

an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Covered Shareholders to redeem their shares of the Funds in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (7) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standards and that the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemption are consistent with the general purposes of the Act because the Covered Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities distributed pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to a Covered Shareholder. Cash will be paid for the portion of the in-kind distribution represented by the excluded assets set forth above, less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Funds' Boards, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each effected Fund as reflected in the prospectus. In addition, the Board will

make and approve such changes as it deems necessary in the procedures for monitoring the Funds' compliance with the terms and conditions of this application.

5. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Covered Shareholder, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41305; File No. SR-DTC-99-08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to its Organization Certificate and By-Laws

April 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 18, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on April 12, 1999, amended the proposed rule change (File No. SR-DTC-99-08) 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 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 amend its Organization Certificate and By-Laws: (1) to increase the size of its Board of Directors, (2) to redesignate its capital stock, and (3) to modernize its Certificate of Organization. The amendments are subject to stockholder approval. DTC anticipates implementing

¹ 15 U.S.C. 78s(b)(1).

the proposed rule change on June 15, 1999.

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

Under the proposed rule change, DTC's Organization Certificate and By-Laws will be amended as follows:

1. Increasing the Number of Board Directors

The Board of Directors of DTC has unanimously determined to proceed with a plan for the integration over time of DTC with the National Securities Clearing Corporation ("NSCC"), and DTC has been advised that NSCC has taken similar action. An initial step in this plan is to propose the reelection by shareholders of DTC at this year's annual meeting and the reelection by the shareholders of NSCC at its annual meeting in June of the two entities' current Boards of Directors. Assuming there is no objection by DTC's and NSCC's regulators, the two current Boards will then be restructured so that one group of individuals will serve as the Board of Directors for each of the two companies. Since simply adding DTC's current Board to NSCC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards, each organization represented will be asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management director, the Board of Directors for each company will be comprised of twenty-seven people.³

² The Commission has modified the text of the summaries prepared by DTC.

³ Under the Federal Reserve Act, DTC's may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

DTC's Organization Certificate and By-Laws currently provide for the number of directors of the Board to be not less than five nor more than twenty. In order to accommodate the number of directors resulting from the consolidation plan described above and in order to provide for a possible limited future expansion of the Board, paragraph "SEVENTH" of the Organization Certificate (which after elimination of paragraph "FOURTH," as described below, will become paragraph "SIXTH") and Article II, Section 2.1 of the By-Laws will be amended to provide that the number of directors be not less than seven nor more than twenty-five. Section 2.1 of the By-Laws will also be amended to set the number of directors at twenty-five.

2. Redesignating DTC's Capital Stock

DTC's Organization Certificate currently limits DTC to only one class of stock, 18,500 shares of capital stock having a par value of \$100,000 per share. All of this stock is issued and outstanding. The Board of Directors may in the future wish to consider authorizing the issuance of preferred stock, for example, as part of DTC's program to strengthen capital. Therefore, paragraph "THIRD" will be amended and paragraph "FOURTH" will be eliminated in order to designate the existing class of capital stock as "common stock" and to provide for 1,500,000 shares of preferred stock having a par value of \$100,000 per share.

3. Modernizing the Organization

DTC's Organization Certificate was originally drafted in 1973. Provisions of the Organization Certificate relating to DTC's powers refer both explicitly and implicitly to New York State Statutory provisions that are no longer applicable. The Organization Certificate also fails to recognize DTC's status as a securities depository registered with the SEC (registration was required by federal law enacted two years later in 1975) and to describe more clearly powers incidental to DTC's role as a securities depository. Accordingly, paragraph "THIRTEENTH" (which after elimination of paragraph "FOURTH," as described above, will become paragraph "TWELFTH") will be amended to correct these deficiencies.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(a) of the Act⁴ and the rules and regulations thereunder applicable to DTC. The proposed rule change will not affect the

⁴ 15 U.S.C. 78q-1(b)(3)(A).

safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(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 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

Written comments from DTC Participants 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

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 DTC 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, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-99-08 and should be submitted by May 14, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41302; File No. SR-NASD-99-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Creating a Discovery Guide for Use in NASD Arbitrations

April 16, 1999.

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 January 29, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. On March 23, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.³ NASD Regulation submitted Amendment No. 2 to the proposed rule change on April 9, 1999.⁴ The Commission is publishing this notice of the rule change, as amended, 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

NASD Regulation has filed with the Commission a proposed Discovery Guide for use in NASD arbitration proceedings to improve the discovery

process in NASD-sponsored securities arbitrations. Below is the text of the proposed rule change which would create the Discovery Guide and Document Production Lists.

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Discovery Guide

For NASD arbitrations, the Discovery Guide supplements the section in The Securities Industry Conference on Arbitration ("SICA") publication entitled "The Arbitrator's Manual," and captioned "Prehearing Conference," found on pages 11 through 16, regarding public customer cases.

I. The Need for New Discovery Procedures

Discovery disputes have become more numerous and time consuming. The same discovery issues repeatedly arise. To minimize discovery disruptions, the NASD Regulation Office of Dispute Resolution has developed two initiatives to standardize the discovery process: early appointment of arbitrators to conduct an initial prehearing conference and document production lists ("Document Production Lists").

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s).⁵ The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and sanctions.

The Discovery Guide, including the Document Production Lists, will function as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. For instance, arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Further, nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. In fact, the Office of Dispute Resolution encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

II. Document Production Lists.

The Office of Dispute Resolution will provide the parties with Document Production Lists (attached to the Discovery Guide) at the time it serves the statement of claim in customer cases. The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged

by the parties within the time frames set forth below.

The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases alleging the following causes of action: churning, failure to supervise misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s) and for customers.

NASD Rule 10321 provides that the parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration process. As noted, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

A. Time Frames for Document Production and Objections

The parties should produce all required documents listed in the applicable Document Production Lists not later than thirty days⁶ from the date the answer is due or filed, whichever is earlier. If a party redacts any portion of a document prior to production, the redacted pages (or ranges of pages) shall be labeled "redacted." A party may object to the production of any document, which would include an objection based upon an established privilege such as the attorney-client privilege. If any party objects to the production of any document listed in the relevant Document Production Lists, the party must file written objections with the Office of Dispute Resolution and serve all parties not later than thirty days following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. An objection to the production of a document or a category of documents is not an acceptable reason to delay the production of any document not covered by the objection. A response to an objection should be served on all parties within 10 days from service of the written objections. Objections and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties. The arbitrator(s) shall then determine whether the objecting party has overcome the presumption based upon sufficient reason(s).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Alden S. Adkins, Senior vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 23, 1999. In Amendment No. 1, NASD Regulation made minor changes to the Discovery Guide in response to some of the Commission's concerns about the Guide ("Amendment No. 1").

⁴ See letter from S. Alden, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 9, 1999. In Amendment No. 2, NASD Regulation made minor changes to clarify some of the language within the Discovery Guide ("Amendment No. 2").

⁵ NASD Regulation may develop separate Document Production Lists for intra-industry disputes.

⁶ All time periods referenced herein are calendar days.