

**Filing Dates:** The application was filed on September 2, 2004 and amended and restated on October 20, 2004.

**Applicant's Address:** 70100 AXP Financial Center, Minneapolis, MN 55474

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50698; File No. SR-Amex-2004-66]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Allocation Procedures for Relisted Options

November 18, 2004.

On August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Amex Rule 27, which would allow automatic allocation of relisted options to their previously assigned specialists upon satisfaction of certain conditions. On September 24, 2004, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on October 15, 2004.<sup>4</sup> The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed

rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of the an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

The Commission believes that automatic allocation of relisted options to their previously assigned specialists may provide specialists with an incentive to delist inactive options. As a result, the Commission further believes that this proposed rule change, as amended, could reduce quote traffic in options market. The Commission has previously noted that proposals that may mitigate quote traffic should benefit investors and other participants in the options markets.<sup>7</sup> The Commission also notes that the proposed rule change, as amended, would not permit automatic allocation in all instances. Specifically, automatic allocation would not occur when a specialist is subject to an allocation prohibition, the Exchange relists an option more than one year after delisting, or a specialist declines the allocation. In any of these cases, the option would be allocated pursuant to the Exchange's regular options allocation procedure.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2004-66), as amended, be, and it hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50690; File No. SR-DTC-2004-10]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Implement Phase II of the IMS Service

November 18, 2004.

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

("Act"),<sup>1</sup> notice is hereby given that on September 10, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

DTC is seeking to implement Phase II of its Inventory Management System ("IMS").<sup>2</sup> In the implementation of Phase I, IMS replaced the Authorization and Exception system to allow for automated settlement of institutional deliveries. By providing for authorization and control within asset class and transaction type, such as night deliver orders ("NDO"), through predefined profiles, IMS provides DTC participants with increased control and timing over their deliveries. The Phase II enhancements to the IMS service will extend a participant's ability to control the submission of its deliveries and will permit participants to determine how their deliveries recycle in the system.

#### 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 these statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is seeking to implement Phase II of IMS. Currently, IMS allows DTC participants to:

(1) Stage their institutional deliveries received from a matching utility system (such as Omgeo's TradeSuite system) for automated settlement;

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

<sup>2</sup> The Commission approved a proposed rule change implementing Phase I of the IMS. Securities Exchange Act Release No. 48176 (July 14, 2003), 68 FR 43244 [File No. SR-DTC-2002-19].

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

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

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

<sup>3</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2004 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 50498 (October 6, 2004), 69 FR 61274.

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See Securities Exchange Act Release No. 42764 (May 8, 2000), 65 FR 31037 (May 15, 2000) (approving File No. SR-Phlx-2000-06).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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