

using cash from normal operations ("Uninvested Cash") or cash received as collateral in connection with portfolio securities lending ("Cash Collateral"), (b) New Fund to sell Shares to the Investing Funds and redeem Shares from the Investing funds, (c) UBS PaineWebber, Brinson Advisors, the Investing Funds, New Fund and the trustee/managing member of New Fund ("Trustee") to engage in certain transactions incident to the Investing Funds' investment in the Shares, (d) UBS PaineWebber and any other broker-dealer that may be controlled by or under common control with UBS PaineWebber (collectively, the "Affiliated Broker-Dealers") to borrow portfolio securities from the Affiliated Funds, (e) UBS PaineWebber and the Affiliated Broker-Dealers to engage in principal transactions in securities with the Other Funds, (f) UBS PaineWebber and the Affiliated Broker-Dealers to borrow securities from the Other Funds, (g) the Other Funds to pay, and UBS PaineWebber and the Affiliated Broker-Dealers to receive, commissions from the Other Funds for acting as brokers in connection with the purchase or sale of securities for the Other Funds, and (h) the Other Funds to pay, and UBS PaineWebber to accept, fees based on a share of the revenue generated from securities lending transactions and Brinson Advisors to accept fees for providing certain services in connection with securities lending transactions.<sup>3</sup>

3. New Fund is an investment vehicle that serves as an investment option for managing Cash Collateral and Uninvested Cash of the Investing Funds. New Fund operates as a private investment company and is not registered under the Act in reliance on section 3(c)(7) of the Act. Brinson Advisors currently serves as New Fund's Trustee and investment adviser. New Fund currently has one series, which operates as a money market portfolio and complies with the requirements of rule 2a-7 under the Act.

4. Condition 9 to the Prior Order provides that UBS PaineWebber or Brinson Advisors will reduce its advisory fee charged to an Affiliated Fund that invests in Shares of New Fund in an amount equal to the net asset value of the Affiliated Fund's holdings in New Fund multiplied by the rate at which advisory fees are charged by Brinson Advisors to New Fund. Applicants seek to amend the Prior

Order to modify condition 9 so that it would apply only with respect to an Affiliated Fund's investment of Uninvested Cash in New Fund and would not apply with respect to an Affiliated Fund's investment of Cash Collateral in New Fund. Since investment advisory fees are calculated on the net, rather than the total, assets of the Affiliated Funds, and since Cash Collateral does not increase net assets because it is offset by the liability to repay it to the borrower, the Affiliated Funds will pay no additional advisory fees with respect to investments made with Cash Collateral. Applicants will continue to comply with all the other conditions to the Prior Order.

#### Applicants' Condition

Applicants agree that condition 9 to the Prior Order is revised to read as follows:

9. With respect to any Affiliated Fund that invests Uninvested Cash in Shares of New Fund, UBS PaineWebber or Brinson Advisors will reduce its advisory fee charged to the Affiliated Fund in an amount (the "Reduction Amount") equal to the net asset value of the Affiliated Fund's Uninvested Cash invested in the New Fund multiplied by the rate at which advisory fees are charged by Brinson Advisors to the New Fund. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by UBS PaineWebber or Brinson Advisors or their affiliates at a later date.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44470; File No. SR-DTC-2001-10]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change to the Admission of Non-U.S. Entities as Direct Depository Participants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 1, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated, temporary approval of the proposed rule change through May 31, 2002.

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

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for entities that are organized in a country other than the United States ("non-U.S. entities").

#### 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>

##### (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 extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities.<sup>3</sup>

The proposed rule change seeks to extend approval of established admissions criteria that permit a well-qualified foreign entity to obtain direct access to DTC's services without requiring the foreign entity to obtain financial guarantees. The policy was established by DTC in response to requests received from certain participants to consider changes in DTC's admissions policy that would allow foreign affiliates to become direct participants without having to obtain financial guarantees.

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

<sup>3</sup> DTC's admission criteria for non-U.S. entities were first temporarily approved on May 16, 1997. Securities Exchange Act Release No. 38600 (May 16, 1997), 62 FR 27086. Since then, the non-U.S. admission criteria have been temporarily approved several times. Securities Exchange Act Release Nos. 40064 (June 3, 1998), 63 FR 31818; 41466 (May 28, 1999), 64 FR 30077; and 42865 (May 30, 2000), 65 FR 36188.

<sup>3</sup> The Prior Order grants relief for the Other Funds to the extent that the Other Funds are affiliated with UBS PaineWebber, Brinson Advisors, Affiliated Broker-Dealers, or New Fund solely by reason of owning 5% or more of the shares of a series of New Fund.

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

In November 1999, DTC admitted one non-U.S. entity as a direct participant under the standards for admission of foreign entities. DTC has received several inquiries from other non-U.S. entities and expects to admit several other foreign entities in 2001 under the standards for the admission of foreign entities. DTC is seeking an extension of the temporary approval so DTC can complete the admission of these foreign entities and gain additional experience with the new admission standards for foreign entities and the unique risks posed by the activities of foreign entities as direct DTC participants.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to DTC because the proposed policy does not unfairly discriminate against foreign entities seeking admission as participants because it appropriately takes into account the unique risks to the depository raised by their admission.

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

While DTC acknowledges that the proposed additional admissions criteria applicable to foreign entities may impose some additional burden, for the reasons stated above, we believe that any such burden is necessary and 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*

DTC has not sought or received comments on the proposed rule change.

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>5</sup> The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria for non-U.S. entities has been designed in a manner that takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to DTC's risk control and management. Furthermore, DTC admission criteria should bind non-U.S.

entities to DTC's rules and procedures in a manner similar to domestic participants and should lessen or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria are designed in a manner that will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria for non-U.S. entities without interruption when the current temporary approval of these criteria expires on May 31, 2001.

**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 also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-10 and should be submitted by July 23, 2001.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2001-10) be, and hereby is, approved on an accelerated basis through May 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44467; File No. SR-NASD-2001-38]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing of Additional Shares**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2001, 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 has filed the proposed rule change to amend Nasdaq Marketplace Rules 4320, 4510, and 4520, regarding the listing of additional shares. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)-(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the

<sup>6</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.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> *Id.*