

to contact the other market directly to confirm whether there is a problem with the quotes.

## 2. Statutory Basis

CBOE believes that the proposed change in Interpretation and Policy .02 is consistent with and is furtherance of the provisions of Section 6(b)(5)<sup>5</sup> of the Act. By making clear that the Exchange has greater flexibility to keep RAES executing orders at the NBBO, CBOE believes that public customers will receive better executions of their orders more frequently. This will improve the efficiency of RAES, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system, and thus protecting investors and the public interest.

### *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 proposed rule 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-99-45 and should be submitted by January 18, 2000.

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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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42257; File No. SR-DTC-99-22]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries for Book Entry Only Securities**

December 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 23, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-99-22) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

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

Under the proposed rule change, DTC will revise its procedures for running call lotteries on book-entry only ("BEO") securities for which DTC receives notice of the call after the redemption date. Specifically, DTC will run lotteries in these instances using participants' positions as of the close of

business on the day prior to the call publication date instead of the date on which the call is announced by DTC.

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

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change*

Currently, DTC's call lottery process allocates called BEO securities among participants having positions in the called securities as of the close of business on the day DTC announces the call lottery ("DTC call announcement date"). DTC adopted these procedures in March 1998 with the approval of the Securities Exchange Commission and the endorsement of the Corporate Actions Division of the Securities Industry Association ("Corporate Actions Division").<sup>3</sup> Prior to March 1998, DTC ran its lotteries based on participants' positions as of the close of business on the day prior to publication date ("call publication date").<sup>4</sup>

DTC is proposing to change the date for the allocation in the call lottery only

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

<sup>3</sup> See Securities Exchange Act Release 34-39658 (February 20, 1998) 63 FR 8726 [File No. SR-DTC-97-14].

<sup>4</sup> For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 [File No. SR-DTC-84-09] (notice of filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992) 57 FR 12352 [File No. SR-DTC-90-02] (order temporarily approving a proposed rule change by DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994) 59 FR 63396 [File Nos. SR-DTC-94-08 and SR-DTC-94-09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); 36651 (December 28, 1995) 61 FR 429 [File No. SR-DTC-95-21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures); and 34-39658 (February 20, 1998) 63 FR 8726 [File No. SR-DTC-97-14] (order approving proposed rule change regarding call lottery procedures for BEO securities).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

for calls of BEO securities in which DTC is notified of the call after the redemption date has passed. Allocation lotteries for other calls of BEO securities, where notice is received on or before the redemption date, will continue to be run using participants' positions as of the DTC call announcement date.

When the call notice is received by DTC after the redemption date, the DTC call announcement date is necessarily after the date as of which the called securities are deemed to have been redeemed by the issuer. Use of the DTC call announcement date in these instances can have an adverse impact on participants and their customers who have acquired a security position during the period between the redemption date and the DTC call announcement date because they have acquired the called security without notice that the security has been redeemed. Therefore, for call notices received after the redemption date, DTC proposes to process its call lottery with reference to participant positions as of the close of business on the day prior to the call publication date. Use of the call publication date to determine lottery allocations is consistent with DTC's procedures for lotteries in certificated issues.

DTC's proposed rule change is designed to mitigate the negative impact of calls of BEO securities which are processed through DTC's lottery process after the redemption date due to late notification from the issuer. The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions and, in general, furthers the protection of investors and the public interest.

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

DTC 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, in the public interest, and for the protection of investors.

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

DTC has discussed the proposed rule change with participants and the Corporate Actions Division of the Securities Industry Association. DTC presented the proposed rule change to the Board of Directors of the Corporate

Action Division on March 23, 1999. Further discussions between DTC and the Corporate Actions Division took place on September 15, 1999. No written comments have been solicited or received.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published 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 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, 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, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file No. SR-STC-99-22 and should be submitted by January 18, 2000.

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42242; File No. SR-NASD-99-68]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Head Trader Alert 1999-60 Regarding the Nasdaq Application of the OptiMark System**

December 16, 1999.

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 November 5, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 on November 23, 1999.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq is filing an interpretation of NASD Rule 4991(h) that was issued in Head Trader Alert Number 1999-60. The interpretation affects the Nasdaq Application of the OptiMark System (the "Nasdaq Application"). The text of the proposed rule change is available at the Association and at the Commission.

#### **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,

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, Nasdaq explained the "N" modifier that may be attached to a SelectNet order that is the result of an OptiMark match, and clarified the use of the C999 modifier by market participants outside of the OptiMark system. Letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 22, 1999.