

Although the OPRA Plan currently provides for a participation fee to be determined in the manner described above, it does not reflect the specific standards to be applied in determining the amount of the fee. Instead, the OPRA Plan contemplates that these standards will be incorporated in the OPRA Plan by means of an amendment to be filed with and approved by the Commission prior to the determination of the participation fee to be paid by the International Securities Exchange, LLC ("ISE"), which, at present, is the only party to the OPRA Plan to which a fee based upon these standards will apply. OPRA proposes to amend the OPRA Plan for the purpose of incorporating in the OPRA Plan standards for determining a participation fee to be paid by a new participant to the OPRA Plan. OPRA represents that ISE, the only party currently subject to a participation fee to be determined on the basis of the standards now proposed, did not vote on the adoption of these standards, but did participate in the discussion of the proposed standards.

The purpose of the participation fee is to require each new party to the OPRA Plan to pay a fair share of the costs previously paid by the other parties for the development, expansion, and maintenance of the OPRA system. Consistent with the purpose, the standards now proposed to be embodied in the OPRA Plan for the determination of the participation fee are, for the most part, concerned with these categories of costs. Because OPRA, as an administrative committee of exchanges, does not account for any assets of its own, it does not capitalize any of its costs but instead, simply passes them on to the exchanges. However, OPRA believes that the concept of capitalized costs is an appropriate factor to be taken into account in determining what should be a proper participation fee. Accordingly, the first factor proposed to be included in the OPRA Plan for this purpose is to consider what would have been amortized as OPRA's capital expenditures over the past five years if OPRA were subject to generally accepted accounting principles. OPRA believes that five years is an appropriate time frame for this purpose not only because it represents a reasonable life for the kinds of computer hardware and software assets that make up the OPRA system, but also, because it is a short enough period to provide a reasonable basis for determining how much of OPRA's past expenses should be shared by a new party.

The next factor proposed to be considered is an assessment of costs incurred and to be incurred by OPRA in

connection with any modifications to the OPRA system necessary to accommodate the new party, unless these costs have otherwise been paid or reimbursed by the new party. This, too, is a cost-based factor, and reflects OPRA's belief that it is appropriate for a new party to pay the costs uniquely associated with its becoming a party.

Finally, OPRA proposes that the determination of the participation fee would also take into account previous fees paid by other new parties. OPRA represents that the closer in time any such prior fees were paid and the greater the similarity of the circumstances between the participation of the other parties and the party that is to pay the participation fee under consideration, the greater will be the weight given to this factor, in the interest of fairness and consistency. Further, OPRA represents that ISE and the other OPRA participant exchanges have had discussions concerning what would be the amount of the fee if the standard proposed in this amendment were approved, and they have reached agreement on both the amount of the fee and the terms of payment.

### III. Discussion

The Commission received one comment letter regarding the proposed OPRA Plan amendment.<sup>7</sup> The commenter expressed support for the proposed amendment to the OPRA Plan. Specifically, the commenter stated that the proposed standards for determining participation fees would treat new participants to the OPRA Plan in an equitable fashion.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>8</sup> Specifically, the Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act<sup>9</sup> and Rule 11Aa3-2<sup>10</sup> thereunder in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission believes that it is reasonable for the OPRA Plan to provide for an initial participation fee to be paid by new parties to the OPRA Plan. The

Commission notes that the proposal would establish specific factors for determining the amount of the fee payable by new participants to the OPRA Plan. The Commission believes that the proposed factors should foster a fair and reasonable method of determining the amount of a fee payable by new participants to the OPRA Plan.<sup>11</sup> Accordingly, the Commission finds that the proposed factors for determining the amount of the participation fee in the proposal are consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Rule 11Aa3-2 of the Act,<sup>12</sup> that the proposed OPRA Plan amendment, (SR-OPRA-00-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43648; File No. SR-DTC-00-11]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of A Proposed Rule Change Relating to Service Fees

November 30, 2000.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 4, 2000, 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 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 will change DTC's service fee schedule.

<sup>11</sup> The Commission notes that the amount of the participation fee for a new party to the OPRA Plan would be subject to review by the Commission if such new party and OPRA do not agree on the amount of the fee. See 15 U.S.C. 78k-1(b)(5).

<sup>12</sup> 17 CFR 240.11Aa3-2.

<sup>13</sup> 17 CFR 200.30(a)(29).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> See Archipelago Letter, *supra* note 4.

<sup>8</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 17 CFR 240.11Aa3-2.

**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 that 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.<sup>2</sup>

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

DTC proposed to change its service fee schedule by adding the following Participant Terminal System (PTS) fees under the heading "GWIZ Service."<sup>3</sup> the proposed fees are designed to recover DTC's estimated service costs.

Service	Present fee	Proposed fee
For Original Issuance services, which combines descriptive and most recent event information.	None .....	\$.25 per inquiry.
For DTC Processing services, which includes four pages of CONI information.	None .....	\$.020 per inquiry.
For Agent, Distribution, Redemption and Corporate Action Screens.	None .....	\$.09 per inquiry.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in DTC's possession or control.

*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.

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

No comments on the proposed rule change were solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder because the proposed rule change establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such 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.

**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, 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 Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-00-11 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43695; File No. SR-NASD-00-34]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Authority of the Director of Arbitration to Remove Arbitrators for Cause**

December 8, 2000.

**I. Introduction**

On June 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> On July 28, 2000, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change

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

<sup>3</sup> GWIZ is a new PTS function that offers DTC's participants improved search and navigation capabilities and expanded information about eligible securities. The GWIZ service combines corporate data from five currently separate PTS functions into one application and provides access to more up-to-the-minute information (e.g., corporate actions, dividends, and redemptions)

with fewer keystrokes to the GWIZ user. In addition, GWIZ provides links to other PTS functions for more detailed or participant-specific information.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Letter from Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2000. Amendment No. 1 clarified certain portions of the description of the proposed rule change and made technical amendments to the text of the proposed rule language.