

proposed rule change. Proposed new language is italicized.

Communications to and on the Floor

Rule 220. (No change).

* * * Commentary

.01 through .05 (No change).

.06 *Proprietary Facilities for Routing Options Orders. With the prior written approval of the Exchange, a member or member organization may establish and maintain facilities that are not owned or operated by the Exchange ("Proprietary Facilities") to transmit orders electronically from the Amex Floor to other exchanges and to receive orders transmitted electronically to the Amex Floor from other exchanges for the purchase or sale of Amex listed options until the permanent Options Linkage is established. Such Proprietary Facilities may not be used for transmitting orders for listed equities and ETFs as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.*

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

In its filing with the Commission, Amex 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. Amex 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 believes that until a Permanent Options Linkage is implemented, Amex should permit member firms to establish Proprietary Facilities to route orders in Amex listed options to and from the Exchange. This could facilitate member firm compliance with best execution obligations. Once the Permanent Options Linkage is implemented, however, the Exchange believes that, for reasons of regulatory oversight, a single mechanism for routing orders between options exchanges is preferable to a number of different proprietary systems.

Management, accordingly, is proposing to terminate the ability of members to use Proprietary Facilities to route orders in Amex listed options to and from the Exchange once the Options Linkage is implemented. The proposed Proprietary Facilities could not be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b) of the Act,⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 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 90 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 Amex 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 proposal, as amended, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-33 and should be submitted by May 29, 2002.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45867; File No. SR-DTC-2001-19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Automated Corporation Action Program Applicable to the Exercise of Warrants, Conversions, and Put Option Privileges

May 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 18, 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 parties.

Options Linkage in July 2000. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

The proposed rule change involves DTC's new Automated Corporation Action Program ("ACAP") applicable to the exercise of warrants, conversions, and put option privileges (collectively "reorganization events").²

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

The Commission has proposed for comment amendments to Rule 17Ad-14 under the Act⁴ that will expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers.⁵ Under the proposed changes to Rule 17Ad-14, reorganization agents acting on behalf of issuers in connection with reorganization events which involve the exercise of warrant, conversion, or put option privileges on securities on deposit at DTC (a "qualified registered securities depository" as defined in Rule 17Ad-14) would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the agents would not be permitted to require DTC to deliver securities certificates prior to the third business day following the expiration date of the reorganization event. These proposed changes to Rule 17Ad-14 would subject reorganization events involving the exercise of warrants, conversions, and put option privileges to requirements under Rule 17Ad-14

similar to those that currently apply to tender offers and exchange offers.

DTC proposes to establish procedures and a master agreement for ACAP which will govern participants' exercises of warrants, conversions, and put options privileges that DTC has made eligible for ACAP. Tender offers and exchange offers will continue to be processed through DTC's Automated Tender Offer Program. Prior to making a reorganization event eligible for ACAP, DTC and the agent will have entered into an agreement that provides that DTC's ACAP procedures are applicable to the event.⁶

Under the ACAP procedures, participants wishing to exercise warrant, conversion, or put option privileges in a reorganization event that has been made eligible for ACAP will transmit the acceptance to DTC. DTC will transmit the instruction to the agent in the form of a DTC "agent's message" and will effect a book-entry delivery of the subject securities to the account of the agent maintained at DTC for this purpose no later than the prescribed deadline for the event. The book-entry delivery will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's delivery of the agent's message to the reorganization agent will satisfy the terms of the reorganization event as to the execution date and the delivery of either (1) the subscription/conversion/put option form by a DTC participant or (2) an instruction letter to cover a protect if the reorganization agent has accepted a notice of guaranteed delivery from a DTC participant outside of DTC.⁷

If DTC presents a certificate to the reorganization agent which the agent determines to be non-transferable, DTC will within three business days after notice from the agent either (i) put the certificate into transferable form or

replace it with a transferable certificate for the same quantity of that issue of securities or (ii) return to the agent all funds and all securities of other issues paid to and issued to DTC in exchange for the non-transferable certificate. If a cash dividend or interest payment is payable on the non-transferable certificate during such three business day period, the agent may deduct the amount of the payment on the non-transferable certificate from the total payment due to DTC with respect to that issue of securities. As is generally the case with securities certificates deposited with DTC, DTC will resolve any problems relating to a non-transferable certificate with the participant that deposited the securities.

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 it will further automate the processing of reorganization events by book-entry movements of securities and will reduce reliance on multiple movements of physical securities certificates in advance of the reorganization event and therefore increase the efficiency and reliability of processing with a decreased risk of loss due to lost or stolen certificates.

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

DTC perceives no impact on competition by reason of the proposed rule change.

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

The proposed rule change was developed through discussions with representatives of DTC participants and the Securities Transfer Association, Inc. Written comments on the ACAP procedures from DTC participants or others have not been solicited or received.

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

² A copy of the text of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

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

⁴ 17 CFR 240.17Ad-14.

⁵ Securities Exchange Act Release No. 40386 (August 31, 1998), 63 FR 47209 [File No. S7-25-98].

⁶ DTC and the reorganization agent will enter into a master agreement, the terms of which will apply to all reorganization events thereafter made eligible for ACAP. When ACAP is fully automated, it is contemplated that DTC's Participant Terminal System ("PTS") or other electronic means will be used to confirm the agreement between DTC and the reorganization agent with respect to each reorganization event and to confirm any special procedures applicable to an event. Prior to completion of ACAP system automation, event information may be exchanged by telephone, fax, or e-mail.

⁷ Notices of guaranteed delivery issued by DTC participants in connection with protect periods in reorganization events may also be transmitted through ACAP upon completion of ACAP automation.

(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-2001-19 and should be submitted by May 29, 2002.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45857; File No. SR-ISE-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Fee Changes

May 1, 2002.

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 April 23, 2002, the International Securities Exchange LLC ("ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

III below, which the ISE has prepared. 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 ISE is proposing to clarify the manner in which the ceiling on its payment-for-order-flow program will operate. The ceiling for each fund is set at \$650,000. The payment for order flow fee would be suspended for a group of options when the fund balance for the group exceeds \$650,000, but would be reinstated when any such fund balance falls below \$650,000. The text of the proposed rule change is available at the ISE and at the Commission.

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

The purpose of the proposed rule change is to clarify the manner in which the ceiling on the ISE's payment for order flow program will operate. In SR-ISE-2002-09,³ the ISE lowered the ceiling from \$750,000 to \$650,000 for each of the ten payment-for-order-flow funds that it maintains.⁴ The ISE did not specify in that filing that the fee would be reinstated if a fund balance falls below the ceiling. This proposed rule change provides that clarification.

The basis for this proposed rule change is the requirement under Section

6(b)(4) of the Act⁵ that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The ISE believes that the proposed rule change does not 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 ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(2)⁷ because it changes an ISE fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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

³ See Securities Exchange Act Release No. 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). See also Securities Exchange Act Release No. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (establishing the original \$750,000 ceiling).

⁴ Under ISE Rule 802(b), the ISE has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.