

is deemed a covered position, and eligible for the cash account, provided a long position in a European style cash-settled index option, stock index warrant or currency warrant having the same underlying component or index that is based on the same aggregate current underlying value, is held in or purchased for the account on the same day provided:

(1)—No change

(2) *Long Butterfly Spreads, Short Butterfly Spreads, Long Condor Spreads, Short Iron Butterfly Spreads or Short Iron Condor Spreads. The captioned spreads, as defined in subparagraphs (a)(5), (a)(6), (a)(7), (a)(8) and (a)(9), respectively, of this Rule, are permitted in a cash account only if they are composed of cash settled, European style options and all options expire at the same time, [Put or call options carried in a short position are deemed covered positions and eligible for the cash account provided the account contains long positions of the same type which in conjunction with the short options constitute a butterfly spread as defined in subparagraph (a)(5) of this Rule] and provided:*

[(A) all component options are European style,]

[(B) all component options are cash settled,]

[(C)](A) the long options are held in, or purchased for the account on the same day,

[(D)](B) in respect of a long butterfly spread or long condor spread as defined in subparagraphs (a)(5) and (a)(7), respectively, of this Rule, the net debit is paid in full,

[(E)](C) in respect of a short butterfly spread, short iron butterfly spread or short iron condor spread as defined in subparagraphs (a)(5)(6), (a)(8) and (a)(9), respectively, of this Rule, either there is held in the account at the time the positions are established or received into the account promptly thereafter:

(1) Cash or cash equivalents of not less than the amount of the *exercise price interval*[aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options], to which requirement the net proceeds from the sale of short option components may be applied, or

(2) An escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents or (3) a combination thereof having an aggregate market value at the time the positions are

established of not less than the amount of the *exercise price interval*[aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options] and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice [on the call (put) with the lowest (highest) exercise price].

[(F)](D) all component options are listed or guaranteed by the carrying broker-dealer.

(3)—No change

12.3(f) through (k)—No change

\* \* \* Interpretations and Policies:

.01–.19—No change

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52721; File No. SR–DTC–2005–14]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Compliance With Regulations Administered by the Office of Foreign Assets Control

November 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on September 9, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change and on October 25, 2005, amended 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

Under the proposed rule change, DTC would revise its Deposit Service, Custody Service, and Withdrawals-By-Transfer Service procedures.

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

#### 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.

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

Under the proposed rule changes, DTC would revise its Deposit Service, Custody Service, and Withdrawals-By-Transfer Service procedures. These changes are based upon guidance provided by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) to DTC.

##### 1. Deposit Service

In order to receive immediate credit in its securities account at DTC for a deposit of registered securities, a participant would be required to certify to DTC that it has compared the parties identified on the deposited certificate (e.g., the issuer, the party in whose name the deposited security is registered, and all assignees) against OFAC’s list of targeted countries, Specially Designated Nationals, and other parties designated by OFAC (collectively referred to as the “OFAC list”) and that there were no matches identified by such comparison.

In the case of a deposit of registered securities by a participant located outside the United States, including a deposit by or for the benefit of a participant accepted at a depository facility located outside the United States, the participant will not receive immediate credit in its securities account. DTC will give credit for the deposit only after DTC has screened the parties on the deposit against the OFAC list and has identified no matches.

##### 2. Custody Service

With respect to securities and other financial instruments that are deposited pursuant to DTC’s Custody Service procedures, DTC will act on the instructions of the depositing participant only after DTC has screened the parties on the deposit against the

OFAC list and has identified no valid matches.<sup>2</sup>

### 3. Withdrawal-By-Transfer Service

For securities on deposit that are sought to be withdrawn pursuant to DTC's Withdrawal-By-Transfer Service, including Withdrawal-By-Transfer requests for Direct Registration, DTC will act on the instructions of the withdrawing participant only after DTC has screened the investor in whose name the securities are to be registered against the OFAC list and has identified no valid match.

For each service, in the event that DTC identifies a match against the OFAC list, DTC would attempt to remove false-positive matches. For valid matches, DTC would present the matches to participants through a new Participant Terminal System function called "OFAP." Participants would be required to review each certificate registration identified as a potential match through the "OFAP" function by comparing the certificate registration to the OFAC text information and respond with a comment for each registration by providing factual information sufficient for DTC to conclude, in its sole discretion, that the investor is or is not the person or entity listed on the OFAC list.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder because it will enhance DTC's compliance with applicable laws thereby reducing risks and associated costs to DTC and 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 it receives.

### 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 within such longer period (i) as the Commission may designate up to ninety 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 change, as amended, 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 No. SR-DTC-2005-14 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-9303.

All submissions should refer to File No. SR-DTC-2005-14. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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 submission should refer to File No. SR-DTC-2005-14 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52746; File No. SR-NASD-2005-106]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding Fees for Closed-End Funds Listing on the Nasdaq Capital Market

November 7, 2005.

On August 31, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change regarding fees for closed-end funds listing on the Nasdaq Capital Market.<sup>3</sup> Nasdaq has proposed to amend NASD Rules 4510 and 4520 to: (i) Decrease the entry fee for listing a closed-end fund on the Nasdaq Capital Market to \$5,000 (of which \$1,000 is a non-refundable application fee) per fund; and (ii) adopt a new annual fee schedule for closed-end funds on the Nasdaq Capital Market, which is identical to that of funds listed on the Nasdaq National Market.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on October 3,

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Subsequent to the Nasdaq filing of this proposed rule, Nasdaq filed, and the Commission approved, another proposed rule change which renamed "The Nasdaq SmallCap Market" as "The Nasdaq Capital Market." See Securities Exchange Act Release No. 52489 (September 21, 2005) 70 FR 56948 (September 27, 2005).

<sup>5</sup> Nasdaq recently adopted new listing fees for Closed-End Funds listing on the Nasdaq National Market. See Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR-NASD-2005-096).

<sup>2</sup> DTC is already screening the registration information for securities it is holding as part of its Custody Service.

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