

from membership) because the time frame between membership termination and becoming an effective member again in those situations is beyond the time period to which the Renewal/Change of Status fee is intended to apply.

Additionally, it should be noted that, irrespective of the changes proposed by this rule filing, CBOE Rule 3.9(g) will remain applicable. Rule 3.9(g) provides, in pertinent part, that any person who does not possess an authorized floor function for more than 1 year is required to re-attend the Exchange's New Member Orientation Program and to re-pass the Floor Member Qualification Exam in order to once again become eligible to have an authorized floor function. Retention of this requirement will ensure that former members that have not had an authorized floor function for an extended period of time will go through the Exchange's floor member orientation class again and will be required to pass the related Exchange exam.

2. Statutory Basis

The proposed rule change will improve the efficiency of the Exchange's membership application processes. Accordingly, the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and further the objectives of Section 6(b)(5)⁴ in particular, in that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market while maintaining other current Exchange rules and procedures that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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 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 proposal 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-2003-49 and should be submitted by December 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48773; File No. SR-DTC-2003-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Termination of the DALI Tax Service

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 2, 2003, The Depository Trust Company filed a proposed rule change with the Securities and Exchange Commission and on October 30, 2003, amended its 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 will terminate DTC's Data Link for Intermediaries ("DALI") tax service.

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 the Statutory Basis for, the Proposed Rule Change

The proposed rule change will terminate DTC's DALI tax service effective December 31, 2003. DALI is a communications hub that allows financial institutions (typically, a U.S. paying institution acting as a U.S. withholding agent and its foreign customer payee) to exchange the data necessary to determine correct withholding and reporting of U.S. tax on

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

payments such as dividends and interest to a foreign payee.³

DTC introduced DALI in January 2001 at the request of four DTC participants ("Consortium"). DALI's principal features are communicating payment events and withholding instructions relating to such events, managing payee tax documentation (such as IRS Forms W-8 and W-9), and aggregating information for tax reporting and recordkeeping.

At the Consortium's request, DTC agreed to act as project manager for developing the DALI software system and for operating and maintaining the system as a DTC service that would be available to all DTC participants and their customers at standard DTC fees. The Consortium members agreed to finance the product development costs and expected to be reimbursed for such costs over time from the proceeds of user service fees in excess of these costs. The Consortium also agreed to fund DALI's operating losses during the initial phase of operations. The Consortium expected that the DALI system would be widely used by DTC participants, which would therefore obviate the need for the Consortium to continue to fund operating losses and would enable the Consortium to recoup any amounts previously funded.

Only Consortium members have used DALI, and by mid-2003, only one out of those four members continued using DALI. Given the costs of maintaining DALI, DTC has determined that it will no longer offer this service. Consistent with the agreements between DTC and the Consortium, DTC will transfer the DALI system to the Consortium member that is still using and funding DALI. DTC will operate the system as a facilities manager on behalf of that member for a limited period of time (less than one year) during the transition. This member intends to operate the DALI system in-house for its own customers.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act⁴ and the rules and regulations thereunder applicable to DTC because it will enhance DTC's ability to safeguard securities and funds in its custody or control or for which it is responsible by promoting the efficient allocation of DTC resources. This will be done by terminating the operation of a service that is not being utilized by a sufficient number of DTC participants to support

its costs or justify its use of DTC's operational resources.

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

DTC perceives no impact on competition by reason of the proposed rule change. Each of the three Consortium members that used DALI informed DTC that it has developed its own internal system to perform withholding and reporting with respect to DALI's functions and that DTC's discontinuance of DALI will not adversely affect it. DTC will assist the remaining Consortium member in transitioning the DALI system for its own use.

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

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

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) of the Act⁵ and Rule 19b-4(f)(6) thereunder⁶ because it effects a change that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after the date of the filing. At any time within 60 days of the filing of such 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 5th Street NW., Washington, DC 20549-0069. 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-2003-13. 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. All submissions should refer to File No. SR-DTC-2003-13 and should be submitted by December 15, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48788; File No. SR-NASD-2001-85]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker-Dealers

November 14, 2003.

I. Introduction

On November 27, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc., filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to require that before accepting

³ See Sections 1441 *et seq.* of the Internal Revenue Code and regulations promulgated thereunder.

⁴ 15 U.S.C. 78q-1(b)(3)(A).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 270.19b-4(f)(6).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.