

applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,<sup>6</sup> which requires that the rules of a registered clearing agency are designed to, among other things, remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

When DTC established the SRO Requirement as a condition of eligibility for Rule 144A Securities, DTC and the Commission envisioned that an SRO Rule 144A System would provide comprehensive safeguards to facilitate the SRO's ability to monitor compliance with Rule 144A. However, the only SRO Rule 144A System that was developed was the NASD's PORTAL Market System ("PORTAL"). Additionally, PORTAL neither developed as anticipated nor included the safeguards contemplated by the DTC requirement.<sup>7</sup> Thus, the Commission agrees with DTC that the SRO Requirement is no longer necessary or practical to achieve the purpose for which it was added to DTC's rules. In addition, the requirement appears to deter the development of alternative markets for Rule 144A Securities that could avail traders in 144A Securities of DTC's automated clearance, settlement, and risk management services.<sup>8</sup> Accordingly, DTC's removal of the SRO Requirement should expand the number of restricted securities that can become eligible for DTC's clearance and settlement services thus helping to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, which is consistent with Section 17A(b)(3)(F) of the Act.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-

DTC-2008-13) be and hereby is approved.<sup>11</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-3573 Filed 2-19-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59409; File No. SR-DTC-2009-03]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Revise Its Fee Schedule

February 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 13, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 13, 2009, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the rule change from interested parties and to grant accelerated approval of the proposal.

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

The purpose of the rule change is to revise fees for certain DTC services.

#### 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 these statements.<sup>2</sup>

<sup>11</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

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

DTC is proposing to revise fees for certain services. The revisions include: (i) Decreases of Settlement Services fees to realign fees with costs incurred in providing the services; (ii) decreases of Custody and Dividend service fees to realign fees with costs scaled to reflect processing complexity creating fee simplification and transparency; (iii) increases of Reorganization services fees to realign fees with costs incurred due to low volume tender offers which are subject to extensive monitoring; and (iv) increases of Custody and Deposits fees to realign fees with costs associated with intensive photocopy and research requests.

In addition, DTC will increase certain disincentive fees to discourage activities that increase industry inefficiencies. These revisions include: fee increases for underwriters who have incomplete, inaccurate, or untimely submission of information in connection with DTC's Underwriting services and fee increases for Withdrawals by Transfer and Deposits (in connection with DTC's continuing efforts to discourage continued traffic in physical securities and to discourage erroneous requests).

The proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, discourage manual and exception processing, and encourage immobilization and dematerialization of securities. Except as otherwise noted above, the effective date for these fee adjustments is January 2, 2009.

The proposed rule change is consistent with Section 17A of the Act,<sup>3</sup> as amended, because it clarifies and updates DTC's fee schedule. As such, it provides for the equitable allocation of fees among its participants.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> Securities Exchange Release No. 56172 (Jul. 31, 2007), 72 FR 44196 (Aug. 7, 2007) [File No. SR-NASDAQ-2006-65].

<sup>8</sup> In a 2007 order approving Nasdaq's reestablishment of its PORTAL market, the Commission acknowledged comments suggesting such and encouraged DTC to review its SRO Requirement. *Supra* note 7.

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission finds that DTC's proposed rule change is consistent with DTC's obligation under the Act because it clarifies and updates DTC's fee schedule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register** because the proposed rule change originally was filed previously but had to be refiled due to a technical issue.

### 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. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2009-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2009-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2009/dtc/2009-03.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2009-03.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2009-03 and should be submitted on or before March 13, 2009.

### V. 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<sup>4</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (File No. SR-DTC-2009-03) be, and hereby is, approved.<sup>6</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-3576 Filed 2-19-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59392; File No. SR-NASDAQ-2009-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Post-Only Order

February 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2009, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</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.

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 Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 Post-Only Order. The text of the proposed rule change is below. Proposed new language is italicized.<sup>5</sup>

\* \* \* \* \*

4751. Definitions

(a)-(e) No change.

(f) No change.

(1)-(9) No change.

(10) "*Post-Only Orders*" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).

(g)-(i) 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.

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

##### 1. Purpose

In order to provide enhanced functionality, Nasdaq proposes to adopt an additional order type known as the Post-Only Order. A Post-Only Order is an order that does not remove liquidity

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.