

should be protected in accordance with industry standards. *Id.*

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the Request pertaining to the proposed International Business Reply Service Contract 1 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than January 16, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

Pursuant to 39 CFR 1315.6, the Commission requests that the Postal Service address the following issues by January 12, 2009:

1. Ms. Miller's statement describing the product and why it should be classified as competitive, at least preliminarily, seems as though it could also apply to the domestic Merchandise Return Service product which is currently classified as market dominant. See Request, Attachment 1, section (d). Should this proposed product category be called "International Merchandise Return Service" to better align it with its domestic counterpart (Merchandise Return Service) and to avoid confusion with the market dominant product of the same name "International Business Reply Service"? See Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 at Appendix A, sections 1540 and 1505.10.

2. For the reasons set forth in Attachment 1, section (d), should a proceeding be initiated to consider moving the domestic Merchandise Return Service product to the competitive rate category? If not, please explain the processing and market characteristic differences between the proposed new product and Merchandise Return Service.

Other interested persons also may find it appropriate to address these issues in their comments.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings, including those addressing questions (1) and (2) of section II above, are due no later than January 16, 2009.

4. The Postal Service shall address questions (1) and (2) of section II above no later than January 12, 2009.

5. The Postal Service shall provide any and all IBRS contingency arrangements currently in effect no later than January 12, 2009.

6. The Postal Service shall explain why no portions of this contract can be filed publicly no later than January 12, 2009.

7. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,
Secretary.

[FR Doc. E9–290 Filed 1–9–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59200; File No. SR–CBOE–2008–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliations With Broker-Dealers

January 6, 2009.

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 December 15, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or

interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b–4(f)(1)⁴ thereunder, which renders the proposal effective upon filing with the Commission. 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

The Exchange is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers. The proposed rule change is available on CBOE's Web site (<http://www.cboe.org/legal>), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 is in the process of forming a wholly owned broker-dealer subsidiary. With respect to the contemplated establishment of the broker-dealer, the Exchange is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers.

In particular, the Exchange notes that Article VIII, Section 8.1(b) of the CBOE Constitution provides in part that "[n]o officer, other than the Vice Chairman of the Board, shall be a member or affiliated with a member or a broker or dealer in securities or commodities."⁵

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b–4(f)(1).

⁵ The Exchange notes that this provision of the Constitution is proposed to be deleted as part of the Exchange's contemplated demutualization and, upon its deletion, there would no longer be such a restriction. See SR–CBOE–2008–88. The Exchange also notes that other self-regulatory organizations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

The term “affiliated with” is not explicitly defined in the Constitution, but that term, and the related definition of control, has been defined in the Exchange Rules since 1973, the year the Exchange was founded.⁶ The term “affiliate” or a person “affiliated with” another person is defined in the Exchange Rule 1.1(j) as, “a person who, directly or indirectly, controls, is controlled by, or is under common control with, such other person.” The term “control” is defined in Exchange Rule 1.1(k) as “the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.”

The purpose of this rule filing is to seek effectiveness of an Exchange interpretation that Section 8.1(b), by its terms, does not apply to instances in which an Exchange officer acts solely in an official position for a broker-dealer, consistent with the longstanding definition and application of the term “affiliated with” in the Exchange Rules.⁷ The essence of this interpretation is that if an Exchange officer is not in a control relationship with a broker-dealer subsidiary of the Exchange, the officer is not an “affiliate” of the subsidiary even if the officer serves in an official position with the subsidiary, and thus the Exchange officer’s serving in an official position of the subsidiary is not prohibited by Section 8.1(b) of the Constitution. For example, the Exchange believes it would be permissible and consistent with Section 8.1(b) for an Exchange officer to be a director, officer, principal, or an employee of a broker-dealer that is a wholly-owned subsidiary of the Exchange.

do not have restrictions in their rules preventing their respective officers from acting in an official capacity with a broker-dealer affiliate. For example, certain officers of the National Stock Exchange, Inc. (“NSX”) are also officers and principals of NSX’s subsidiary broker-dealer, NSX Securities LLC.

⁶ E-mail from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated January 5, 2009 (adding the preceding sentence to clarify the nature of the proposed interpretation).

⁷ *Id.*

The Exchange notes that until it demutualizes it only intends to utilize the interpretation to permit Exchange officers to act in an official position with the wholly-owned broker-dealer subsidiary in accordance with Section 8.1(b) and to form the broker-dealer. The Exchange represents that the broker-dealer will not perform any operations without first discussing with the Commission staff whether any of the broker-dealer’s operations should be subject to an Exchange rule filing required under the Act.⁸ These Exchange also notes that there are other protections in place that limit the potential conflicts between the Exchange as a self-regulator and broker-dealers, including, among other things, the existence of a Regulatory Oversight Committee as a committee of the CBOE Board of Directors that consists solely of public directors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed rule change is also consistent with the requirements of Section 6(b)(1) of the Act,¹¹ which requires that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)¹² or 19(g)(2)¹³ of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange. This rule change is designed to clarify the meaning and

⁸ 15 U.S.C. 78s(b)(1). In particular, the Exchange represents that it will not commence operations for such broker-dealer prior to an effective rule filing with the Commission setting forth the manner in which the broker-dealer would operate. E-mail from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated January 5, 2009 (adding the preceding clarifying text).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78g(d).

¹³ 15 U.S.C. 78s(g)(2).

scope of CBOE’s Constitution and Rules related to affiliations with broker-dealers.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE 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 the Act.

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

The Exchange neither received nor solicited written comments on the proposal.

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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act¹⁴ and Rule 19b-4(f)(1) thereunder,¹⁵ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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 an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2008-125 on the subject line.

Paper Comments

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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁵ 17 CFR 240.19b-4(f)(1).

All submissions should refer to File Number SR-CBOE-2008-125. 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 also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2008-125 and should be submitted on or before February 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-350 Filed 1-9-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59199; File No. SR-DTC-2008-14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Existing Operational Arrangements

January 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 21, 2008, 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

The purpose of the proposed rule change is to modify DTC's existing Operational Arrangements ("OA") necessary for a securities issue to become and remain eligible for the services of DTC.

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.²

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

DTC's OA was first published in June 1987.³ It was then updated in June 1988, in February 1992, in December 1994, in January 1998, and most recently in May 2002.⁴ DTC's OA is designed to maximize the number of issues that can be made eligible while ensuring orderly processing and timely payments to its participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements, those requirements can be met almost without exception. The purpose of this rule change is not substantive in nature in that it is merely an update to the OA in an attempt to assemble relevant requirements, including requirements resulting from Commission approval of

prior DTC rule changes, in one place. Additionally, some clerical changes, reorganization, and clarification of language have been made in order to provide a concise and coherent version of the OA.

The primary differences between the attached modified OA and the OA filed with the Commission in 2002 are as follows:

1. In an effort to update the OA and make it more comprehensive, DTC has included a description of the following, all of which have been previously approved by the Commission:

(a) In 1988, the Commission approved a DTC rule filing related to certificates of deposit.⁵ The OA has been updated to include a section describing procedures unique to retail certificates of deposit.

(b) In 1994, the Commission approved a DTC rule filing which consisted of enhancements to the reorganization and deposit services of DTC. The OA has been updated accordingly to specify that issuers' agents are required to provide timely notification to DTC for conversions with variable rate (cash and share) entitlements.⁶

(c) In 1995, the Commission approved a DTC rule filing in which DTC was designated as the "appropriate qualified registered securities depository" to receive notices of transfer agent changes pursuant to Rule 17Ad-16 of the Act.⁷ The OA has been updated to reflect the procedures for notifying DTC of transfer agency changes.⁸

(d) In 1996, the Commission approved a DTC rule filing which established procedures for the Direct Registration System ("DRS").⁹ DRS permits an investor to hold a security as the registered owner of the security in electronic form on the books of the issuer rather than (i) indirectly through a financial intermediary that holds the security in street name; or (ii) in the form of a certificate. The OA has been updated to include a description of DRS.

(e) In 1997, the Commission approved a rule filing amending DTC's Return-of-Funds Policy.¹⁰ The rule change amended DTC's charge back and return of funds policies to shorten from ten business days to one business day after the payable date the period within which a paying agent can request that DTC return principal and income payments that have been allocated to participants. The rule change also amended the procedure so if a paying agent requests the return of a principal and income payment more than

⁵ Securities Exchange Act Release No. 25870 (May 7, 1988), 53 FR 25870 (May 12, 1988) (File No. SR-DTC-88-3).

⁶ Securities Exchange Act Release No. 34189 (June 9, 1994), 59 FR 30818 (June 15, 1994) (File No. SR-DTC-94-06).

⁷ 15 U.S.C. 78 et seq.

⁸ Securities Exchange Act Release Act No. 35378 (February 15, 1995), 60 FR 9875 (February 22, 1995) (File No. SR-DTC-95-02).

⁹ Securities Exchange Act Release Act No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) (File No. SR-DTC-96-15).

¹⁰ Securities Exchange Act Release Act No. 38564 (April 30, 1997), 62 FR 25008 (May 7, 1997) (File No. SR-DTC-96-22).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

³ Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 (August 24, 1987) (File No. SR-DTC-87-10).

⁴ Securities Exchange Act Release Nos. 25948 (July 27, 1988), 53 FR 29294 (August 3, 1988) (File No. SR-DTC-88-13); 30625 (April 30, 1992), 57 FR 18534 (April 30, 1992) (File No. SR-DTC-92-06); 35342 (February 8, 1995), 60 FR 8434 (February 14, 1995) (File No. SR-DTC-94-19); 39894 (April 21, 1998), 63 FR 23310 (April 28, 1998) (SR-DTC-97-23); and 45994 (May 29, 2002), 68 FR 35037 (June 11, 2003) (File No. SR-DTC-2002-02).