Organizations'') purchased the DTC common shares allocated to the broker-dealer users of DTC services that were their members. It was anticipated that over time as broker-dealers exercised their right to purchase DTC common shares, the number of DTC common shares held by broker-dealers directly would increase, and the number of DTC common shares held by the Self-Regulatory Organizations would correspondingly decrease, potentially to zero, since the share entitlements of the Self-Regulatory Organizations were a function of the unexercised share entitlements of their members.

Notwithstanding the passage of time and the opportunity afforded broker-dealer Participants to purchase DTCC common shares, the Self-Regulatory Organizations continue to hold a significant block of DTCC common shares. NYSE holds approximately 29% of the outstanding DTCC common shares, and the NASD and the AMEX each holds approximately 3.7%. It is also the case that a significant number of Participants other than broker-dealers have not purchased any DTCC common shares or have not purchased DTCC common shares commensurate with their share entitlements. Accordingly, a total of approximately 36.4% of the outstanding DTCC common shares are not held by Participants but rather are held by the Self-Regulatory Organizations. Ownership of DTCC common shares (and previously ownership of DTC common shares) is not a financial investment but instead is a vehicle for supporting each registered clearing agency and influencing its policies and operations through the election of directors.

By providing that all DTCC common shares are owned by Participants, DTC, FICC, and NSCC believe that the proposed rule changes [8] and the proposed amendments to the Shareholders Agreement will guarantee that Participants continue to govern and to control the activities of DTC, FICC, and NSCC, including the services provided and the service fees charged. In particular, Participants will be in a position to assure that DTC, FICC, and NSCC continue the practices of establishing fees that are cost-based and use-based and of returning to Participants in the form of cash rebates or discounts revenues in excess of expenses and necessary reserves. Finally, because they introduce the greatest risks to the clearing agencies and obtain the greatest benefits from clearing agency services, it is appropriate to require those Participants making full use of the services of DTC, FICC, and NSCC to contribute to DTCC's capital through the purchase of its common shares.

[8] The proposals add a new provision to each of DTC, FICC, and NSCC's rules that requires Mandatory Purchaser Participants to purchase and own DTCC common shares in accordance with the terms of the Shareholders Agreement. The new provisions are DTC Rule 31, NSCC Rule 64, FICC's Government Securities Division Rule 49, and FICC's Mortgage-Backed Securities Division Article V, Rule 18.

III. Comment Letters

The Commission received two comment letters.[9] Both commenters opposed the proposed rule change. One commenter stated that if DTC needed to raise capital it should offer the shares to the general public or participants in DTC's Direct Registration System. The commenter also suggested that share ownership by DTC participants provides a financial disincentive for such participants to share information with the Commission and other regulators regarding criminal or unethical practices. The other commentator suggested that requiring participants to purchase common shares in DTCC could be used as a means to separate small investors from large investors based on their net assets and subject smaller investors to potential abuse.

IV. Discussion

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency be designed to assure fair representation in the selection of its directors and the administration of its affairs.[10] The Commission finds that DTC, FICC, and NSCC's proposed rule changes are consistent with this requirement because the proposed changes serve to increase the number of Participants that have input in the selection of DTCC's board of directors and thus the boards of directors of DTC, FICC, and NSCC. This increased participation of Participants should help DTC, FICC, and NSCC assure that their Participants have fair representation in the selection of its directors and the administration of their affairs.

The purpose of the proposed rule changes are not to raise capital for DTC, FICC, and NSCC as suggested by one of the commenters, but rather to redistribute common share ownership from having a significant portion held by the Self-Regulatory Organizations to having all shares held by the Participants in order to increase Participants' role in the selection of directors and the administration of DTC, FICC, and NSCC's affairs. With respect to the other commenter's fear that some ''investors'' would not be able to purchase DTCC common shares, neither DTC, FICC, nor NSCC have been informed by any of their Participants that they would have difficulty or be unable to pay for the allocation of shares.

[9] *Supra* notes 3 and 4.

[10] 15 U.S.C. 78q–1(b)(3)(C).

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are 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,[11] that the proposed rule changes (File Nos. SR–DTC–2005–16, SR–FICC–2005–19, and SR–NSCC–2005–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7305 Filed 12–13–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52910; File No. SR–ISE–2005–052]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Requirements for Continued Approval of Securities that Underlie Options Traded on the Exchange

December 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE.[3] The ISE filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In one part of the proposal, ISE Rule 504(d)(6) is erroneously referenced, instead of current ISE Rule 503(b)(6). The staff corrected this reference, as per telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Christopher Chow, Attorney, Division of Market Regulation, Commission, December 5, 2005.

the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend certain of its rules governing the requirements for and the withdrawal of approval of securities underlying options traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 502. Criteria for Underlying Securities

(a) Underlying securities with respect to which put or call options contracts are approved for listing and trading on the Exchange must meet the following criteria:

(1) The security must be registered and *be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act* [(i) listed on a national securities exchange; or (ii) traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Exchange Act]; and

(2) No change.

(b)–(j) No change.

Rule 503. Withdrawal of Approval of Underlying Securities

(a) No change.

(b) Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(1)–(4) No change.

[(5) The issuer has failed to make timely reports as required by applicable requirements of the Exchange Act, and such failure has not been corrected within thirty (30) days after the date the report was due to be filed.]

[(6)] *(5) The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act.* [The issuer, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.] [(7)] *(6)* If an underlying security is approved for options listing and trading under the provisions of Rule 502(c), the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when-issued'' trading, may be taken into account in determining whether the trading volume and market price requirements of (3) and (4) of this paragraph (b) are satisfied.

(c)–(j) 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, the ISE 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. The ISE 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

The Exchange proposes to eliminate ISE Rule 503(b)(5) pertaining to the continued approval of securities that underlie options traded on the Exchange. ISE Rule 503(b) sets forth various situations under which an underlying security previously approved for options trading will in usual circumstances be deemed to no longer meet Exchange requirements for the continuance of such approval. In such circumstances, ISE Rule 503(a) provides that the Exchange will not open for trading any additional series of options in that class and may also limit any new opening transactions in those options series that have already been opened.

Currently, ISE Rule 503(b)(5) provides that an underlying security will no longer be approved for options trading on the Exchange when:

''(5) The issuer has failed to make timely reports as required by applicable requirements of the Exchange Act, and such failure has not been corrected within thirty (30) days after the date the report was due to be filed.''

The Exchange proposes to eliminate this provision because (i) it limits investors' ability to use options to hedge existing equity positions in such securities, and (ii) it is not necessary in the context of the rest of ISE Rule 503(b).

First, ISE Rule 503(b)(5) can and does impact investors' interests by preventing investors from using new options series to hedge positions that they may hold in the underlying security of companies that fail to make timely reports required by the Act. ISE believes such a restriction is inconsistent with the rules and regulations in the markets for the underlying securities because no similar trading restriction is placed upon the trading of the underlying security itself. Thus, ISE Rule 503(b)(5) only serves to limit the abilities of shareholders in such companies who may wish to hedge their positions with new options series, at a time when the ability to hedge may be particularly important.

ISE believes that ISE Rule 503(b)(5) has outlived any usefulness and now serves to unnecessarily burden and confuse the investing public. ISE believes this provision was appropriate when it was first implemented in or around 1976 when the listing and trading of standardized options was still in its infancy and information pertaining to public companies was not readily available to the general investing public. The Exchange believes that today's listed options market, however, is a mature one with investors who have access to a significant amount of real-time market information to assist them in making informed investment decisions, including information as to whether companies have timely filed reports as required by the Exchange Act, and if not, why not. Therefore, ISE believes that there is no reason to continue limiting investors' ability to trade in options classes, including new series within those classes, simply because a company is not timely in filing its reports. The Exchange further states that this restriction is further misplaced, considering that investors are not similarly restricted from buying or selling shares of the underlying security in the equity markets.

Moreover, the Exchange believes that ISE Rule 503(b)(5) limits an investor's ability to hedge his underlying stock positions at a time when he may be in most need to protect his investment. The failure of a public company to comply with its reporting requirements under the Act could cause a significant movement in the price of that

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

company's stock. Restricting the Exchange from opening new options series may leave investors without means to hedge their positions with options contracts at strike prices that more accurately reflect the contemporaneous price trends of the underlying stock.

The ISE states that new options series on a security should not be permitted to be opened if the underlying security ceases to be an ''NMS stock'' within the meaning of Rule 600(b)(47) of Regulation NMS.[6] Typically, the Exchange becomes aware of issues that may impact the continued listing of a security well before that security is delisted from its primary market. Exchange staff routinely monitors daily press releases and informational releases disseminated by various entities, such as, the primary listing market of a security and private news services, in an effort to monitor the activities and news items pertaining to the issuers of securities that underlie options traded on the Exchange. In many cases, when an issuer fails to comply with its reporting requirements under the Act, the issuer is given a substantial amount of time to cure this deficiency before the primary listing market actually delists the issuer's security. Many times, the issuer is able to comply without its security ever being delisted. During this period, ISE staff continually monitors the status of the issuer's compliance with its reporting requirements to determine whether the security may be delisted. Finally, the primary listing market typically issues a press release well in advance of delisting an issuer's security to give investors and other market participants adequate notice.

Given the availability of data and information relating to public issuers of securities in today's markets, and in light of the extensive amount of additional continued listing standards under ISE Rule 503(b), waiting until a security is actually delisted by its primary listing market is the appropriate point at which to restrict the issuance of new options series in an options class. Accordingly, the Exchange hereby proposes to eliminate ISE Rule 503(b)(5).

Additionally, as a matter of ''housekeeping,'' the Exchange also proposes to clarify the texts of ISE Rules 502(a)(1) and 503(b)(6),[7] which govern the criteria for the initial and continued listing of options on a particular security, respectively. Both of these provisions include as part of the criteria, a requirement that the underlying security must be a national market system security (''NMS security''). As part of the recently adopted Regulation NMS,[8] among other things, the Commission revised the definition of an NMS security. Specifically, Rule 600(b)(46) under Regulation NMS defines an NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' As such, each of these ISE Rules will be amended to reflect these new terms.

2. Statutory Basis

The ISE believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5), in that the elimination of ISE Rule 503(b)(5), which is both burdensome to investors and unnecessary for their protection, will serve to remove impediments to and perfect the mechanisms 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 ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the 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 ISE has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least 5 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The ISE has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission waives the 5-day pre-filing notice requirement. Additionally, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based upon a recently approved rule change by the Chicago Board Options Exchange, Incorporated (''CBOE''),[9] which was published for notice and comment.[10] For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission.

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.[11]

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:

[6] 17 CFR 242.600(b)(47).

[7] ISE Rule 503(b)(6) would become ISE Rule 503(b)(5) to correspond with the elimination of current ISE Rule 503(b)(5), as discussed above.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[9] *See* Securities Exchange Act Release Nos. 52562 (October 4, 2005), 70 FR 59382 (October 12, 2005) (notice for SR–CBOE–2004–037) and 52779 (November 16, 2005), 70 FR 70902 (November 23, 2005) (approval order for SR–CBOE–2004–037).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

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*. Please include File No. SR–ISE–2005–052 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0903.

All submissions should refer to File No. SR–ISE–2005–052. 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. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. 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 No. SR–ISE–2005–052 and should be submitted on or before January 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7303 Filed 12–13–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52896; File No. SR-NASD–2005–116]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Modify Nasdaq's Auditor Peer Review Requirement

December 6, 2005.

On September 29, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify NASD Rule 4350(k), regarding the oversight of accountants that audit listed issuers.[3] The proposed rule change was published for comment in the **Federal Register** on October 26, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

Current NASD Rule 4350(k) requires each issuer listed on Nasdaq to be audited by an independent accountant that has received an external quality control review by another independent public accountant (a ''peer review'') or is enrolled in an acceptable peer review program. The proposed rule change would replace this requirement with a provision that requires each listed issuer to be audited by an independent accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board (''PCAOB''), as provided for in the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'').[5] The PCAOB is charged, among other things, with conducting a continuing program of inspections of registered public accounting firms.[6]

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b) of the Act[7] and the rules and regulations thereunder applicable to a national securities association,[8] and in particular, with Section 15A(b)(6) of the Act.[9] The Commission believes that the proposed rule change will align Nasdaq's requirements with the auditor oversight requirements of the Sarbanes-Oxley Act and eliminate the redundancy of Nasdaq's current rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2005–116) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7333 Filed 12–13–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change would also make a conforming amendment to the language of NASD Rule 4200(a).

[4] Securities Exchange Act Release No. 52645 (Oct. 20, 2005), 70 FR 61864.

[5] *See* Section 102 of the Sarbanes-Oxley Act, 15 U.S.C. 7212.

[6] *See* Section 104 of the Sarbanes-Oxley Act, 15 U.S.C. 7214.

[7] 15 U.S.C. 78o–3(b).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52915; File No. SR–NYSE–2005–85]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Study Outline and Selection Specifications for the Limited Principal—General Securities Sales Supervisor (Series 9/10) Examination Program

December 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).