

*Registration of market makers.* Under the proposal, Exchange members could seek registration as market makers in one or more of the securities traded in the electronic book. A market maker would be required to maintain a continuous two-sided market in each security in which he or she is registered and would be entitled to utilize exempt credit for financing their market maker transactions. The proposed rules would set out a process for market makers to apply for this registration and for the suspension or termination of their registrations, where appropriate.<sup>22</sup>

*Additional changes to rules.* Because this proposal is designed to replace the Exchange's existing cabinet security and lead market maker systems, this submission also contains proposed changes to various rules associated with those trading systems.<sup>23</sup>

The Exchange represents that it has designed this electronic book to be a fully-automated system that would permit eligible orders in eligible securities to match against one another, without the required participation of a specialist or lead market maker. The Exchange believes that this system functionality would provide all Exchange members with an efficient way to trade securities that are not assigned to a specialist and would protect investors and the public interest by automatically handling orders in a fair and reasonable manner.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>25</sup> in particular, because it is designed to promote just and equitable principles of

in the event of disruption or malfunction that impacts the operation or use of the electronic book, an Exchange official could act promptly to declare transactions void or to modify transactions. The official would be required to notify each member involved in the transaction as soon as practicable after making any decision. Decisions could be appealed using the procedure set out for the review of decisions addressing clearly erroneous transactions.

<sup>22</sup> See Proposed CHX Article XXA, Rules 6(a) and (d).

<sup>23</sup> See proposed changes to CHX Article XII, Rule 9 (deleting the cabinet securities rule from the Minor Rule Violation Plan ("MRVP")); CHX Article XX, Rule 11 (deleting the cabinet securities rule); CHX Article XXVIII, Rule 6 (deleting the rule permitting the Board of Governors to place securities in the cabinet); CHX Article XXXIV, Rule 3 (deleting the interpretation that creates the lead market maker program); and Schedule of Membership Dues and Fees (deleting the lead market maker credits and the recommended MRVP fines for violations of the cabinet system rule).

<sup>24</sup> 15 U.S.C. 78(f)(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

## 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 the Exchange consents, the Commission will:

(A) By order approve the 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. 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2004-11 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CHX-2004-11. 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 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 the CHX. 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-CHX-2004-11 and should be submitted on or before August 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50006; File No. SR-DTC-2004-03]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to the Processing of Deliveries in DTC's Money Market Instrument Program

July 12, 2004.

On March 18, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-DTC-2004-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on May 20, 2004.<sup>2</sup> No comment letters were

<sup>26</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. 49709 (May 14, 2004), 69 FR 29155 (May 20, 2004).

received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

### I. Description

The purpose of this filing is to allow DTC to modify its procedures relating to how deliveries are processed in DTC's Money Market Instrument ("MMI") Program. Under DTC's current procedures applicable to MMI transactions, early on the maturity date (generally around 2 a.m.)<sup>3</sup> DTC initiates deliveries of 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 transactions are processed as the equivalent of valued delivery orders ("DO"). The IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3 p.m. on the maturity date. DTC will inform all participants of the IPA's refusal to pay by broadcast message. DTC will then, among other things, reverse any completed maturity presentments by recrediting them to presenting participants.

The MMI procedures also provide for participants that are receivers of new MMI issuance DOs (e.g., custodian banks) to have until 3:30 p.m. to reclaim those DOs back to the IPA.<sup>4</sup> Since the reclaim can be "matched" with a DO processed on the same day, the reclaim is permitted to bypass the Receiver Authorized Delivery ("RAD") system and DTC's risk management controls (e.g., net debit cap and collateral monitor) if the value of the DO is less than \$15 million.<sup>5</sup>

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. IPAs have raised concerns about potentially having to fund an issuer's maturity at a level higher than anticipated at the time IPA decides not to exercise a "refusal to pay" because the IPA fails to receive the settlement credits associated with new issuance DOs that are reclaimed after 3 p.m. As a result, IPAs are forced to make

"refusal to pay" decisions based on incomplete data and are subject to increased exposure to individual issuers.

The rule change addresses these concerns by subjecting reclamations of all new MMI issuance DOs received after 2:30 p.m. to RAD controls and treating them as original transactions subject to DTC's normal risk management controls.<sup>6</sup> To reduce the potential impact of the change in the processing of reclaims received after 2:30 p.m., the rule change provides receivers of new issuance DOs with the option of having those deliveries made subject to RAD at 2 p.m. thereby giving these participants electing this option one-half hour to consider whether to accept or reject the new issuance DOs.<sup>7</sup> While the cutoff for the Issuing/Paying agent ("IPA") to exercise its "refusal to pay" option will remain at 3 p.m., the rule change clarifies that since under certain circumstances DTC may extend the 2 p.m. and 2:30 p.m. cutoffs referred to above, DTC may also extend the 3 p.m. cutoff.

### II. Discussion

Section 17A(b)(3)(F)<sup>8</sup> of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By moving up the cutoff for reclamations for new MMI issuance DOs, DTC's proposed rule change will enable IPAs to make more informed decisions on whether to provide credit for a particular issuer and therefore to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

<sup>6</sup> As a result, reclamations made after 2:30 p.m. will not be eligible for processing during the exclusive reclaim period (3:20 pm. to 3:30 p.m.) and may not be "re-reclaimed" by the receiver.

<sup>7</sup> All new issuance DOs processed after 2:00 p.m. will automatically be subject to RAD unless the participant instructs DTC to the contrary. DTC participants may opt-out of forced RAD by completing the "Forced MMI RAD Election Form" and submitting it to their DTC relationship manager. The election form is available on DTC's website ([www.dtc.org](http://www.dtc.org)) as Attachment A to DTC Important Notice #5337. A participant that, at first, elected to opt out of the forced RAD functionality may opt back in by submitting a new completed election form to its DTC relationship manager.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

### III. 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 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-DTC-2004-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50004; File No. SR-PCX-2004-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Changes to the Schedule of Fees and Charges for Exchange Services

July 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 14, 2004, the Pacific Exchange, Inc. ("PCX" 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 by PCX. On June 30, 2004, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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 Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 29, 2004 ("Amendment No. 1"). In Amendment No. 1, PCX amended its Schedule of Fees and Charges for Exchange Services to replace a reference to the term "Order Service Firm" with "any OTP Holder or OTP Firm that has activated their OTP for trading or clearing purposes" and to make a conforming change to a related footnote. PCX also made technical corrections to the proposed rule text. Amendment No. 1 supercedes and replaces the proposed rule change in its entirety.

<sup>3</sup> All times are Eastern Standard Time.

<sup>4</sup> Reclaims, or reclamations, are the means by which receivers can return erroneous deliveries.

<sup>5</sup> RAD is a control mechanism that allows participants to review transactions prior to completion of processing in order to limit participants' exposure from misdirected or erroneously entered DOs. The bypassing of DTC's risk management controls is designed to address industry concern that the receiver not be "stuck" with a delivery it should not have received because of DTC's risk management controls.