

III below, which Items have been prepared by the CBOE. 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 CBOE proposes to change its rules and fee schedule to authorize monthly, rather than quarterly, billing and collection of membership dues.

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

In its filing with the Commission, the CBOE 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. The CBOE 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**

The purpose of this proposed rule change is to bill and collect Exchange membership dues more equitably and fairly by doing it on a monthly, rather than quarterly, basis. The Exchange represents that it has been its recent experience that collecting membership dues only four times a year can cause the dues to be imposed inequitably upon members who lease their seats. If a quarterly dues payment comes due at a time when the member is between lessees and has not yet found someone new to lease the seat, the member ends up having to pay three months worth of dues for a seat he is not even using. The Exchange believes that monthly, instead of quarterly, billing will minimize such occurrences, and increase the likelihood that the member who actually uses each seat will be the one paying the dues. This proposed change will take effect on October 1, 2001.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>4</sup> in particular, because it is designed to provide for the equitable

allocation of reasonable dues, fees, and other charges among CBOE members.

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

The Exchange 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**

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder.<sup>6</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the 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 Fifth Street, N.W., Washington, D.C. 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-2001-51 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44884; File No. SR-DTC-2001-12]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Distribution of Notices of Participants and Pledges**

September 28, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 2, 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 approval of the proposal.

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

The proposed rule change permits DTC to serve notices on participants and pledgees electronically and states service is deemed given at the time the notices are made available or transmitted to such participants and pledgees. In addition, the proposed rule change discontinues the practice of hard-copy distribution of notices to participant boxes maintained by DTC on its premises. Subject to regulatory approval, these changes will be effective October 1, 2001.

#### **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

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

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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.<sup>2</sup>

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

Historically, DTC provided its participants and pledgees (hereinafter, collectively referred to as "participants") with notices in hard-copy format only. Beginning in 1997, DTC also made such notices, most typically known as Important Notices, available electronically on its internet website, *www.DTC.org*. This site maintains all DTC Important Notices issued over the most recent two complete with scanned forms and attachments.

In addition to the website, Important Notices issued over the most recent thirty day period have also been available electronically in the IMPP function on DTC's participant terminal system ("PTS") although forms and attachments to these notices are viewable only on DTC's website.

DTC and its participants have now gained three years of experience with the electronic delivery of Important Notices over the internet, a delivery system that has helped DTC provide for the prompt, efficient, and time distribution of important information. According, to further automate its services and reduce the inefficiencies and costs associated with the manual production of physical documents, on October 1, 2001, DTC will discontinue the practice of hard-copy distribution of notices to participant boxes maintained by DTC on its premises.<sup>3</sup>

DTC will continue to provide participants with Important Notices electronically, at this time via the DTC's internet website and PTS. DTC's internet website will also include a no fee Important notice subscription service, to be initiated prior to the implementation of the proposed rule change. This new service will send all registered participants and non-participants an e-mail alert when DTC Important Notices are posted to the website. The proposed rule change will still permit DTC to alternatively serve notices on participants via direct delivery or U.S. mail delivery.

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

<sup>3</sup> In calendar year 2000 alone, DTC delivered approximately 3,000 Important Notices in hard-copy format to participants, printing a total of approximately 17,525,400 pages.

Specifically, the proposed rule change will now provide that any notice from DTC to a participant shall be sufficiently served if the notice is in writing and is electronically made available or transmitted to a participant by any means normally employed by DTC for the delivery of electronic communications to such participant. Alternatively, any non-electronic notice shall be sufficiently served on a participant if it is in writing and is delivered or mailed to the participant's office address. Any notice, if made available or transmitted electronically shall be deemed to have been given, respectively, at the time of availability or transmission. Any notice, if delivered or mailed shall be deemed to have been given, respectively, at the time of delivery or when deposited in the United States Postal Service with postage thereon prepaid.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder applicable to DTC since the proposed rule change will provide participants with more immediate access to DTC notices and alleviates current operational distribution inefficiencies. In addition, DTC states that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because all of DTC's risk management controls will remain in effect.

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

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

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

The proposed rule change was developed in response to an ongoing effort by DTC to automate processing services that are now handled manually. The proposed rule change was developed through discussions with participants. Written 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**

The Commission finds that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).<sup>5</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. By replacing the practice of hard-copy distribution of notices to participants with electronic distribution, DTC is further automating its operations which should help to perfect the national clearance and settlement system.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day of the publication of the notice of filing because accelerated approval will permit DTC to begin distributing electronic notices to its participants on the planned implementation date of October 1, 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 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, 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 File No. SR-DTC-2001-12 and should be submitted by October 26, 2001.

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

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

DTC-2001-12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44886; File No. SR-NYSE-2001-37]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through January 11, 2002

September 28, 2001.

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 September 26, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. 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 Exchange proposes to extend, until January 11, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which amendments were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.<sup>3</sup> The Pilot was subsequently amended on March 30, 2001.<sup>4</sup>

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

In its filing with the Commission, the Exchange 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. The Exchange 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

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.<sup>5</sup> Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.<sup>6</sup> ON March 30, 2001 the Commission approved the 2000 Extension Request on a pilot basis until September 30, 2001.<sup>7</sup>

The Exchange proposes to further extend the effectiveness of the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that an Exchange have rules be 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 facilitating

transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> to Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before September 30, 2001, in order to allow the Pilot to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative as of the date of this order through January 11, 2002. The extension of the Pilot will

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<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-2.

<sup>3</sup> Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 2001).

<sup>4</sup> Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) ("2000 Extension Request").

<sup>5</sup> See Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000).

<sup>6</sup> Securities Exchange Act Releases Nos. 43329 (October 2, 2000), 65 FR 5883 (October 2, 2000); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001).

<sup>7</sup> See note 4 *supra*.

<sup>8</sup> 15 U.S.C. 78f(b)(5).