

Amex Rule 117. The Commission expects Amex to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options covering such security.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2004-74), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52779; File No. SR-CBOE-2004-37]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Deletion of Interpretation and Policy .01(e) to CBOE Rule 5.4

November 16, 2005.

On July 1, 2004, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to delete Interpretation and Policy .01(e) to CBOE Rule 5.4 (“Interpretation .01(e”). The proposal would permit the opening of new option series on an underlying security previously approved for CBOE option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 21, 2005, CBOE amended the proposal to replace the term “national market system security” with the term “NMS stock” in its rules for consistency with Regulation NMS.<sup>3</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, which replaced the original filing in its entirety, the Exchange conformed the definition of “NMS security” in CBOE Rules 5.3(a)(1) and Interpretation .01(f) of Rule 5.4 to that found in Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.<sup>4</sup> The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.<sup>5</sup> The Commission believes that the elimination of Interpretation .01(e) is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to 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.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer’s security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Interpretation .01(e) prevents CBOE from opening new series of options on the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination Interpretation .01(e) could help reduce investor confusion arising from inconsistent treatment of the underlying security and option. The Commission notes that, pursuant to CBOE rules, the underlying security will not be deemed to meet CBOE’s requirements for continued listing if such underlying security is not subject to an effective transaction reporting plan, and other requirements that address the liquidity and pricing of the underlying security.<sup>7</sup> Finally, the Commission notes that CBOE has stated that it will monitor the listing status of the underlying security and, pursuant to

<sup>4</sup> See Securities Exchange Act Release No. 52562 (October 4, 2005), 70 FR 59382.

<sup>5</sup> The Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See Interpretation and Policy .01 to CBOE Rule 5.4.

Interpretation and Policy .01(f) to CBOE Rule 5.4, no longer approve an underlying security for the listing of new option series when the issue is delisted from trading. The Commission expects CBOE to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options on such security.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2004-37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52784; File No. SR-DTC-2005-08]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the New Canadian Link Service

November 16, 2005.

#### I. Introduction

On July 27, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2005-08 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> On August 30, 2005, DTC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 26, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change will allow participants of DTC and participants of The Canadian Depository for Securities Limited (“CDS”) (i) to clear and settle securities transactions in Canadian dollars and (ii) to transfer or receive Canadian dollars without any

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 52471, (September 19, 2005), 70 FR 56196.

corresponding delivery or receipt of securities.

### 1. Overview of the Canadian-Link Service

The proposed rule change creates a new DTC service, the Canadian-Link Service, that will facilitate the clearance and settlement of valued securities transactions and the transfer of funds denominated in Canadian dollars between DTC's Participants using the Canadian-Link Service ("Canadian-Link Participants") and CDS Participants and between Canadian-Link Participants and other Canadian-Link Participants. Currently, DTC processes transactions in U.S. dollars only. The Canadian-Link Service will:

(1) Create a new link between DTC and CDS to leverage the existing CDS infrastructure for clearing and settling valued securities transactions and transferring funds in Canadian dollars so that DTC will not have to replicate this infrastructure;

(2) Apply enhanced DTC risk management controls to the transactions processed for Canadian-Link Participants through the Canadian-Link Service and will also subject DTC to CDS risk management controls, which are similar in most respects to DTC risk management controls; and

(3) Permit DTC Participants to concentrate their securities positions at DTC and not bifurcate inventory between DTC and CDS or a Canadian custodian.

At the present time, CDS maintains a number of links with DTC and the National Securities Clearing Corporation ("NSCC"). These links include:

(1) The American and Canadian Connection for Efficient Securities Settlement ("ACCESS") Service which enables CDS Participants to clear and settle transactions with DTC Participants through omnibus accounts maintained by CDS with DTC and NSCC.<sup>3</sup> CDS Participants that use the ACCESS Service are not participants or members of DTC or NSCC and CDS does not maintain or sponsor individual accounts at DTC or NSCC for such CDS Participants.

(2) The New York Link Service which enables CDS Participants to clear and settle transactions with DTC Participants through sponsored accounts maintained by CDS with DTC and NSCC. Through such sponsored accounts, CDS Participants may clear

and settle transactions on a trade for trade basis or on a continuous net settlement basis through the facilities of DTC and NSCC.

(3) The DTC Direct Link Service which enables CDS Participants to clear and settle transactions with DTC Participants through sponsored accounts maintained by CDS with DTC. Through such sponsored accounts, CDS Participants may clear and settle their transactions on a trade for trade basis through the facilities of DTC.

At the present time, DTC maintains no comparable links with CDS although DTC Participants may use the ACCESS Service of CDS for free deliveries of securities to and from CDS Participants. With the implementation of the Canadian-Link Service by DTC, Canadian-Link Participants will have the same ability to clear and settle valued securities transactions with CDS Participants and other Canadian-Link Participants in Canadian dollars that CDS Participants now have to clear and settle valued securities transactions with DTC Participants in U.S. dollars. As noted above, this will be accomplished using the existing CDS infrastructure for processing transactions in Canadian dollars together with enhanced DTC risk management controls.

### 2. The DTC Omnibus Account

DTC, as a participant of CDS, will maintain at CDS a ledger consisting of a series of accounts, including a securities account to record securities held by CDS for DTC and securities to be delivered by DTC to CDS and a funds account to record the net amount of money owing from time to time intraday between DTC and CDS. Such ledger and the accounts included in the ledger are referred to collectively as the "DTC Omnibus Account."

The DTC Omnibus Account will be subject to all CDS risk management controls, including the full collateralization of securities transactions, subject to appropriate haircuts, and limits on allowable net debits. DTC will be the account party on the DTC Omnibus Account. As a participant of CDS, DTC will be liable to CDS with respect to transactions processed for Canadian-Link Participants through the DTC Omnibus Account. Such obligations of DTC to CDS will in turn be matched by the obligations of Canadian-Link Participants to DTC with respect to such transactions. As an operational matter, DTC will act as a conduit between Canadian-Link Participants and CDS by transmitting to CDS information and instructions received from Canadian-

Link Participants and by transmitting to Canadian-Link Participants information and instructions received from CDS. CDS and Canadian-Link Participants will not have a direct relationship with each other.

The DTC Omnibus Account will have its own (i) collateral requirements and controls and net debit requirements and controls, (ii) settlement obligations, and (iii) line of credit from a Canadian bank that is a CDS Participant to secure the settlement obligations of DTC to CDS. In accordance with the Rules and Procedures of CDS, DTC will be a member of a credit ring with certain other CDS Participants.<sup>4</sup> Although DTC will take instructions from Canadian-Link Participants with respect to their transactions with CDS Participants through the Canadian-Link Service, DTC will at all times maintain control over the securities and funds credited to the DTC Omnibus Account.

Transactions will be processed in the CDS system on each day that CDS is open for business ("CDS Business Day") whether or not such day is a day that DTC is open for business ("DTC Business Day").

### 3. Transactions Processed Through the Canadian-Link Service

Transactions between Canadian-Link Participants and CDS Participants will be processed through the DTC Omnibus Account in accordance with the Rules and Procedures of CDS. Canadian-Link Participants will be able (i) to deliver securities to or receive securities from CDS Participants against payment in Canadian dollars and (ii) to transfer funds to or receive funds from CDS Participants in Canadian dollars without any corresponding delivery or receipt of securities.

Transactions between Canadian-Link Participants and other Canadian-Link Participants will be processed through accounts at DTC in accordance with the Rules and Procedures of DTC. Canadian-Link Participants will be able to (i) deliver securities to or receive securities from other Canadian-Link Participants against payment in Canadian dollars and (ii) transfer funds to or receive funds from other Canadian-Link Participants in Canadian dollars without any corresponding delivery or receipt of securities.

<sup>4</sup> CDS has advised DTC that (i) DTC will be required to be a member of the Non-Contributing Receivers Credit Ring for Canadian Dollar Settlements, (ii) the only claims that could be made against DTC as a member of this credit ring involve very unusual events, and (iii) no claim has ever been made by CDS against any member of this credit ring.

<sup>3</sup> CDS has advised DTC that it has decided to terminate the ACCESS Service and to transfer its users to the New York Link Service. However, the ACCESS Service will continue to be available to DTC Participants for free deliveries of securities to and from CDS Participants.

For both transactions between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account and transactions between Canadian-Link Participants and other Canadian-Link Participants processed through accounts at DTC, there will be a single end-of-day Canadian dollar money settlement between DTC and its Canadian-Link Participants ("Canadian-Link Money Settlement"). For the transactions between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account, there will be a separate end-of-day Canadian dollar money settlement between CDS and DTC.

#### 4. Eligibility of Participants and Securities

All DTC Participants will be eligible to be Canadian-Link Participants and use the Canadian-Link Service, provided that they comply with (i) the Rules and Procedures of DTC, (ii) the Rules and Procedures of CDS, and (iii) all agreements between DTC and CDS relating to the participation of DTC in CDS. (Such agreements together with the Rules and Procedures of CDS will be referred to as the "Canadian-Link Documents").

DTC will determine what securities will be eligible for the Canadian-Link Service ("Canadian-Link Securities"). Some securities may be eligible for all purposes of the Canadian-Link Service and some securities may be eligible only for limited purposes (e.g., clearance and settlement through the facilities of CDS but only custody and asset servicing through the facilities of DTC). In no case will a security be eligible for the Canadian-Link Service if the issuer is on an OFAC list of specially designated nationals and blocked persons or is incorporated in a jurisdiction on an OFAC list of sanctioned countries. As is the case with securities processed through the facilities of DTC, it will be DTC rather than CDS that will monitor such compliance with OFAC regulations.

#### 5. Enhanced DTC Risk Management Controls

Each Canadian-Link Participant will be required to make an additional required cash deposit to the DTC Participants Fund ("Canadian-Link Required Participants Fund Deposit"). The amount of the Canadian-Link Required Participants Fund Deposit will be determined by a formula that will be fixed by DTC and will be set forth in DTC's procedures. For all purposes of the Rules and Procedures of DTC, the Canadian-Link Required Participants

Fund Deposit of a Canadian-Link Participant will be considered a part of the Required Participants Fund Deposit of such Participant and will secure all of the obligations of such Participant to DTC, including transactions processed for such Participant through the Canadian-Link Service and other transactions processed by DTC for such Participant.

Each Canadian-Link Participant will be assigned a net debit cap on the transactions that may be processed for such Participant through the Canadian-Link Service ("Canadian-Link Net Debit Cap"). The Canadian-Link Net Debit Cap of a Canadian-Link Participant will be determined by a formula that will be fixed by DTC and will be set forth in DTC's procedures. Under existing DTC Rules, which will not be affected by new DTC Rule 30, which governs the Canadian-Link Service, each DTC Participant is assigned a Net Debit Cap on the transactions that may be processed for such Participant through the facilities of DTC (i.e., a limit on the negative funds balance that may from time to time be incurred with respect to its Canadian-Link funds transactions). The Canadian-Link Net Debit Cap of a Canadian-Link Participant and not its Net Debit Cap will apply to the transactions of such Participant processed through the Canadian-Link Service, including both transactions with CDS Participants processed for such Participant through the DTC Omnibus Account and transactions with other Canadian-Link Participants processed for such Participant through accounts at DTC. The Net Debit Cap of a Canadian-Link Participant and not its Canadian-Link Net Debit Cap will apply to all other transactions processed by DTC for such Participant.

Each Canadian-Link Participant will have a single Collateral Monitor with respect to transactions processed for such Participant through the Canadian-Link Service and other transactions processed by DTC for such Participant. For purposes of the Canadian-Link Service, the Collateral Monitor of a Canadian-Link Participant will be adjusted as follows:

(1) Canadian dollar net credits from transactions processed for such Participant through the Canadian-Link Service will be converted into U.S. dollar equivalents and added to U.S. dollar net credits from other transactions processed by DTC for such Participant;

(2) Canadian dollar net debits from transactions processed for such Participant through the Canadian-Link Service will be converted into U.S. dollar equivalents and added to U.S.

dollar net debits from other transactions processed by DTC for such Participant;

(3) The Collateral Value of Canadian-Link Securities delivered by such Participant to CDS Participants through the DTC Omnibus Account and the Collateral Value of Canadian-Link Securities delivered by such Participant to other Canadian-Link Participants through accounts at DTC will be converted into U.S. dollar equivalents and deducted from the Collateral Value of the collateral of such Participant; and

(4) Collateral Value in U.S. dollars will be given for Canadian-Link Securities received by such Participant from other Canadian-Link Participants but no Collateral Value will be given for Canadian-Link Securities received by such Participant from CDS Participants unless and until such securities are credited to an account of such Participant at DTC.

#### 6. Instructions for Transactions Processed Through the Canadian-Link Service

A Canadian-Link Participant may give DTC an instruction to clear and settle a securities transaction or to effect a funds transaction between such Participant and a CDS Participant as follows:

(1) An instruction from a Canadian-Link Participant to DTC to clear and settle a delivery of Canadian-Link Securities to a CDS Participant will constitute an instruction for DTC (i) to report or to confirm as appropriate the details of the transaction to CDS for processing in the CDS system and (ii) to transfer the securities subject to such instruction from an account of such Participant at DTC to the DTC Omnibus Account for the purpose of making such delivery on the settlement date;

(2) An instruction from a Canadian-Link Participant to DTC to clear and settle a receipt of Canadian-Link Securities from a CDS Participant will constitute an instruction for DTC (i) to report or to confirm as appropriate the details of the transaction to CDS for processing in the CDS system and (ii) to transfer subject to CDS risk management controls the securities subject to such instruction from the DTC Omnibus Account to an account of such Participant at DTC on the settlement date;

(3) An instruction from a Canadian-Link Participant to DTC with respect to a payment of Canadian dollars to a CDS Participant without any corresponding receipt of Canadian-Link Securities will constitute an instruction for DTC to report or confirm as appropriate the details of the transaction to CDS for processing in the CDS system; and

(4) An instruction from a Canadian-Link Participant to DTC with respect to a receipt of Canadian dollars from a CDS Participant without any corresponding delivery of Canadian-Link Securities will constitute an instruction for DTC to report or confirm as appropriate the details of the transaction to CDS for processing in the CDS system.

A Canadian-Link Participant may give DTC an instruction to clear and settle a securities transaction or effect a funds transaction with another Canadian-Link Participant as follows:

(1) An instruction from a Canadian-Link Participant to DTC to clear and settle a delivery of Canadian-Link Securities to another Canadian-Link Participant will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to debit the securities from an account of the delivering Participant at DTC and to credit the securities to an account of the receiving Participant at DTC and (iii) credit the delivering Participant and to debit the receiving Participant the contract price of the securities in Canadian-Link Money Settlement;

(2) An instruction from a Canadian-Link Participant to DTC to clear and settle a receipt of Canadian-Link Securities from another Canadian-Link Participant will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to credit the securities to an account of the receiving Participant at DTC and to debit the securities from an account of the delivering Participant at DTC, and (iii) to debit the receiving Participant and to credit the delivering Participant the contract price of the securities in Canadian-Link Money Settlement;

(3) An instruction from a Canadian-Link Participant to DTC with respect to the payment of Canadian dollars to another Canadian-Link Participant without any corresponding receipt of Canadian-Link Securities will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to debit the paying Participant and to credit the receiving Participant the appropriate amount of funds in Canadian-Link Money Settlement;

(4) An instruction from a Canadian-Link Participant to DTC with respect to the receipt of Canadian dollars from another Canadian-Link Participant without any corresponding delivery of Canadian-Link Securities will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to credit the paying Participant and to debit the receiving

Participant the appropriate amount of funds in Canadian-Link Money Settlement.

All valued securities transactions processed through the Canadian-Link Service will be settled trade for trade on a delivery against payment basis.

#### *7. The Settlement of Transactions Processed Through the Canadian-Link Service*

On each CDS Business Day, CDS will give DTC a recap of all transactions processed for DTC through the DTC Omnibus Account on such CDS Business Day and the net amount of money that CDS owes DTC or that DTC owes CDS with respect to such transactions. In turn, DTC will give each Canadian-Link Participant a recap of the transactions processed for such Participant through the Canadian-Link Service on such CDS Business Day, including transactions with CDS Participants processed for such Participant through the DTC Omnibus Account and transactions with other Canadian-Link Participants processed for such Participant through accounts at DTC, and the net amount of money that DTC owes such Participant or that such Participant owes DTC with respect to such transactions. Then, in the following order, (i) Canadian-Link Participants with net settlement debits will pay DTC the amounts of such net settlement debits, (ii) DTC will pay CDS the amount of any net settlement debit owing to CDS or CDS will pay DTC the amount of any net settlement credit owing to DTC, and (iii) DTC will pay Canadian-Link Participants with net settlement credits the amounts of such net settlement credits. However, the amount of any net settlement credit owing to a Canadian-Link Participant with respect to transactions processed for such Participant through the Canadian-Link Service may be withheld and applied to any obligation of such Participant to DTC or to any obligation of DTC to another registered clearing agency with respect to such Participant. DTC will not be required to make any payment to Canadian-Link Participants with net settlement credits unless and until DTC receives payment from all Canadian-Link Participants with net settlement debits and payment of any net amount of money that CDS owes DTC.

If a Canadian-Link Participant fails to pay any Canadian dollar net settlement debit with respect to the transactions processed for such Participant through the Canadian-Link Service, DTC may apply the DTC Participants Fund to cover any shortfall in its settlement obligations to CDS. If the day of such

default is a DTC Business Day, DTC may either:

(1) Declare such Participant to be a Defaulting Participant, in which case DTC will have all of its rights and remedies under the Rules and Procedures of DTC, including the right to sell or to pledge (i) all securities credited to the DTC Omnibus Account at CDS for delivery to the Defaulting Participant, which securities are owned by DTC until they are paid for by the Participant, (ii) all securities provisionally credited to an account of the Defaulting Participant at DTC against payment, which securities are owned by DTC until they are paid for by the Participant, and (iii) all securities which are designated as additional Collateral by the Defaulting Participant pursuant to the Rules and Procedures of DTC; or

(2) Translate the amount of such Canadian dollar net settlement debit into a U.S. dollar amount that will be added to or subtracted from, as the case may be, the U.S. dollar net settlement debit or credit of such Participant with respect to other transactions processed for such Participant through the facilities of DTC on that day and if as a result of this process such Participant has a net-net settlement debit with respect to all transactions processed for such Participant and fails to pay such net-net settlement debit to DTC, DTC may declare such Participant to be a Defaulting Participant and will have all of its rights and remedies under the Rules and Procedures of DTC, including the rights and remedies described above.

If the day of such default is not a DTC Business Day and as a result the amount of such Canadian dollar net settlement debit cannot be included in the calculation of the settlement obligations of such Participant with respect to other transactions processed by DTC for such Participant on that day, DTC will deem such Participant to be a Defaulting Participant, and DTC will have all of its rights and remedies under the Rules and Procedures of DTC, including the rights and remedies described above. Any amounts withdrawn from the DTC Participants Fund to cover a shortfall in the settlement obligations of DTC to CDS will be restored to the Participants Fund (i) from any payments subsequently received by DTC from the Defaulting Participant and (ii) from any amounts derived by DTC from the operation of its failure to settle procedures and loss allocation rules.

#### *8. Additional Matters*

As a member of CDS, DTC must observe and comply with the Canadian-

Link Documents. Each Canadian-Link Participant, in order to use the Canadian-Link Service, acknowledges that (i) all transactions processed for such Participant through the facilities of CDS are subject to the Canadian-Link Documents, (ii) the Canadian-Link Documents may include grants of security interests in and liens on securities and funds in the CDS system in which such Participant has an interest, (iii) there are other provisions of the Canadian-Link Documents that could also affect the interest of such Participant in such securities and funds, and (iv) in the event of any conflict between the Rules and Procedures of DTC, which are a contract between DTC and DTC Participants, and the Canadian-Link Documents, which are a contract between DTC and CDS, the requirements of the Canadian-Link Documents will prevail.

#### 9. Fees

DTC is proposing to charge its Canadian-Link Participants the following fees. The fee schedule is set forth in section 23 of the Canadian-Link Service Guide.<sup>5</sup> All fees will be collected in U.S. dollars through the existing U.S. dollar settlement system and will be uniquely identified on the DTC U.S. dollar settlement statement bill. The proposed fees are as follows:

##### (1) Deliver Order Fees

DTC will charge \$2.00 U.S. per submitted Canadian dollar delivery/receive, recall transaction resulting from the automatic recall process, cancel instruction, and modify instruction. DTC will not charge for hold instructions of Canadian dollar deliveries/receives, DK instructions, confirm instructions, or end-of-day sweep transactions.

##### (2) Payment Order Fees

DTC will charge \$2.00 U.S. per submitted Canadian dollar payment order delivery/receive, cancel instruction, and modify instruction. DTC will not charge for hold instructions of Canadian dollar payment order deliveries/receives, DK instructions, or confirm instructions.

##### (3) Asset Servicing/Custody Fees

DTC will charge for asset servicing and custody services on all Canadian and U.S. securities at the existing DTC Asset Servicing/Custody fees.

### III. Discussion

Section 17A of the Act sets forth the regulatory framework for the national system for clearance and settlement of securities transactions and provides the requirements a clearing agency must meet in order to be registered with the Commission. Although the proposed rule change concerns the linkage of DTC and CDS to facilitate the clearance, settlement, and custody of Canadian securities and payments of Canadian dollars by DTC participants, it is consistent with the general purpose of section 17A to promote the perfection of a system for the prompt and accurate clearance and settlement of securities transactions. Furthermore, the proposed rule change is consistent with DTC's other cross border services that link CDS with DTC to facilitate the clearance and settlement of transactions executed by CDS participants in U.S. dollars.

Section 17A(a)(1)(D) of the Act provides in general that the linking of clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement reduces unnecessary costs and increases the protection of investors and persons facilitating transactions by and acting on behalf of investors.<sup>6</sup> The Canadian-Link Service will take advantage of existing connectivity between DTC and CDS to increase efficiencies and to reduce costs for DTC participants and ultimately investors with respect to the clearance and settlement of Canadian dollar transactions. Additionally, new DTC Rule 30 will establish detailed procedures for the Canadian-Link Service that will provide certainty and reliability with respect to these transactions and will apply to all Canadian-Link Participants. As a result, the proposed rule change is consistent with the directives in sections 17A(a)(1)(D) because it should reduce unnecessary costs by providing increased efficiencies for DTC participants and because it should create uniform standards for the clearance and settlement of securities transactions by establishing procedures for Canadian dollar transactions processed through DTC.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Most DTC participants currently clear and settle their Canadian securities transactions in Canadian

dollars by using a custodian bank in Canada as a settlement agent at CDS. The proposed rule change is designed to streamline the clearance and settlement process of Canadian dollar transactions for DTC participants by centralizing the process at DTC and by establishing rules and procedures for Canadian Link Participants. By leveraging the existing linkage between DTC and CDS, by using the existing rules and procedures of DTC and CDS, and by establishing new rules and procedures for the Canadian-Link Service, DTC has put in place sufficient procedures so that it should be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The Commission also considered whether the fact that under the proposal DTC will be required to become a member of a clearing agency that is neither registered with nor regulated by the Commission (*i.e.*, CDS) would be inconsistent with DTC's statutory obligations under section 17A or would present unacceptable risks to DTC or its participants. As a member of CDS and as an intermediary for its Canadian-Link Participants, DTC will be subject to CDS's rules and procedures and will bear the initial financial burden if CDS or a Canadian-Link Participant fails to meet its settlement obligations. Also, DTC will be required to be a member of CDS's Non-Contributing Receivers Credit Ring. Accordingly, the Commission has focused part of its review of DTC's proposal on CDS itself and on DTC's risk management procedures related to the Canadian-Link Service.

CDS is the sole central securities depository organized in the Canadian market and is regulated in Canada at the Federal and provincial level. CDS has been a member of DTC since 1979. As a participant of DTC, CDS is required to meet DTC's financial and capital requirements and is subject to DTC's risk management evaluation and review.<sup>7</sup> As a result, DTC has previously evaluated and is familiar with CDS's financial and organizational soundness. CDS conducts its clearance and settlement services pursuant to a published rulebook and has risk management procedures in place that are similar to and in some cases more conservative than DTC's risk management procedures. For example, CDS requires that all positions be fully collateralized with a bank line of credit, and it has limited membership

<sup>5</sup> Section 23 of the Canadian-Link Service Guide is attached as Exhibit 2 to DTC's filed proposed rule change.

<sup>6</sup> 15 U.S.C. 78q-1(a)(1)(D).

<sup>7</sup> CDS has also been a member of NSCC since 1984 and is subject to NSCC's risk management evaluation and review.

categories and credit rings so that a participant will not share in a financial loss related to a service in which it does not participate. Furthermore, DTC provided the Commission with the materials it used to analyze the risks associated with the Canadian-Link Service and represented that in its risk analysis it found neither any unacceptable risk related to DTC becoming a member in CDS nor any other cause for concern regarding the proposed rule change. Accordingly, the Commission finds that neither DTC nor its participants should be exposed to any undue risks or burdens as a result of DTC's membership in CDS or DTC's offering the Canadian-Link Service.

Based on the DTC's history with CDS, the regulatory oversight and risk management framework of CDS's operations, and the risk analysis DTC performed with respect to the proposed rule change, the Commission is satisfied that DTC has taken adequate steps to design the Canadian-Link Service so that it can be offered by DTC in a manner that enables DTC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2005-08) be and hereby is approved.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52786; File No. SR-NASD-2005-011]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Limit the Eligibility for Quotation on the OTCBB of the Securities of an Issuer That Is Repeatedly Delinquent in Its Periodic Reporting Obligations

November 16, 2005.

#### I. Introduction

On January 28, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to limit the eligibility for quotation on the Over-the-Counter Bulletin Board ("OTCBB") of the securities of an issuer that is repeatedly late or otherwise delinquent in filing required periodic reports.<sup>3</sup> Nasdaq submitted Amendment No. 1 to this filing on May 10, 2005.<sup>4</sup> Nasdaq submitted Amendment No. 2 to this filing on June 24, 2005.<sup>5</sup> Nasdaq submitted Amendment No. 3 to this filing on August 15, 2005.<sup>6</sup> The

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

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

<sup>3</sup> The Commission notes that subsequent to publication of the Notice, the Commission approved the NASD's proposal to amend its Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, as well as certain corresponding NASD rules, to permit the NASD to assume direct authority for over-the-counter ("OTC") equity operations, including the OTCBB, rather than continuing to delegate this authority to Nasdaq. Nasdaq, however, will continue to furnish the OTCBB quotation and trade reporting platform and certain other services that it provided with respect to over-the-counter equity operations. See Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (SR-NASD-2005-089).

<sup>4</sup> Amendment No. 1, which replaced the original filing in its entirety, made clarifying changes to the proposal's rule text; provided greater detail regarding how Nasdaq would notify issuers about the proposed rule; and stated that the proposed rule would be implemented for those filings for periods ending on or after June 1, 2005.

<sup>5</sup> Amendment No. 2, which replaced the original filing and Amendment No. 1 in their entirety, further clarified the proposal's rule text; and amended the proposal's rule text to provide that filings for reporting periods ending before June 1, 2005, would not be considered for purposes of the proposed rule change.

<sup>6</sup> Amendment No. 3, which supplemented the filing as modified by Amendment No. 2, amended the proposal's rule text to provide that filings for

proposed rule change, as amended, was published for comment in the **Federal Register** on August 24, 2005.<sup>7</sup> The Commission received one comment letter on the proposal.<sup>8</sup> Nasdaq<sup>9</sup> and the NASD<sup>10</sup> each responded to the comment letter. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

Pursuant to current NASD Rule 6530 (the "Eligibility Rule"), for an issuer's securities to be eligible and remain eligible for quotation on the OTCBB by an NASD member, the issuer must be current in its filings with the Commission or other appropriate regulator.<sup>11</sup> When a security becomes ineligible for quotation on the OTCBB due to the Eligibility Rule, either because a required periodic filing is not made or because a filing is incomplete,<sup>12</sup> Nasdaq appends an additional character "E" designator to the security's symbol.<sup>13</sup> If the issuer does not comply within the applicable grace period provided by the Eligibility Rule (typically 30 days),<sup>14</sup> the Rule prohibits NASD members from quoting the issuer's securities on the OTCBB.

reporting periods ending before October 1, 2005, would not be considered for purposes of the proposed rule change.

<sup>7</sup> See Securities Exchange Act Release No. 52291 (August 18, 2005), 70 FR 49701 ("Notice").

<sup>8</sup> See E-mail from John Meade to *rule-comments@sec.gov*, dated September 14, 2005.

<sup>9</sup> See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 29, 2005.

<sup>10</sup> See Letter from Andrea Orr, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 14, 2005.

<sup>11</sup> See Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR-NASD-98-51).

<sup>12</sup> In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS-100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). See, e.g., Rule 13a-14 under the Act, 17 CFR 240.13a-14, and Rules 10-01(d) and 2-02(c) of Regulation S-X, 17 CFR 210.10-01(d) and 210.2-02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. See section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

<sup>13</sup> Nasdaq also appends an "E" to a security's symbol when it fails to receive notice that an issuer, which files with a regulator other than the Commission, has timely filed. In the case of those issuers, the Nasdaq generally receives notice of a regulatory filing from the applicable market maker or the issuer itself, and will investigate any instance where it has not received such notice. See Telephone conversation between Tim Fox, Attorney, Commission, and Arnold Golub, Associate Vice President, Nasdaq on May 20, 2005.

<sup>14</sup> The Eligibility Rule provides a 60-day grace period to banks, savings association and insurance companies that do not file with the Commission, but are required to file with other regulators. See NASD Rule 6530(a)(3) and (4).

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