

to every customer prior to trading the Securities.

The Commission notes that the securities are dependent upon the individual credit of the issuer, J.P. Morgan. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Securities. In addition, the Exchange's hybrid listing standards further require that the securities have at least \$4 million in market value.¹⁷ In any event, financial information regarding J.P. Morgan, in addition to the information on the issuers of the underlying securities comprising the Nasdaq-100, will be publicly available.¹⁸ Based on these factors, the Commission finds that the proposal to trade the Securities is consistent with section 6(b)(5) of the Act.¹⁹

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the Nasdaq-100 is a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Securities will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-Amex-2002-24), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45969; File No. SR-DTC-2002-04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Application of a Receiver-Authorized Delivery-Like Function to Maturity Presentments for Money Market Instruments in Times of Unusual Market Stress

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 25, 2002, 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 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

The proposed rule change would amend DTC's procedures to allow the application of a Receiver-Authorized Delivery ("RAD")-like function in times of unusual market stress to maturity presentments ("MPs") of money market instruments ("MMIs") that are in DTC's custody.

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

(i) Current Maturity Presentments

Under DTC's current procedures for the processing of MPs, early on the maturity date (generally around 2:00 a.m.), DTC initiates deliveries of the maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the issuing/paying agent ("IPA"). These MPs are processed as the equivalent of book-entry deliveries versus payment. As such, MPs may "recycle" just as any delivery would if the net debit cap or collateralization controls applicable to the IPA's account prevents the delivery from being completed. If recycled, the MP delivery would be completed once additional funds such as settlement obligation prepayments or new issuances are credited to the IPA's account. Attempts to complete deliveries of recycling MPs occur randomly without regard to the identity of the offsetting prepayment/issuance transactions. For example, an issuer for commercial paper ("CP") Issuer A might establish collateral in the IPAs account that could be used to support the processing of a maturity of CP Issuer B's paper. This arrangement has operated successfully since MMIs first became DTC-eligible in 1990.

DTC's MMI procedures provide that the IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3:00 p.m. (ET) on the maturity date. This intention will be communicated to all participants by DTC. DTC will then reverse any completed MPs by recrediting them to presenting participants' accounts, which offsets the associated settlement credits in those accounts. DTC will also unwind the following transactions it may have processed earlier that day in the same and other MMIs of that "defaulting issuer": uncompleted maturity presentments; any valued issuances; any periodic income (interest or dividend) and principal presentments; and any reorganization presentments. In addition, DTC will mark down the collateral value of all of the defaulting issuer's MMIs in the system to zero and will block further issuances of that issuer's paper through DTC.

(ii) Application of Receiver-Authorized Delivery-Like Function

The Receiver-Authorized Delivery (RAD) function enables each participant to limit and consider certain securities

¹⁷ See Section 107A of the Company Guide.

¹⁸ The companies that comprise the Nasdaq-100 are reporting companies under the Act.

¹⁹ 15 U.S.C. 78(f)(b)(5).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

deliveries (those obligating the participant to pay \$15 million or more) and certain payment orders (those obligating the participant to pay \$1 million or more) which are directed to its account by any other participant before its account is updated. Certain other transactions, including substantially overvalued deliveries and deliveries initiated just prior to cutoff, are automatically subject to the RAD function.

Under DTC's current procedures, RAD is not available for MPs initiated by DTC on behalf of presenting participants because MPs are known in advance and can generally be presumed to be valid obligations due and payable. Moreover, the processing of MPs occurs early in the processing day in the expectation that the associated money credits posted to the accounts of presenting participants will be available to support the efficient subsequent processing of new MMI issuances. Finally, subjecting all MMI maturities to RAD would impose an operational burden on IPAs, who would be required to authorize each MP in order for the transaction to be completed.

Since the events of September 11, IPAs have raised a concern that in such emergency situations the random nature of DTC's process for updating recycling MPs prevents the IPAs from aligning the funding of maturities with offsetting issuances of the same issue or with decisions to activate back-up lines of credit in order to fund a particular issuer's maturing obligations.

The purpose of the proposed rule change is to provide to IPAs in the event of a systemic, operational, or other crisis that could result in MMI maturities not being funded in the normal course a mechanism for dealing with the nonpayment of maturities that does not have the consequences of a "refusal to pay." Under the proposed rule change, in extraordinary circumstances³ and only after consultation with its regulators, DTC at its option could direct MPs for MMIs maturing on the days following the crisis to a new contingency RAD-like feature. This would afford the IPA an opportunity to review and approve MPs prior to having them processed into its account and would provide the IPA additional measures of control over its financial obligations to particular MMI issuers in times of unusual market stress. DTC would continue this procedure at its

option until processing conditions returned to a more normal state.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

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

DTC perceives no impact on competition by reason of the proposed rule change.

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

The proposed rule change was reviewed with members of The Bond Market Association's Money Market Operations Committee in December 2001 and the Commercial Paper Issuers Working Group in January 2002. They agreed that using the proposed RAD-like feature offers many advantages in that it is a process that can be rapidly deployed by DTC on the days following a disaster and that allows IPAs to control the presentation of maturing paper into their accounts and thereby better manage their exposures in times of unusual market stress.

Some members of these industry groups expressed concern that subjecting MPs to RAD-like controls might impose a difficult operational burden on IPAs if they would be required to authorize each MP individually. In this connection, a custodian bank pointed out that a significant delay in the availability of credits from successfully processed MPs (which but for the need for RAD approvals would have been processed in the early morning hours) could leave custodians with higher than usual debits and therefore could potentially cause the recycling of other delivery versus payment transactions. To address these concerns, the RAD-like controls developed by DTC will provide the IPA with several options to facilitate its processing, including the ability to approve all MPs as a group.

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.

VI. 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 will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-2002-04 and should be submitted by June 18, 2002.

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. 34-45968; File No. SR-NASD-2002-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 thereto by the National Association of Securities Dealers, Inc. Relating to the Integrated Processing of Odd-Lot Share Amounts in Nasdaq's SuperMontage System

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

³ Such circumstances would be evidenced by the closing of one or more national securities exchanges (e.g., the New York Stock Exchange or Nasdaq).

⁴ 17 CFR 200.30-3(a)(12).