

(File No. SR-DTC-2002-08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 6, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC's rule change will clarify the procedures under which DTC's nominee, Cede & Co., will exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is required to act with respect to 100% of the securities on deposit or not act at all. Such an event is known as a "Unitary Action."

When involved in a situation that requires a Unitary Action under applicable law, DTC will attempt to follow its normal procedures for actions that are not Unitary Actions. Specifically, for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC will assign applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date, will issue an omnibus proxy, and will forward it to the issuer or trustee. DTC also will assist its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

However, if, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC but only in the form of a 100% yes or no vote or not at all, DTC will attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly

caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (e.g., hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge each participant holding a position in a Unitary Action security such participant's pro rata share (based on the number of shares or the principal amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

II. Discussion

Section 17A(b)(3)(F)³ of the Act requires that the rules of a clearing agency be designed, among other things, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with DTC's obligations under section 17A(b)(3)(F) because it preserves DTC's participants' ability to exercise their individual rights in corporate actions while continuing to hold their positions in a book-entry environment in situations involving Unitary Actions. This clarification should also add more certainty to the allocation of voting rights and the costs involved in Unitary Action situations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2002-08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48035; File No. SR-NASD-98-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 14 and 15 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Short Sale Rule and Continued Suspension of the Primary Market Maker Standards Set Forth in NASD Rule 4612

June 16, 2003.

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 March 19, 1998, 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 and II below, which Items have been prepared by the Nasdaq. The NASD subsequently filed several amendments to the proposed rule change. On June 11, 2003, the NASD filed Amendment No. 14 to the proposed rule change.³ On June 16, 2003, the NASD filed Amendment No. 15 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, and to grant accelerated approval of the proposed rule change, as amended.

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

The Nasdaq is proposing to extend the pilot program of the NASD short sale rule from June 15, 2003, until December 15, 2003. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker ("PMM") standards currently set forth in NASD Rule 4162 also from June 15, 2003, until December 15, 2003. The text of the proposed rule change is below. Proposed new language is italicized; deletions are [bracketed]. NASD Rule 3350

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 10, 2003 ("Amendment No. 14").

⁴ See letter from Mary M. Dunbar, Vice-President and Deputy General Counsel, NASD, to Kathy England, Assistant Director, Division, Commission, dated June 10, 2003 ("Amendment No. 15").

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46930 (Nov. 27, 2002); 67 FR 72713.

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 17 CFR 200.30-3(a)(12).