

In November 1999, DTC admitted one non-U.S. entity as a direct participant under the standards for admission of foreign entities. DTC has received several inquiries from other non-U.S. entities and expects to admit several other foreign entities in 2001 under the standards for the admission of foreign entities. DTC is seeking an extension of the temporary approval so DTC can complete the admission of these foreign entities and gain additional experience with the new admission standards for foreign entities and the unique risks posed by the activities of foreign entities as direct DTC participants.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to DTC because the proposed policy does not unfairly discriminate against foreign entities seeking admission as participants because it appropriately takes into account the unique risks to the depository raised by their admission.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

While DTC acknowledges that the proposed additional admissions criteria applicable to foreign entities may impose some additional burden, for the reasons stated above, we believe that any such burden is necessary and 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*

DTC has not sought or received comments on the proposed rule change.

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>5</sup> The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria for non-U.S. entities has been designed in a manner that takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to DTC's risk control and management. Furthermore, DTC admission criteria should bind non-U.S.

entities to DTC's rules and procedures in a manner similar to domestic participants and should lessen or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria are designed in a manner that will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria for non-U.S. entities without interruption when the current temporary approval of these criteria expires on May 31, 2001.

**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 Section, 450 Fifth Street, NW., Washington, DC 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-2001-10 and should be submitted by July 23, 2001.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2001-10) be, and hereby is, approved on an accelerated basis through May 31, 2002.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44467; File No. SR-NASD-2001-38]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing of Additional Shares**

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 May 29, 2001, 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, II, and III below, which Items have been prepared by Nasdaq. 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**

Nasdaq has filed the proposed rule change to amend Nasdaq Marketplace Rules 4320, 4510, and 4520, regarding the listing of additional shares. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)-(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the

<sup>6</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>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> *Id.*

following criteria for inclusion in Nasdaq:

(1)–(14) No change

(15) The issuer of any class of securities included in Nasdaq, except for American Depositary Receipts, shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A)–(D) No change

(16)–(25) No change

(f) No change

#### Rule 4510. The Nasdaq National Market

(a) No change

(b) Additional shares

(1) The issuer of each class of security that is a domestic issue which is listed in [t]he Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be \$2,000 or \$.01 per additional share, whichever is higher, up to a maximum of [\$17,500] \$22,000 per quarter and an annual maximum of [\$35,000] \$45,000 per issuer. *There shall be no fee, however, for issuances of up to 49,000 additional shares per quarter.*

(3) No change

(4) *The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the additional shares fee prescribed herein.*

(c)–(d) No change

#### Rule 4520. The Nasdaq SmallCap Market

(a) No change

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be \$2,000 or \$.01 per additional share, whichever is higher, up to a maximum of [\$17,500] \$22,000 per quarter and an annual maximum of [\$35,000] \$45,000 per issuer. *There shall be no fee, however, for issuances of up to 49,000 additional shares per quarter.*

(3) No change

(4) *The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or*

*waive all or any part of the additional shares fee prescribed herein.*

(c)–(d) No change

\* \* \* \* \*

#### 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, 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

###### 1. Purpose

Nasdaq proposes to amend Nasdaq Marketplace Rules 4320, 4510, and 4520, regarding the listing of additional shares ("LAS Program"). These amendments include revising the fees for the listing of additional shares ("LAS"), providing the Board or its designee with the discretion to defer or waive fees relating to the LAS program, and clarifying that American Depositary Receipts are exempt from the LAS notification requirements contained in Nasdaq Marketplace Rule 4320(e)(15).

The LAS program involves notification and fee requirements for the issuance of additional shares. In January 2000, the notification process was simplified so that today issuers must notify Nasdaq only of a transaction that may implicate Nasdaq's corporate governance requirements contained in Nasdaq Marketplace Rules 4310(c)(25) and 4320(e)(21).<sup>3</sup> The LAS fee schedule was also amended last year to provide that the fees for the issuance of additional shares would be \$0.01 per share or a minimum of \$2,000, whichever is higher, based upon quarterly changes in total shares outstanding, subject to a cap of \$17,500 per quarter and \$35,000 per year.<sup>4</sup>

Since the LAS fee schedule was amended, Nasdaq has received several complaints from issuers regarding these changes. Specifically, issuers have noted that the \$2,000 minimum fee results in a significant per share cost for minor issuances. Issuers have further

indicated that many of these minor issuances have resulted from employees exercising stock options, a circumstance over which issuers have no control. As such, several issuers have requested that their LAS fees be waived.

In response to these concerns, Nasdaq proposes to amend Nasdaq Marketplace Rules 4510(b)(2) and 4520(b)(2) to provide a "carve-out" for issuances of up to 49,999 shares per quarter. To offset the loss in revenues resulting from this "carve-out," Nasdaq proposes to change the maximum quarterly fee from \$17,500 to \$22,500 and the maximum annual fee from \$35,000 to \$45,000. These changes will alleviate issuers' concerns regarding small issuances while maintaining the revenues generated by the current LAS fee schedule.

Nasdaq also proposes to amend Nasdaq Marketplace Rules 4510(b)(4) and 4520(b)(4) to give the Board of Directors, or its designee, the ability to defer or waive all or any part of the fees relating to the LAS program. Nasdaq believes that it is appropriate for its Board to have the ability to defer or waive LAS fees in those situations where such action would be justified to achieve an equitable result, consistent with Nasdaq's current ability to defer or waive entry and annual fees.<sup>5</sup>

Lastly, Nasdaq proposes to clarify the LAS notification requirement for foreign issuers. Originally, Nasdaq Marketplace Rule 4320(e)(15) excluded American Depositary Receipts (ADRs) from the LAS notification requirements for foreign issuers because it is very difficult to track the creation as well as unwinding of ADRs and their creation may not implicate any Nasdaq regulatory requirements. When the notification requirements were amended in January 2000,<sup>6</sup> the exclusion of ADRs was inadvertently omitted from Rule 4320(e)(15). As such, Nasdaq proposes to amend this Rule to add that ADRs are not subject to the LAS notification requirement.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) and (6) of the Act.<sup>7</sup> The proposed rule change is consistent with section 15A(b)(5) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among issuers using the Nasdaq system. Specifically, the LAS

<sup>5</sup> See Nasdaq Marketplace Rules 4510(a)(3), 4510(c)(2), 4520(a)(2), and 4520(c)(2).

<sup>6</sup> See Securities Exchange Act Release No. 42351 (January 20, 2000), 65 FR 4457 (January 27, 2000).

<sup>7</sup> 15 U.S.C. 78o-3(b)(5) and (6).

<sup>3</sup> See Securities Exchange Act Release No. 42351 (January 20, 2000), 65 FR 1210 (January 7, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 42300 (December 30, 1999), 65 FR 4457 (January 27, 2000).

program fees were adopted to fund issuer-related operations that include educational initiatives, issuer service initiatives and NASD surveillance measures.<sup>8</sup> The proposed rule change is also consistent with Section 15A(b)(6) in that it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As previously mentioned, the LAS program fees are used to fund various operations relating to issuers.

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

Nasdaq does not believe that the proposed rule change will result in 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*

Written comments were not solicited or received.

### **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 Nasdaq 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 proposal 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. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2001-38 and should be submitted by July 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

### **TENNESSEE VALLEY AUTHORITY**

#### **Public Meeting To Receive Comments on the Draft Environmental Impact Statement for Addition of Electric Generation Baseload Capacity in Franklin County, TN**

**AGENCIES:** Tennessee Valley Authority and U.S. Air Force.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tennessee Valley Authority (TVA) with the U.S. Air Force will hold a public meeting to receive comments on the Draft Environmental Impact Statement (DEIS) titled, "Addition of Electric Generation Baseload Capacity in Franklin County, Tennessee." The meeting will be held on July 10, 2001, at the University of Tennessee Space Institute Auditorium near Tullahoma, Tennessee. Registration for the meeting will begin at 5:30 p.m. Central Time and the meeting will begin at 6 p.m. Central Time. TVA staff will be available to answer questions concerning the environmental review process, the project schedule and other details of the proposed power plant. The public will then have an opportunity to provide oral or written comments on the DEIS. Comments may be submitted on comment cards available at the meeting, or subsequently mailed by the date indicated to the address provided below. Comments will also be accepted by mail or e-mail at the addresses listed below.

**DATES:** The meeting will be held on Tuesday, July 10 at 6 p.m. Central Time. Registration for the meeting will begin at 5:30 p.m. Central Time. Comments on the DEIS must be postmarked or e-mailed no later than July 30, 2001, to ensure consideration. Late comments will receive every consideration possible.

**ADDRESSES:** The meeting will be held at the Auditorium of the University of Tennessee Space Institute, 411 B. H. Goethert Parkway, Tullahoma, Tennessee. Written comments should be sent to Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail Stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499. Comments may also be e-mailed to blyeager@tva.gov.

#### **FOR FURTHER INFORMATION CONTACT:**

Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail Stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499.

#### **SUPPLEMENTARY INFORMATION:**

##### **Project Description**

In accordance with the National Environmental Policy Act (NEPA), regulations specified in Title 40 of the Code of Federal Regulations, parts 1500-1508, and implementing procedures of the TVA and U.S. Air Force, TVA as lead agency, and the U.S. Air Force as a cooperating agency, have prepared a Draft Environmental Impact Statement on TVA's proposal to construct a natural gas-fired combined cycle power plant in Franklin County, Tennessee. TVA and the U.S. Air Force are using the EIS process and meetings, such as that currently announced, to obtain public involvement on this proposal. Public comment is invited concerning the alternatives and environmental issues addressed as a part of this DEIS.

This DEIS tiers from TVA's *Energy Vision 2020: An Integrated Resource Plan and Final Programmatic Environmental Impact Statement*. *Energy Vision 2020* was completed in December 1995 and a Record of Decision issued on February 28, 1996 (61 FR 7572). *Energy Vision 2020* analyzed a full range of supply-side and demand-side options to meet customer energy needs for the period 1995 to 2020. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies. A group of options drawn from several effective strategies was chosen as TVA's preferred alternative. The supply-side options selected to meet peaking and baseload capacity needs through the 2005 period included: (1) Addition of simple cycle or combined cycle combustion turbines to TVA's generation system, (2) purchase of call options for peaking or baseload capacity, and (3) market purchases of peaking or baseload capacity. Because

<sup>8</sup> See Securities Exchange Act Release No. 31586, 53 S.E.C. Docket 2 (December 11, 1992).

<sup>9</sup> 17 CFR 200.30-3(a)(12).