For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46338; File No. SR–DTC–2002–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising the Fee Schedule

August 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 1, 2002, 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 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 consists of revisions to the fee schedule of DTC for certain of its existing 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 such statements.[2]

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

The purpose of this rule filing is to revise the fee schedules for some of DTC's services. DTC expects to implement the fee changes described in (1) and (2) below as of July 1, 2002, and the fee changes described in (3) below as of November 1, 2002. Services affected and changes in fees are as follows:

(1) *DTC Custody Service:* This service enables participants of DTC to outsource the safekeeping and processing physical securities not eligible for regular depository services due to transfer restrictions or other factors.

DTC is reducing the Custody Reorganization/Redemption deposit fee from a current fee of $101.50 to $65.00. The Custody Reorganization research fee, used when DTC staff is reviewing the reorganization activity for the first time, is also being lowered from $125.61 to $85.00. Custody Reorganization/Redemption Deposits that are rejected by DTC staff prior to their submission to the transfer agent will now be assessed the standard reject fee of $37.93. Previously, no fee had been assessed.

(2) *Draft Shipment Control List (''SCL'') Payments:* These payments represent the fees paid to transfer agents to effect the reregistration of a select number of securities (generally referred to as fee-bearing issues). Historically, participants have paid fixed ''blended'' rates based upon an actual fee threshold for standard deposit or withdrawal-by-transfer.[3]

DTC is replacing the ''blended'' rate algorithm with a direct charge back for the actual expense as incurred for standard deposit and withdrawal activity. DTC will also be instituting a new $1.00 transaction fee to fully recover the expense associated with the draft processing, bank charges, and handling costs for all reregistration activities in these securities.

(3) *Government Securities:* This process has been redesigned to accommodate the changes directed by the Federal Reserve Bank of New York (''FRBNY'') for fail tracking, repo tracking, and interim accounting. DTC maintains a free-of-payment interface with the Federal Reserve's book-entry system that enables participants to hold securities positions of U.S. government securities in their DTC accounts. Recently DTC has replaced the manual deposit and withdrawal process with an automated securities link with FRBNY via a new Fed Book-Entry Deliver Order process.

To recover the development, implementation, and processing costs, as well as the Fed fees associated with each transaction, DTC is revising these fees. The deliver order fee for government securities will be set at $2.25. In addition to the transaction charge, this fee recovers the $0.70 fee surcharged by the Fed. Present fees for deliver orders are $0.44 to the deliverer and $0.26 to the receiver. Monthly long position fees for government securities will be set at $1.00, helping to offset a $0.45 Fed imposed fee. Present long position fees are $0.35.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it is consistent with DTC's longstanding policy to set service fees at a level of full cost recovery along its different product lines.

(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.

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

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2).[5] At any time within sixty 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.

VI. 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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] For deposits, when a transfer agent fee was $20.00 or less, DTC would bill participants $13.00; if the fee was greater than $20.00, DTC would charge the participant $22.00. For withdrawals, when a transfer agent fee was $20.00 or less, DTC would bill $22.00; if the fee was greater than $22.00, DTC would charge the participant $33.00.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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 will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2002–09 and should be submitted by September 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46345; File No. SR–NASD–2002–105]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Increase the Term of Office for Members of the Nasdaq Listing and Hearing Review Council From Two to Three Years, and to Increase the Number of Nasdaq Listing and Hearing Review Council Classes

August 13, 2002.

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 August 2, 2002, 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. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(3) thereunder[4] as being concerned solely with the administration of the self-regulatory organization, which renders the proposal 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 increase the term of office for members of the Nasdaq Listing and Hearing Review Council (''Listing Council'') from two to three years, and to increase the number of Listing Council classes from two to three. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deleted text is in brackets.

BY–LAWS OF THE NASDAQ STOCK MARKET, INC.

* * * * *

ARTICLE V

NASDAQ LISTING AND HEARING REVIEW COUNCIL

* * * * *

Term of Office

Sec. 5.4 (a) *Beginning in January 2003*, [E]*e*xcept as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of *three* [two] years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason. *Prior to January 2003, the term of office for each Nasdaq Listing and Hearing Review Council member shall be two years.*

(b) The Nasdaq Listing and Hearing Review Council shall be divided into *three* [two] classes. The term of office of those of the first class shall expire in January *2004* [1999], [and] the term of office of those of the second class shall expire *in January 2005*, [one year thereafter] *and the term of office of those of the third class shall expire in January 2006.* Beginning in January *2003* [1999], members shall be appointed for a term of *three* [two] years to replace those whose terms expire.

(c) [Beginning in 1999,] [n]*No* member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

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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

Nasdaq proposes to increase the term of office for members of the Listing Council, and to increase the number of Listing Council classes. The Listing Council, which consists of between eight and 18 members, considers and makes recommendations to the Nasdaq Board on policy and rule changes relating to issuer listings. In addition, the Listing Council, to the extent of its delegated authority, functions as the appellate forum for staff adjudicated determinations related to compliance with applicable listing requirements.

Currently, members of the Listing Council hold office for a term of two years and may serve no more than two consecutive terms. Nasdaq proposes to extend members' terms to three years in order to provide greater continuity to the Listing Council. Specifically, the increase in the length of members' terms will allow the Listing Council to be divided into three classes rather than the current two classes. By dividing the Listing Council into three classes, the number of members that must be selected and trained each time a new class is appointed will be significantly reduced.

Nasdaq proposes to implement the proposed rule change by extending the second term of most current Listing Council members from two to three years. Currently, the Listing Council consists of 18 members. The first class is composed of eight members. Five of these members are currently serving their second consecutive term, which is scheduled to expire in January 2003 (''Group 1''). The remaining three members of the first class are currently

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).