for Primex. See Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002). Nasdaq began assessing fees on August 1, 2002 according to the revised fee schedule; fees were never charged under the original fee schedule.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

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 Eleni Constantine, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2003 ("Clarification Letter"). In the Clarification Letter, Nasdaq corrected a typographical error in a footnote that is not part of the text being amended regarding the revenue sharing payment schedule. Nasdaq stated that the revenue sharing amounts are paid on a monthly basis, not on a quarterly basis, as previously published in the *Federal Register*. See Securities Exchange Act Release No. 45285A (March 5, 2002), 67 FR 10962 (March 11, 2002). Thus, footnote * * * should read: "Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis." Nasdaq represents that the footnote reads this way in its Manual.

⁴ 15 U.S.C. 78s(b)(3)(A).