

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48885; File No. SR-DTC-2002-17]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of Matching Criteria for DRS Transactions

December 5 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 11, 2002, 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.

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

The proposed rule change provides for a processing enhancement to the Profile Modification System ("Profile") of the Direct Registration System ("DRS") by eliminating the matching criteria for the investor's account registration for certain DRS transactions using Profile.

#### 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.<sup>2</sup>

#### (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 enhance Profile processing by eliminating investor's account registration information<sup>3</sup> as a matching criteria for certain DRS transactions processed through Profile. Implemented by DTC in May 2000, Profile provides an electronic means for both participants and DRS limited participants (*i.e.*, transfer agents) to convey an investor's request to move from one form of securities ownership to another with the actual position movements taking place in DRS.<sup>4</sup> Currently the investor's social security number ("SS") or taxpayer identification number ("TIN"), DRS account number, CUSIP, share quantity to be moved through Profile, and the account registration information are used by participants and DRS limited participants as matching criteria when processing DRS transactions through Profile. DTC will eliminate the use of the account registration information as a matching criteria for certain DRS transactions processed through Profile in order to increase processing efficiencies. For those transactions where the investor's SS or TIN is available, participants and limited participants will be required to use the SS or TIN, CUSIP, DRS account number, and share quantity as matching criteria to process DRS transactions through Profile. In the event an investor's SS or TIN is not available, the registration, in addition to the other criteria, will continue to be required as matching criteria.

DTC's Profile System will be enhanced to accommodate the registration elimination for incoming and outgoing files. The following rules will apply to Profile transactions submitted by participants and DRS limited participants:

- For Profile transactions where the participant or limited participant inputs the investor's SS or TIN, DTC will no longer require registration information. DTC will not forward the registration information to the party receiving the Profile instruction.

<sup>3</sup> Account registration information generally includes, but is not limited to, the investor's name, designation (*i.e.*, title), and form of ownership.

<sup>4</sup> Profile allows a broker-dealer to electronically submit an instruction to a transfer agent to move an investor's securities held in DRS at the transfer agent to the investor's account at the broker-dealer and allows a transfer agent to submit an instruction to a broker-dealer to move securities held in the investor's account at the broker-dealer to the investor's DRS account at the transfer agent.

- The registration information will be required when a participant or DRS limited participant does not know the investor's SS or TIN or that information is not available. Participants and DRS limited participants will be required to input nine "1s" if the SS or TIN is not known or input nine "9s" if the SS or TIN is not available (as in the case of a foreign investor) and to input the investor's registration as it appears on the investor's DRS statement. DTC will forward the registration information to the party receiving the Profile instruction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to DTC because the proposed rule change will provide for more efficient use of DRS by participants and DRS limited participants. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>6</sup> of the Act and Rule 19b-4(f)(4)<sup>7</sup> promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At

<sup>29</sup> 17 CFR.200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

any time within sixty days of the filing of such proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-DTC-2002-17. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. All submissions should refer to File No. SR-DTC-2002-17 and should be submitted by January 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48892; File No. SR-ISE-2003-34]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to Firm Quotations

December 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 2003, the International Securities Exchange, Inc. ("ISE" 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 Exchange. The ISE submitted Amendment No. 1 to the proposed rule change on December 3, 2003.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE is proposing to amend its rules governing firm quotations. The text of the proposed rule change is available at the Office of the Secretary, 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 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 aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003. In Amendment No. 1, ISE corrects an error in the second sentence of the rule text of the original filing. Specifically, Amendment No. 1 deletes the reference to "Order Execution Size"—a term no longer used in the rule—and substitutes the term "a bid or offer."

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

##### 1. Purpose

The purpose of this proposed rule change is to require ISE market makers to be firm for the stated size of their quotations in all instances. Earlier this year, the Exchange moved to "one size" for market maker quotations.<sup>4</sup> As now in effect, a market maker's disseminated quotation is firm at its stated size for all incoming orders. However, there currently is one exception to the "one size" rule: when quotes of two ISE market makers interact, a market maker can limit its exposure to one contract, regardless of the size of its disseminated quotation. This proposed rule change will remove that exception.

The ISE originally proposed the limited exception to the one-size rule to help limit market makers' risk during the transition to one size. Because quotations often change across multiple series in an options class, a market maker could be at risk when multiple quotes "hit" the quotes of other market makers and multiple trades occur. At the time the ISE moved to one size, the Commission granted the ISE an exemption from the firm quote rule<sup>5</sup> to permit market makers to limit their exposure in this limited situation.<sup>6</sup> ISE market makers have now operated under the one-size rule for almost a year, and have grown increasingly comfortable with the rule. As a general matter, both the ISE and its market makers believe that all market maker quotations should be firm for the full size in all situations. Thus, the ISE proposes to eliminate the current exception.

##### 2. Statutory Basis

The ISE states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,<sup>7</sup> that the rules of an exchange be designed 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 ISE states that, in particular, the proposed rule change will further the development of the national market system by having ISE market makers be

<sup>4</sup> See Securities Exchange Act Release No. 47220 (January 21, 2003), 68 FR 4260 (January 28, 2003).

<sup>5</sup> 17 CFR 240.11Ac1-1.

<sup>6</sup> See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).