cooperate fully in providing the information necessary to complete such audit.

[FR Doc. 01–24576 Filed 10–1–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44843; File No. SR–DTC–2001–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising the Fee Schedule for Services of The Depository Trust Company

September 25, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 25, 2001, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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

DTC is filing a revised fee schedule for DTC services associated with the processing of registered securities.

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 such statements.[2]

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

The purpose of the proposed rule change is to adjust the fees DTC charges for various services and to initiate several new fees for existing services so that DTC's fees may be aligned with the respective estimated service costs for 2001. The revised fees and new fees will be effective with respect to services provided on and after May 1, 2001.

The revised 2001 fee schedule includes five new fees for existing services, which are being employed to recover processing costs with regard to reorganizations and underwritings. The revised and new fees are set forth in Exhibit 1 to the proposed rule change.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because fees will be allocated more equitably among DTC participants based on respective estimated 2001 unit service costs.

(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 the Act.

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

No written comments from participants or others have been solicited or received in respect of this proposed rule change.

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

DTC has designated the proposed rule change as a fee change in accordance with Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within sixty 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. 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 filings will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2001–06 and should be submitted by October 23, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24578 Filed 10–1–01; 8:45 am]

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

[2] The Commission has modified parts of these statements.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44847; File No. SR–PCX–2001–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Pacific Exchange, Inc. Relating to Its Auto-Ex Incentive Program for Market Makers

September 25, 2001.

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 January 11, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 20, 2001, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On May 17, 2001, the PCX

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 19, 2001. In Amendment No. 1, the PCX deleted from its proposed rule text the provision permitting guaranteed participation

Continued

submitted Amendment No. 2 to the proposed rule change.[4] 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 PCX proposed to provide assignment of Auto-Ex orders to logged-on Market Makers according to the percentage of their in-person agency contracts by adopting a new Auto-Ex Incentive Program. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 6.87(a)–(j)—No change.

6.87(k) Allocation of Auto-Ex Trades to Individual Market Makers. The OFTC will determine the manner in which orders entered through the Auto-Ex system will be assigned to individual Market Makers for execution, on an issue-by-issue basis, [subject to the following restrictions:] *as follows:*

[(1) Each Market Maker who is participating on the Auto-Ex system will be to execute a maximum of ten option contracts per Auto-Ex trade, except that:

(A) The OFTC may permit individual Market Makers and Lead Market Makers (''LMMs'') to be allocated a number of contracts greater then ten and no more than fifty, but may do so only upon the request of the individual Market Maker or LMM.

(B) In accordance with the provision on LMMs' guaranteed participation in Rule 6.82(d)(2), the LMM in an issue will be required either (i) to participate in every other trade executed on Auto-Ex in that issue or (ii) to participate in a percentage of every trade consistent with the amount of the LMM's amount of guaranteed participation.

(C) The OFTC may require Market Makers or an LMM who is participating on Auto-Ex in a particular option issue to execute a number of contracts greater than ten, but before doing so, the OFTC must take into account whether doing so would place a Market Maker at undue risk based on that Market Maker's capitalization.

(2) The OFTC will ordinarily seek to assure that each Market Maker participating on Auto-Ex in a particular option issue will be assigned up to the same maximum number of option contracts per Auto-Ex trade. The OFTC may permit exceptions to this procedure only in unusual situations where the OFTC finds good cause for permitting differences in the maximum number of contracts executed by individual Market Makers.]

Auto-Ex Incentive Program

(1) Auto-Ex orders are assigned to Market Makers who are logged-on Auto-Ex according to the percentage of their in-person agency contracts traded in that issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period will be determined by the Options Floor Trading Committee (''OFTC'') and may be for any period of time not in excess of two weeks. The percentage distribution determined for a review period will be effective for the succeeding review period.

(A) Participation Percentage Calculation. Each Auto-Ex order in an issue will be allocated to Market Makers on Auto-Ex on a rotating basis. On each rotation (subject to the exceptions described below) each participating Market Maker logged onto Auto-Ex will be assigned the number of Auto-Ex contracts that reflects the percentage of agency contracts that the Market Maker traded in-person in that issue during the review period. A participation percentage will be calculated for each Market Maker for each issue that the Market Maker trades. For this purpose, all transactions on behalf of the same LMM will be aggregated into a single percentage for the LMM.

(B) Assignment of Contracts. Once a Market Maker has logged onto Auto-Ex, the Market Maker will be assigned contracts during the Auto-Ex rotation until that Market Maker's participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same Market Maker during the rotation.

(C) Joint Accounts. A joint account participant may substitute on the Auto-Ex wheel for another participant who is registered to trade the same joint account and may receive the same participation percentage that has been established for the participant for which the replacement is substituting, provided that the following conditions are met:

(i) *The substitute must notify the OBO of the substitution;*

(ii) *The substitute must log on to the same option issues that the original trader was logged-on to; and*

(iii) *The agency trades of the substitute will count toward the calculation of the participation percentage of the original participant for the subsequent review period.*

(D) Minimum Participation. The Exchange will determine the number of contracts that make up one percent of the rotation. Market Makers logged onto Auto-Ex in an issue, regardless of their participation percentage, will be entitled to at least one percentage of the rotation on every rotation.

(E) Rotation. Generally, one rotation consists of the number of contracts replicating the cumulative percentage of all Market Makers logged onto Auto-Ex who have a participation percentage plus one percentage for each Market Maker that does not have a specific participation percentage.

(F) Maximum assignment. The maximum number of contracts that a Market Maker may be consecutively assigned at any one time during a rotation will be variable and may be different for different issues or the same for all issues. Because the maximum number of contracts permitted may be smaller than the number of contracts to which a particular Market Maker is entitled during one rotation, that Market Maker will receive more than one turn during one rotation.

* * * * *

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 III below. The Exchange 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 a rule change that will allow the Exchange to assign Auto-Ex orders to Market Makers logged-on to Auto-Ex according to their percentage of in-person agency

by Lead Market Makers (''LMMs''). In addition, in Amendment No. 1, PCX renumbered certain sections of its proposed rule text. Finally, PCX corrected certain typographical errors contained in its original filing.

[4] *See* letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 16, 2001. In Amendment No. 2, the PCX made a technical change to its filing. Specifically, the PCX redesignated paragraph (1) of Rule 6.87, as set forth in Amendment No. 1, as paragraph (k).

contracts[5] traded in an issue during the review period.[6] The Exchange proposes to delete the current method of assigning Auto-Ex contracts, which consists of assigning a minimum of ten contracts and a maximum of one hundred[7] contracts to each participating Market Maker per Auto-Ex trade, and adopt a new Auto-Ex Incentive Program. Currently the LMM receives its guaranteed participation percentage under Rule 6.82(d)(2) and the remaining contracts are allocated according to a rotation system to the remaining Market Makers in the crowd. The proposed Auto-Ex Incentive Program will replace the current system of Auto-Ex contract assignment in its entirety and will be implemented on a floor-wide basis.[8]

The proposed rule provides for Auto-Ex orders to be assigned to Market Makers who are logged-on to Auto-Ex according to the percentage of their in-person agency contracts traded in that issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period will be determined by the Options Floor Trading Committee (''OFTC'') and may be for any period of time not in excess of two weeks.[9] The percentage distribution determined for a review period will be effective for the succeeding review period.

The proposed rule provides the following:

(A) *Participation Percentage Calculation.*

Each Auto-Ex order in an issue will be allocated to Market Makers on Auto-Ex on a rotating basis. On each rotation (subject to the exceptions described below) each participating Market Maker logged-on to Auto-Ex will be assigned the number of Auto-Ex contracts that reflects the percentage of agency contracts that the Market Maker traded in-person in that issue during the review period. A participation percentage will be calculated for each Market Maker for each issue that the Market Maker trades. For this purpose, all transactions on behalf of the same LMM will be aggregated into a single percentage for the LMM.

(B) *Assignment of Contracts.*

Once a Market Maker has logged-on to Auto-Ex, the Market Maker will be assigned contracts during the Auto-Ex rotation until that Market Maker's participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same Market Maker during the rotation.

(C) *Joint Accounts.*

A joint account participant may substitute on the Auto-Ex wheel for another participant who is registered to trade the same joint account and may receive the same participation percentage that has been established for the participant for which the replacement is substituting, provided that the following conditions are met:

(i) the substitute must notify the Order Book Official of the substitution;

(ii) the substitute must log-on to Auto-Ex for the same option issues for which the original trader was logged-on; and

(iii) the agency trades of the substitute will count toward the calculation of the participation percentage of the original participant for the subsequent review period.

(D) *Minimum Participation.*

The Exchange will determine the number of contracts that make up one percent of the rotation. Market Makers logged onto Auto-Ex in an issue, regardless of their participation percentage, will be entitled to at least one percent of the rotation on every rotation.

(E) *Rotation.*

Generally, one rotation consists of the number of contracts replicating the cumulative percentage of all Market Makers logged onto Auto-Ex who have a participation percentage plus one percentage for each Market Maker that does not have a specific participation percentage.

(F) *Maximum assignment.*

The maximum number of contracts that a Market Maker may be consecutively assigned at any one time during a rotation will be variable and may be different for different issues or the same for all issues. Because the maximum number of contracts permitted may be smaller than the number of contracts to which a particular Market Maker is entitled during one rotation, that Market Maker will receive more than one turn during one rotation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

III. 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

[5] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between market makers in-person in the trading crowd.

[6] The proposed rule changes were based in part on Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.8 *Interpretations and Policies* .06(c) ''100 Spoke RAES Wheel.'' In addition, the Exchange notes that the Commission has directed that the options markets adopt new, or amend existing, rules concerning its automated quotation and execution systems which substantially enhance incentives to quote competitively and reduce disincentives for market participants for market participants to act competitively. *See* Section IV.B.h.(i), *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the ''Order''). Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (September 24, 2001).

[7] The maximum order size for execution through Auto-Ex is now one hundred contracts pursuant to Rule 6.87(b)(1). *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001). The PCX has confirmed that some of the options traded on its floor currently are subject to the one hundred contract maximum order size. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (September 25, 2001).

[8] Telephone conversation among Cindy Sink, Senior Attorney, Regulatory Policy, PCX, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (September 7, 2001).

[9] The Exchange represents that the review period will be set at two weeks for all options classes and that the Options Floor Trading Committee (''OFTC'') will not vary the term of the review period except in the case of exigent circumstances. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (September 24, 2001).

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

[11] 15 U.S.C. 78f(b)(5).

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 at the Commission's Pubic Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2001–05 and should be submitted by October 23, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change on a pilot basis is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(8) of the Act.[14] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, 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.[15] Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule would provide for the assignment of Auto-Ex orders to Market Makers who are logged-on Auto-Ex according to the percentage of their in-person agency contracts traded in that issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. Although the PCX's proposal does not reward a Market Maker for improving the Exchange's displayed quotation, it does reward a Market Maker for providing liquidity to orders in the trading crowd by linking the Market Maker's percentage of Auto-Ex contracts to the percentage of agency contracts it executed in the trading crowd. The Commission finds that it is consistent with the purposes of Section 6(b)(5) of the Act for PCX to revise its Auto-Ex contract assignment method in this way. The Commission believes that, because the PCX's proposed Auto-Ex incentive system for Market Makers will more closely allocate the percentage of contracts that a particular Market Maker can receive on a single revolution of the wheel to the percentage of in-person agency contracts traded on the floor by that Market Maker, Market Makers will have a greater incentive to compete effectively for orders in the crowd. This result, in turn, should benefit investors and promote the public interest.

The Commission further finds that the proposed Auto-Ex Incentive Program, in general, does not impose any unnecessary burden on competition, consistent with Section 6(b)(8) [16] of the Act. In fact, the proposed rule change should help foster competition because Auto-Ex allocations to Market Makers will be based on the number of in-person agency contracts that they execute on the floor, rather than on the same number of Auto-Ex contracts being allocated to each logged-on Market Maker during each wheel rotation. In addition, the Commission finds that the maximum assignment provision set forth in the proposed rule change, which limits the number of contracts each Market Maker can be assigned consecutively at any one time during a rotation, does not impose any unnecessary burden on competition, consistent with Section 6(b)(8) [17] of the Act. This maximum assignment provision will not affect the number of contracts that each Market Maker is entitled to receive during each revolution of the Auto-Ex wheel, but only the timing of the allocation of contracts to each Market Maker. This provision ensures that each Market Maker logged-on to Auto-Ex will receive at least some contracts before Market Makers with a greater participation percentage are assigned all of their contracts in a given revolution. This provision also reduces the exposure of Market Makers to market risk by breaking up the distribution of contracts into smaller groupings.

The Commission is approving this proposal on a nine-month pilot basis, through June 25, 2002. As indicated above, the Commission anticipates that the proposed Auto-Ex Incentive Program for Market Makers will encourage Market Makers to compete effectively for order flow in the trading crowds, thus benefiting investors and promoting the public interest. The Commission, however, intends to review the Exchange's experience with its new allocation system during the course of the pilot program.

The Exchange has requested that the Commission approve this proposed rule change on an accelerated basis. The Commission notes that PCX's proposal is virtually identical to a proposed rule change by CBOE (SR–CBOE–99–40) that was approved on a nine-month pilot basis by the Commission,[18] and was extended by the Commission for an additional six months and four months, respectively, in two subsequent orders.[19] Thus, the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to Section 19(b) of the Act.[20] Accordingly, the Commission finds good cause for approving the proposed rule change (SR–PCX–2001–05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–PCX–2001–05) is hereby approved on an accelerated basis, as a pilot program through June 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5) and (b)(8).

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

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000).

[19] *See* Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001); Securities Exchange Act Release No. 44749 (August 28, 2001); 66 FR 46487 (September 5, 2001).

[20] 15 U.S.C. 78s(b).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.