

ECB would provide subcustody services such as principal and income collection and corporate action processing on securities held in DTC's omnibus account at ECB in accordance with ECB procedures. DTC in turn would provide its participants with principal and income payment and corporate actions services without the need for its participants to interact directly with ECB.

The primary benefits of the proposed rule change are that it would facilitate the expanded dual listing programs of marketplaces operating in the U.S. and Europe and that it should help to reduce the number of transactions that fail on settlement date because of inefficient methods of inventory repositioning. The realization of these benefits would be consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and of reducing risk to DTC participants by immobilizing certificates.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should reduce risks and associated costs to DTC and ECB participants by streamlining the processing of cross-border securities transactions between U.S. and European entities.

#### *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 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 the 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-2007-12 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-DTC-2007-12. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of DTC. 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-2007-12 and should be submitted on or before November 23, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-21496 Filed 10-31-07; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56709; File No. SR-FINRA-2007-007]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Exempt From TRACE Reporting Transactions in TRACE-Eligible Securities Resulting From Certain Derivative-Related Transactions**

October 26, 2007.

On August 10, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a 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 to exempt from reporting to the Trade Reporting and Compliance Engine ("TRACE") transactions in TRACE-eligible securities resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap ("CDS"), other types of swap, or a similar instrument (collectively, "Derivative-Related Transactions").<sup>3</sup> The Commission published the proposed rule change for comment in the **Federal Register** on September 21, 2007.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

As described above, FINRA proposed to amend its Rules to exempt transactions in TRACE-eligible securities<sup>5</sup> that are Derivative-Related

<sup>3</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> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

<sup>4</sup> See Securities Exchange Act Release No. 56439 (September 13, 2007), 72 FR 54087.

<sup>5</sup> See NASD Rule 6210 for definition of "TRACE-eligible security."

Transactions from the TRACE reporting requirements.<sup>6</sup> FINRA believes that Derivative-Related Transactions should be exempt from TRACE reporting requirements because the information regarding price (and yield) being reported to FINRA and disseminated to the public does not reflect a currently negotiated transaction price. Further, FINRA believes that reporting and dissemination of certain Derivative-Related Transactions does not foster price discovery and may contribute to investor confusion, which FINRA believes is consistent with previously recognized rationale for exempting certain transactions from trade reporting and dissemination. FINRA noted in its proposal that, historically, purchases and sales of equity securities that occurred as a result of the exercise of an over-the-counter option were subject to a similar exemption and were not required to be reported to FINRA.<sup>7</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>8</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules be designed to promote just and equitable principles of trade, 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. FINRA's proposal will relieve its members of the administrative burdens of reporting transactions in TRACE-eligible securities resulting from Derivative-Related Transactions. The Commission agrees with FINRA that requiring members to report such transactions does little to enhance market transparency, because the price of the TRACE-eligible security in this case has been previously negotiated and does not reflect the present market value. The Commission notes that it previously has approved similar proposals that exclude

<sup>6</sup> The TRACE reporting requirement does not exist in connection with any cash-settled derivative, even if the derivative relates to one or several securities that are TRACE-eligible securities.

<sup>7</sup> *But see* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (requiring members to report equity trades resulting from the exercise of a physically settled option for purposes of fee calculation, but not for transparency purposes).

<sup>8</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

from trade reporting obligations "transactions effected upon the exercise of an option or any other right to acquire securities at a preestablished consideration unrelated to the current market."<sup>10</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2007-007), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56708; File No. SR-NASDAQ-2007-078]

### Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq's Outbound Routing Broker

October 26, 2007.

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 September 7, 2007, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On October 19, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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.

<sup>10</sup> *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396, n.5 (April 16, 1992) (SR-NASD-91-50).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes to codify the functions of its wholly-owned routing broker-dealer Nasdaq Execution Services, LLC ("NES"). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://www.nasdaq.com>.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

In July 2006, the Commission approved the integration of Nasdaq's three execution systems—the Nasdaq Market Center, the Brut ECN, and the INET ECN—into a single execution system with routing functionality commonly known as the Nasdaq Single Book ("Single Book").<sup>5</sup> In coordination with Nasdaq's transition to a registered national securities exchange, Single Book commenced full operation for Nasdaq-listed securities on October 30, 2006, and for other exchange-listed securities on February 12, 2007. Since that time, NES has operated solely and exclusively as the routing broker for the Exchange, and the method for the Exchange to obtain access to better prices displayed in other market centers and, more recently, as required under Regulation NMS. NES is a facility of Nasdaq and operates no trade matching or execution system. Nasdaq states that NES has no customers or users other than the Nasdaq exchange itself. Nasdaq states that this filing merely seeks the adoption of a rule formally codifying this existing and ongoing relationship, and does not alter in any way the current operation of either the Exchange

<sup>5</sup> *See* Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).