

customers and other broker-dealers, including specialists, other ROTs, away market makers and firms. Consistent with the Exchange's current rules on priority, parity, and precedence, the electronic hedging and/or liquidating orders of ROTs, as provided in this proposal, would be on parity with the orders of other broker-dealers, specialists, ROTs, and away market makers. The electronic hedging and/or liquidating orders of ROTs will continue to receive market maker treatment because the orders would be executed to reduce the risk of the positions put on by the ROT in connection with his market maker responsibilities in the formerly assigned option class.

## 2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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 Exchange believes that providing ROTs with this limited ability to send orders in connection with a bona fide hedge or liquidating position in an option class that has been relocated would provide an effective and efficient means for ROTs to reduce position risk, and thereby, promote a free and open national market system.

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

The Exchange believes the proposed rule change, as amended, 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

No written comments were solicited or received by the Exchange on this proposal, as amended.

## 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 Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, 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, as amended, 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-Amex-2005-096 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2005-096. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-Amex-2005-096 and

should be submitted on or before May 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53655; File No. SR-DTC-2006-03]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Amend the Criteria Used to Place Participants on Surveillance Status

April 14, 2006.

## I. Introduction

On February 3, 2006, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2006-03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 14, 2006.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

### Overview

DTC has developed certain criteria for placing participants on surveillance. Specifically, all broker-dealers from which DTC requires the submission of FOCUS or FOGS reports and banks from which DTC requires the submission of CALL reports<sup>3</sup> are assigned a rating that is generated by entering financial data of the participant into a risk evaluation matrix ("Matrix") that was developed by

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 53435 (March 7, 2006), 71 FR 13198.

<sup>3</sup> A small number of DTC member banks which submit CALL reports are not assigned a rating. Because these banks do not make loans and do not take deposits as part of their business activities, their CALL reports do not contain information on asset quality and/or liquidity. Asset quality and liquidity are among the financial figures used in the Matrix. Since these figures would be zero in the Matrix for these banks, their Matrix results would not adequately portray their financial status. DTC has therefore concluded that these banks do not lend themselves to appropriate analysis using the Matrix.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

credit risk staff.<sup>4</sup> Those participants with a “weak” rating (*i.e.*, deemed to pose a relatively higher degree of risk to DTC) are placed on an internal “watch list” and are monitored more closely. All participants that do not fall into the categories of banks and broker-dealers mentioned above are not currently included in the Matrix process but are monitored by DTC’s credit risk staff using financial criteria deemed relevant by DTC.<sup>5</sup>

#### Procedures

Credit risk staff approaches its analysis of participants in the following manner. First, the required information of designated broker-dealers and banks are entered into the Matrix, and a rating for each participant is generated. Low-rated participants are placed on the watch list. At this point, credit risk staff may downgrade a particular participant’s rating based on various qualitative factors. For example, one qualitative factor might be that the participant in question received a qualified audit opinion on its annual audit. In order for DTC to protect itself and its participants, it is important that credit risk staff maintain the discretion to downgrade a participant’s Matrix rating and thus subject the participant to closer monitoring. All rated participants, including those on the watch list, are monitored monthly or quarterly, depending upon the participant’s financial filing frequency, against basic minimum financial requirements and other parameters.

All broker-dealer participants included on the watch list are monitored more closely than those not on the watch list. This means that they are monitored for various parameter breaks which may include, but are not limited to, such things as a defined decline in excess net capital over a one month or three month period, a defined period loss, a defined aggregate indebtedness/net capital ratio, a defined net capital/aggregate debit items ratio, or a defined net capital/regulatory net capital ratio. All bank participants included on the watch list are also

monitored more closely for watch list parameter breaks which may include, but are not limited to, such things as a defined quarter loss, a defined decline in equity, a defined tier one leverage ratio, a defined tier one risk-based capital ratio, and a defined total risk-based capital ratio.

Credit risk staff also monitors those participants not included in the Matrix process using similar criteria.<sup>6</sup> These criteria may include, but are not limited, to such things as failure to meet minimum financial requirements, experiencing a significant decrease in equity, or a significant loss. This class of participants may be placed on the watch list based on credit risk staff’s analysis of this information. DTC continues to reserve the right to place a participant on the watch list for failure to comply with operational standards and requirements.<sup>7</sup>

#### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>8</sup> The Commission finds that DTC’s proposed rule change is consistent with this requirement because it improves DTC’s member surveillance process which should better enable DTC to safeguard the 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-2006-03) be and hereby is approved.

<sup>6</sup> Participants that are not included in the Matrix are: the banks discussed in footnote 3, United States (“U.S.”) branches and agencies of non-U.S. banks, non-U.S. central securities depositories, and U.S. government sponsored enterprises.

<sup>7</sup> Participants are required to meet the standards of financial condition, operational capability, and character set forth in DTC Rule 2 (Participants and Pledges).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53653; File No. SR-NASD-2006-035]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Proposed Amendments to IM 2110-2 to Codify NASD’s Existing Position that the Manning Rule Applies to All Members, Whether Acting as a Market Maker or Not

April 14, 2006.

On March 6, 2006, the National Association of Securities Dealers, Inc. (“NASD”) 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 relating to proposed amendments to NASD Interpretive Material 2110-2, Trading Ahead of Customer Limit Order (commonly referred to as the Manning Rule) to state that the rule applies to all members, whether acting as a market maker or not. NASD asked the Commission to grant accelerated approval to the proposed rule change. The Commission stated it would consider granting accelerated approval at the close of a 15-day comment period, and published the proposed rule change for notice and comment in the **Federal Register** on March 28, 2006.<sup>3</sup> The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association <sup>4</sup> and, in particular, the requirements of section

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53527 (March 21, 2006), 71 FR 15503.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>4</sup> The Matrix is used by DTC and its affiliated clearing agencies, the Fixed Income Clearing Corporation (“FICC”) and the National Securities Clearing Corporation (“NSCC”). In using the Matrix, credit risk staff uses the financial data of each applicable DTC participant and the financial data of each applicable member of FICC and NSCC. In this way, each applicable DTC participant, FICC member, and NSCC member are rated against each other.

<sup>5</sup> DTC will continually evaluate the matrix methodology and its effectiveness and will make such changes as it deems prudent and practicable within such time frames as it determines to be appropriate. DTC will update the Commission staff periodically on its evaluations of the Matrix.