

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49777; File No. SR-DTC-2004-04]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Establish a Valued Delivery Order Interface With the National Securities Clearing Corporation

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on May 3, 2004, 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

DTC is seeking to amend its rules to establish a Valued Delivery Order Interface ("VDO Interface") with the National Securities Clearing Corporation ("NSCC"). The VDO Interface will allow NSCC at the request of a common DTC/NSCC member to create delivery versus payment delivery orders for the member's NSCC balance orders and special trades to be transmitted automatically to DTC for processing.

#### 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

NSCC currently creates receive and deliver instructions for Balance Order Securities "Balance Orders" and for

"Special Trades" (trade-for-trade transactions) which NSCC Members then have to manually enter into DTC as "Valued Delivery Orders" ("VDOs").<sup>3</sup> In connection with NSCC's update of its Continuous Net Settlement System ("CNS Rewrite"),<sup>4</sup> NSCC requested DTC to establish an interface to automate and facilitate the processing and book-entry settlement of Balance Orders and Special Trades.

DTC and NSCC currently have an automated VDO municipal bond interface known as the PDQ Automated Municipal Bond Settlement Facility ("PDQ Facility"). Pursuant to the PDQ Facility, NSCC Members and NSCC Municipal Comparison Only Members ("MCOMs") that are also DTC Participants ("common participants") or that clear through DTC Participants may authorize NSCC to send to DTC their compared municipal bond transaction data in an automated file, and may authorize DTC to accept and input such data as VDOs.

As a result of requests from common participants and based upon DTC's and NSCC's positive experience with the PDQ Facility, DTC and NSCC are seeking to expand the PDQ Facility to include all NSCC Balance Orders and Special Trades for automatic processing at DTC as VDOs using the VDO Interface. The VDO Interface would convey VDO instructions for each common participant's Balance Orders and Special Trades pursuant to standing instructions from the common participant to NSCC. These standing instructions would be automatically transmitted to DTC for processing. For NSCC MCOMs that are not common participants, NSCC will create delivery versus payment VDO instructions for a MCOM's Special Trades if both the MCOM and its DTC clearing brokers each provide standing instructions to DTC to process such trades through the VDO Interface. The VDO Interface will incorporate the PDQ Facility's functionality and will replace the PDQ Facility.<sup>5</sup> Subject to Commission approval, DTC intends to implement the proposed rule change in conjunction

with the implementation of NSCC's CNS Rewrite on or about July 9, 2004.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to DTC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency in processing member transactions.

##### (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 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

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 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2004-04 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

<sup>3</sup> The terms Balance Order Securities and Special Trades are defined in Rule 1 of NSCC's Rules. The term Valued Delivery Order is a delivery versus payment as opposed to a Free Delivery where delivery is made free of any payment by the receiver.

<sup>4</sup> The Commission has published notice seeking comment on NSCC's CNS Rewrite. Securities Exchange Act Release No. 49717 (May 17, 2004), 69 FR 29605 (File No. SR-NSCC-2004-01).

<sup>5</sup> Telephone conversation between Diane L. Brennan, Director of Risk Management, DTC, and staff of the Division of Market Regulation, Commission (May 21, 2004).

<sup>6</sup> 15 U.S.C. 78q-1.

<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.

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-DTC-2004-04. 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 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>. 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 Number SR-DTC-2004-04 and should be submitted on or before June 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49770; File No. SR-Phlx-2004-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a Temporary Waiver of Equity Option and Index Option Specialist Transaction Fees and ROT Comparison Fees for New and Recent Options Listings

May 25, 2004.

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 April 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" 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. On May 21, 2004, the Exchange submitted Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as amended, has been filed by the Exchange as establishing or changing a due, fee, or other charge pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend its schedule of dues, fees and charges to waive, for options other than those with a license fee, (1) specialist equity option and index option transaction charges<sup>6</sup> and Registered Options Trader ("ROT") equity option and index option

comparison charges<sup>7</sup> and (2) the amount of the applicable increase in the specialist unit fixed monthly fee ("fixed monthly fee"),<sup>8</sup> for all equity options and index options that begin trading on the Exchange between January 1, 2004 and June 30, 2004. The waiver of fees as described in this proposal is scheduled to become effective for transactions settling on or after May 1, 2004 through August 31, 2004.<sup>9</sup> The text of the proposed rule change is available at the Exchange 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>7</sup> Currently, ROT equity option and index option comparison charges are \$0.03 per contract.

<sup>8</sup> A specialist unit may elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and equity option specialist deficit (shortfall) fees. Currently, for specialist units who have elected to pay a fixed monthly fee and who obtain an equity option or index option book after a specified time period (either September 1, 2003 or March 1, 2004) as a result of a new Exchange listing, the methodology used to calculate the fixed monthly fee for the newly listed Exchange equity option or index option is the average of the two previous months' national volume multiplied by 12% with that product multiplied by 21%, which is then multiplied by the specialist unit's current transaction charge of \$0.21. If an equity option or index option does not have a complete two months' volume, the then-current transaction charge is used until that option trades for two full calendar months nationally, after which the above methodology is applied. The fixed monthly fee is in effect through August 31, 2004. See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (File No. SR-Phlx-2004-17). Therefore, pursuant to this proposal, if a specialist unit is currently paying a fixed monthly fee of \$100,000 and as a result of a new Exchange listing would pay an additional fixed monthly fee of \$20,000 per month as a result of the above-referenced methodology, the fee of \$20,000 would be waived from May 1, 2004 through August 31, 2004 if the equity option or index option begins trading on the Exchange between January 1, 2004 and June 30, 2004.

<sup>9</sup> The fee schedule will note that the fees described in this proposal will be waived from May 1, 2004 through August 31, 2004. The Exchange will delete the reference to this limited waiver from its fee schedule after the specified time period has expired, pursuant to this proposed rule change.

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

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

<sup>3</sup> See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 20, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the filing to add language regarding the temporary fee waiver to the Exchange's Specialist Unit Fixed Monthly Fee Schedule and to make other non-substantive changes to the filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> Currently, specialist equity option transaction charges are \$0.21 per contract and specialist index option transaction charges are \$0.24 per contract.

<sup>7</sup> 17 CFR 200.30-3(a)(12).