

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"),¹ and Rule 19b-4 thereunder,² 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.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on October 15, 2004.⁴ 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.⁵ In particular, the Commission finds that the proposed

rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁶ 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.⁷ 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,⁸ 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.⁹

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"),¹ 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").² 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.³

(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;

¹ 15 U.S.C. 78s(b)(1).

² 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].

³ The Commission has modified the text of the summaries prepared by DTC.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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").

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

⁵ 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).

⁶ 15 U.S.C. 78f(b)(5).

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

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

(2) Establish a predefined profile to allow greater control over the timing and order of their deliveries by transaction type and asset class;

(3) Reintroduce drop deliveries for NDO, broker-to-broker balance orders, and all other participant deliveries; and

(4) Warehouse deliveries with future settlement dates through the NDO function.

Today, deliveries from the National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") system are automatically processed unless a participant otherwise instructs NSCC through an exemption. Other deliveries such as NDOs, along with authorized institutional and CNS deliveries, are processed by DTC at predefined times. All of these transactions may recycle (*i.e.*, pend) in the event of a position deficiency or a problem with system controls. These recycles are processed based on one of two recycle options: A "first in first out" process or a DTC preestablished recycle queue.

DTC is now seeking to implement Phase II to allow participants to customize the order in which their authorized night cycle deliveries, such as CNS and institutional deliveries, are submitted for processing and to provide participants with the ability to create profiles that instruct DTC's processing system how to attempt to complete their recycling deliveries that are recycling for insufficient position.

DTC currently recycles deliveries for insufficient position in a prescribed order based on transaction type and settlement value. To address their unique recycle requirements, some participants withhold their deliveries to DTC. For other participants, deliveries may not complete in their desired order.

IMS Phase II permits participant to prepopulate a profile that "customizes" its position recycle order for settlement related transactions. Transactions will be processed in the prescribed order if there are sufficient shares. If there are insufficient shares to complete a high priority transaction, then transactions with a lower priority but with sufficient shares will be processed subject to other controls. This service will be optional, and the current recycle order will remain in effect unless profile changes are made.⁴

Participants will be able to promote their recycling transactions through 15022 messages or a new PBS screen in IMS if they have update capability.

Participants will be able to promote transactions to the top of the recycle queue. Once a transaction is promoted, a participant will be able to promote another transaction higher or lower than the previously promoted transaction.

In order to recoup the costs of this development, participants will be billed \$.045 for each delivery that is promoted. Participants will be charged \$0.06 for each delivery that is "customized" by these profiles, including deliveries that are submitted using the current active to passive functionality. If a delivery is submitted and recycles based upon profile selection, the participant will not be double charged for the delivery.⁵

Participants will not be required to make systemic changes and will be able to continue processing their deliveries as they do today. All IMS features will be optional, and participants will be able to migrate to any or all features they deem valuable.

The new enhancements to the IMS service will extend and will improve participants' ability to control the submission of their deliveries and will permit users to determine how their deliverables should recycle in the system based on a participant-defined profile.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to DTC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency in processing member transactions.

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

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of this Act, in the public interest, or for the protection of investors.

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

DTC has discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed IMS system. DTC will notify the Commission of any written comments received by DTC.

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.

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. Please include File Number SR-DTC-2004-10 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-DTC-2004-10. 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

⁴ For example, unless a participant customizes its position recycle order, CNS will continue to have the highest priority, followed by value releases, and others.

⁵ It will cost \$0.06 to have a delivery submitted and recycled by IMS based upon the profile created.

⁶ 15 U.S.C. 78q-1.

inspection and copying at the principal office of DTC and on DTC's Web site (<http://www.dtc.org>). 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-DTC-2004-10 and should be submitted on or before December 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-3348 Filed 11-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50712; File No. SR-FICC-2004-07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Its Rules To Eliminate the "Mortgage Banker" Category of Membership in Its Mortgage-Backed Securities Division

November 22, 2004.

I. Introduction

On March 25, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 21, 2004, and October 13, 2004, amended proposed rule change File No. SR-FICC-2004-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the *Federal Register* on October 20, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division ("MBSD") to eliminate the "mortgage banker" category of membership. In accordance with Article III, Rule 1, Section 2, "Financial Requirements for Participants and Limited Purpose Participants," of MBSD's Rules, mortgage bankers are subject to a

minimum net worth requirement of \$5 million. With the exception of "brokers," all other applicants are subject to a minimum net worth or regulatory net capital requirement of \$10 million.³

Historically, mortgage bankers (which generally act as mortgage originators) maintained relatively little capital. FICC considered a lower minimum capital standard appropriate to enable and encourage these types of firms to participate in FICC. The mortgage banker category of membership is now becoming obsolete for two principal reasons. First, changes in the mortgage business are causing small originators to use Fannie Mae and Freddie Mac, making MBSD membership less desirable and therefore making the relatively lower minimum capital standard less justified. Second, from a membership administration perspective there appears to be no precise, uniform definition for "mortgage banker."⁴

The proposed rule change eliminates the mortgage banker category from the MBSD Rules. Entities that would have previously qualified as mortgage bankers will now be classified under the catch-all category of membership in Article III, Rule 1, Section 1, "Applicants Eligible to Become Participants or Limited Purpose Participants."⁵ This reclassification will increase the minimum net worth requirement from \$5 million to \$10 million for these members. FICC does not anticipate that this increase will adversely affect existing mortgage banker members because member financial statements filed with FICC indicate that each mortgage banker member's capitalization currently exceeds the new minimum.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the

³ MBSD's Rules define "broker" as a member that is in the business of buying and selling securities as agent on behalf of dealers. Brokers are currently subject to a minimum net or liquid capital requirement of \$5 million.

⁴ Mortgage originators are state-regulated entities, and definitions of such entities vary with each state. Generally, these definitions target entities whose "primary" business is the issuance of mortgages. MBSD has historically classified entities as mortgage bankers based upon an applicant's representations made in its membership application and confirmed by management's review of the applicant's business.

⁵ Article III, Rule 1, Section 1(f) provides a catch-all category for membership for "firms in such other categories as the Corporation [FICC] from time to time may determine." The proposed rule change was amended to add language to Addendum A of the MBSD Rules to clarify that entities that are deemed to be mortgage bankers would be considered to be one of the various entity types that fall under the catch-all category of membership.

rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁶ The Commission finds that FICC's proposed rule change is consistent with this requirement because by removing the mortgage banker category from the MBSD Rules and by providing that entities that currently are classified as such meet a higher minimum financial requirement, it enhances the ability of FICC to maintain a financially sound membership base without an adverse effect on itself or its members.

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 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-FICC-2004-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-3350 Filed 11-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50710, File No. SR-NASD-2004-157]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Linked to the Russell 2000 Index

November 19, 2004.

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 October 21, 2004, 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") the proposed rule change as described in Items I and II

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 50536 (October 13, 2004), 69 FR 61699.