

approved by the Commission.<sup>19</sup> The Exchange's proposal raises no novel or substantial issues and should benefit investors by creating, without undue delay, additional competition in the market for the Shares. For these reasons, the Commission designates the proposal to be operative simultaneous with the Amex Proposal.<sup>20</sup>

At any time within 60 days of the filing of the 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. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-73 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR-NYSEArca-2008-73 and should be submitted on or before August 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58157; File No. SR-DTC-2007-05]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Harmonizing Fines With the National Securities Clearing Corporation and the Fixed Income Clearing Corporation

July 15, 2008.

#### I. Introduction

On May 15, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on December 10, 2007, amended the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On April 15, 2008, the Commission published notice of the proposed rule change to solicit comments from interested parties.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

#### II. Description

This filing will conform DTC's fine structure relating to participants not providing financial information in a timely manner to similar fine structures of DTC's clearing agency affiliates, the

National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC").<sup>3</sup>

DTC's rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit this information. As part of the ongoing effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.<sup>4</sup>

#### 1. Fines for Late Submissions

If the participant's late submission violates the rules of more than one DTC-affiliated clearing agency (which includes DTC, NSCC, and FICC), the fine amount will be divided equally among those clearing agencies.<sup>5</sup> When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

#### 2. Fines Relating to Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation that outlines the nature of the applicant's business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant

<sup>3</sup> Securities Exchange Act Release Nos. 57666 (Apr. 15, 2008), 73 FR 21675 [SR-FICC-2007-05] and 57667 (Apr. 15, 2008) [SR-NSCC-2007-07].

<sup>4</sup> The three clearing agencies do not view the proposed rule changes as fee reductions because they never intended to charge a common member two or three times for a single violation that trips another clearing agency's rules on the same matter.

<sup>5</sup> For example, assume that Firm A is a participant of DTC, FICC, and NSCC and is required to submit its annual audited financial statement within a certain time frame. If participant A is late in its submission of the statement (and this is Firm A's first violation), Firm A will be fined \$300 total and would owe \$100 to DTC, \$100 to FICC, and \$100 to NSCC.

<sup>19</sup> See *supra* note 6.

<sup>20</sup> For purposes only of waiving this designation, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 57665 (Apr. 15, 2008), 73 FR 21675.

letter acknowledges in the letter or representation its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards, then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or continue to act for them on a temporary or other conditional basis.

In order to harmonize the rules of DTC with those of its clearing agency affiliates, DTC will add an additional consequence in this regard whereby a participant will be fined \$1,000 if it fails to notify DTC of its non-compliance with any general continuance standard for DTC participation within two business days.

In addition, DTC will add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change." A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The new provision provides that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that timeframe.

With respect to both \$1,000 and \$5,000 fines mentioned above, DTC will add an additional provision that if the participant's failure to provide notice of such material change applies to more than one DTC-affiliate clearing agency, the fine amount will be divided equally among the clearing agencies. This is the same approach being adopted above with respect to fines for failure to timely provide requisite financial and other information. When the member is a DTC participant and a member of FICC or NSCC, DTC will collect the fine and allocate the amount equally among other clearing agencies, as appropriate. If the member is not a DTC participant but is a member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>6</sup> which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)<sup>7</sup> which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes DTC's fines with those of NSCC and FICC, is consistent with those statutory obligations.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.<sup>9</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2007-05), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58152; File No. SR-NASDAQ-2008-059]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

July 14, 2008.

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 July 1, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 proposes to modify Rule 7050 governing pricing for Nasdaq members using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. Nasdaq will implement the proposed rule change on July 1, 2008.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.<sup>5</sup>

\* \* \* \* \*

#### 7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market by members for all securities.

(1)-(3) No Change.

(4) Fees for executions of contracts other than those executed on the

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

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

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

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

<sup>5</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>.