

addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. Finally, the Commission repeats its request that the Exchange incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance.⁹ As previously noted, the Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.¹⁰

The Commission finds good cause for granting the Exchange's request for a twelve-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation and accelerated approval of the proposed rule change permits the SPEP pilot program to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until March 31, 2001, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.¹¹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-00-01) is hereby approved on an accelerated basis through March 31, 2001.

program). In Securities Exchange Act Release No. 39730, the Commission stated certain terms and conditions for approving the SPEP pilot program on a permanent basis, including the need to provide a study to the Commission regarding the SPEP pilot program. Those terms and conditions are hereby incorporated by reference.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42578; File No. SR-DTC-00-02]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to the Depository Trust Company's Organization Certificate and Rules in Order To Issue Preferred Stock

March 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 2, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2000, amended the proposed rule change as 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 proposed rule change would allow DTC to issue \$75 million of preferred stock to participants and to decrease the amount of required deposits in the participants fund by \$75 million.

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

¹³ 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 the DTC.

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

In March 1999, DTC's organization certificate was amended to provide for up to \$150 million of preferred stock as thereafter authorized by the Board of Directors.³ The board has now determined to increase the capital of DTC by using \$75 million of series A preferred stock and to reduce the mandatory deposits to the participants fund by a like amount.⁴

The issuance of the \$75 million of series A preferred stock, the corresponding reduction of mandatory participants fund deposits, and the transition to the new arrangements will be governed by the following documents:⁵

(1) *Certificate of Amendment of the Certificate of Incorporation*. The certificate of amendment sets forth the relative rights (including a dividend which will provide an after-tax return comparable to the after-tax return on participant fund deposits), preferences, and limitations of the series A preferred stock.

(2) *Revised DTC Rules*. The revised rules set forth:

(a) The requirement that participants purchase and own shares of series A preferred stock;⁶

(b) The amount of series A preferred stock that participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of series A preferred stock are to be transferred among participants, the method and timing of payment for shares of series A preferred stock, and certain limitations on the transfer of shares of series A preferred stock;⁷

(c) The right of DTC, acting as agent and attorney-in-fact for its participants,

³ This Amended Certificate of Organization was the subject of a DTC rule filing approved by the Commission (Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR-DTC-99-08]).

⁴ In connection with this proposed rule change, DTC has requested that the Commission advise that it will take no action with respect to DTC broker-dealer participants treating investments in DTC series A preferred stock as allowable assets for purposes of Section 15c(3)(1) of the Act. Letter from Leopold S. Rassnick, Managing Director and Senior Special Counsel, DTC, to Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission (February 2, 2000).

⁵ A copy of DTC's proposed rule change and the attached exhibits, including the Certificate of Amendment of the Organization Certificate, the revised DTC Rules, and the Transition Procedures, are available at the Commission's Public Reference Section or through DTC.

⁶ Rule 4, Section 2.

⁷ *Id.*

to pledge their shares of series A preferred stock to its end-of-day lenders;⁸

(d) The right of DTC, acting as agent and attorney-in-fact for its participants, to sell their shares of series A preferred stock to other participants (which have a corresponding obligation to purchase such shares) and to apply the proceeds to the participant's obligations to DTC;⁹

(e) Various changes in defined terms to: (i) Describe the series A preferred stock and the required investment of participants in series A preferred stock, (ii) distinguish, when necessary, between the series A preferred stock and the required investment of participants in series A preferred stock (on the one hand) and the participants fund and the required deposit of participants to the participants fund (on the other hand) and (iii) refer collectively, when appropriate, to the series A preferred stock and the required investment of participants in series A preferred stock and the participants fund and the required deposit of participants to the participants fund;¹⁰

(f) The structure under which DTC, acting as agent and attorney-in-fact for a party that has ceased to be a participant, shall sell all of the shares of series A preferred stock of the former participant to current participants (who shall be required to purchase such shares pro rata to their required preferred stock investments at the time of such purchase) and shall add the proceeds thereof to the actual participants fund deposit of the former participant for disposition in accordance with Rule 4, Section 1(h) (which provides for the return of such actual participants fund deposit to a party ceasing to be a participant).¹¹

(g) Certain other conforming and minor stylistic changes.

(3) *Transition Procedure.* The transition procedure sets forth the time and manner in which, without any action required on the part of participants (other than the consent deemed to be given to DTC by virtue of their receipt of all necessary information and their continued use of the services and facilities of DTC), the required deposits of existing participants to the participants fund will be reduced in the aggregate amount of \$75 million and such participants will purchase from DTC a corresponding amount of the series A preferred stock.

The proposed rule change is consistent with the requirements of

Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control for which it is responsible.

(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 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

Written comments from DTC participants have not been solicited or received on the proposed rule change.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 DTC. All submissions should refer to File No. SR-DTC-00-02 and should be submitted by April 25, 2000.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-8196 Filed 4-3-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-42583; File No. SR-PCX-99-35)

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% of 15% of the Issues Traded on the Exchange's Options Floor

March 28, 2000.

I. Introduction

On September 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the PCX's Options Allocation Committee ("Committee") may allocate to a Lead Market Maker ("LMM") from 10% of the number of issues traded on the PCX's options floor to 15% of the number of issues traded on the PCX's options floor.

Notice of the proposed rule change was published for comment in the **Federal Register** on November 1, 1999.³ No comments were received regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Committee, no LMM may be allocated more than 10% of the number of issues traded on the PCX's options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Committee may allocate

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42051 (October 22, 1999), 64 FR 58876.

⁸ Rule 4, Section 2(f).

⁹ Rule 4, Section 2, and Rule (B).

¹⁰ Rule 1.

¹¹ Rule 4, Section 2(h).