

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will reduce duplicative qualification standards that foreign registered representatives encounter to qualify as a U.S. general securities registered representative. Additionally, the Commission notes that other self-regulatory organizations currently accept certain foreign examination modules as equivalent to the Series 7 examination as satisfactory proficiency examinations. Therefore, the Commission designates the proposal as operative upon filing.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is 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. 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-BATS-2009-003 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BATS-2009-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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 BATS. 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-BATS-2009-003 and should be submitted on or before February 20, 2009.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59298; File No. SR-DTC-2008-15]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Provide The Options Clearing Corporation With Settlement Services for Stock Loan Transactions Entered Into Under the Market Loan Program

January 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 23, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is

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

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

publishing this notice and order to solicit comments on the proposed rule change and to grant accelerated approval of the proposal.

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

DTC is seeking to provide settlement services for stock loan transactions entered into under The Options Clearing Corporation's ("OCC") proposed Market Loan Program.<sup>2</sup>

#### 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>3</sup>

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

OCC has approached DTC seeking DTC's settlement services for its proposed Market Loan Program in which OCC will act as a central counterparty for stock loan transactions. Under the proposal, OCC will submit stock loan deliver orders to DTC on a locked-in basis on behalf of the parties to the transactions. OCC will open a new account at DTC for this service.

Under OCC's proposed Market Loan Program, a stock loan is initiated when a lender is matched with a borrower through an electronic platform that supports securities lending and borrowing transactions by matching lenders and borrowers based on loan terms that each party is willing to accept. Once matched, the electronic platform will send details of the matched stock loan transaction to OCC. If the matched transaction passes OCC's validation process, OCC will create and send to DTC a pair of delivery orders, one message instructing DTC to transfer a specified number of shares of a specified eligible stock from the lending Participant to OCC's account and the

<sup>2</sup> OCC filed a proposed rule change (File No. SR-OCC-2008-20) with the Commission that is being approved simultaneously with this proposed rule change to describe proposed changes in its rules for purposes of establishing the Market Loan Program.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

other message instructing DTC to transfer the same number of shares of the same stock with the same dollar value from OCC's account to the borrowing Participant's account. Each participant that elects to use the proposed Market Loan Program will authorize DTC by written agreement to accept instructions on its behalf from OCC, requesting that DTC debit or credit the Participant's DTC account with regard to said stock loan transactions.<sup>4</sup>

Since OCC's Market Loan Program is intended to be primarily an anonymous market, OCC will establish a new account at DTC for this activity.<sup>5</sup> The transfer of securities for value between the lender and the borrower will pass through the new OCC account in order to enable the stock loan transaction to be settled in a manner that provides anonymity to both the lender and borrower. In an effort to ensure that OCC's stock loan transactions complete, DTC is proposing to bypass the collateral monitor in OCC account.<sup>6</sup> This will advance transactions from the collateral recycle queue to the net debit cap recycle queue and will allow look-ahead to capture the transactions. DTC will also set the net debit cap<sup>7</sup> on OCC's account to zero so that all receives into the account recycle for net debit cap. A zero net debit cap will ensure that no receives are completed to OCC account unless an offsetting delivery is also completed.

In order to reduce the possibility of mismatched stock loans, DTC is proposing to amend its current look-ahead process for OCC stock loan transactions so that look-ahead matches on number of shares and dollar amount

<sup>4</sup> The debit or credit will depend on whether the Participant is the borrower or the lender in the stock loan transaction. DTC Participants that wish to use this service will also be required to acknowledge that reclaims to OCC under \$15 million will not override OCC's net debit cap and will recycle until OCC submits a redelivery to the lender or until the reclaim drops at the recycle cutoff.

<sup>5</sup> A new Participant-level master file indicator will be used to signify that both Participants, the borrower and lender, have agreed to use the service.

<sup>6</sup> DTC's Account Transaction Processor ("ATP") is the core processing system for all transaction activity affecting security positions held at DTC. It checks receiver's collateral before it checks for debit cap. If DTC did not bypass the collateral monitor then the deliveries into OCC account would pend for collateral first and would not be processed by look-ahead.

<sup>7</sup> Before completing a transaction in which a Participant is the receiver, DTC calculates the resulting effect the transaction would have on such Participant's account, and determines whether the resulting net balance would exceed the Participant's net debit cap. Any transaction that would cause the net settlement debit to exceed the net debit cap is placed on a pending (recycling) queue until another transaction creates credits in such Participant's account.

in addition to CUSIP. The existing Look-Ahead process finds delivery transactions that are pending because the receiving Participant has reached its net debit cap. It then looks to see whether the receiving Participant has a pending delivery for the same security to another Participant. In such a situation, DTC's Account Transaction Processor ("ATP") will calculate the net effect to the collateral and net debit cap controls for all three Participants involved. If the net effect will not result in a deficit in the collateral or net debit cap controls for any of the three Participants, ATP processes the transactions simultaneously.

Additionally, DTC is proposing to block matched reclaims into OCC's account. Participants will be permitted to reclaim<sup>8</sup> to OCC's account, but reclaims under \$15 million will not override OCC's debit cap and will recycle until OCC submits a redelivery back to the lender or until the reclaim drops at the recycle cutoff.<sup>9</sup> Under DTC's existing procedures, if the borrowing Participant reclaimed to OCC and the reclaim was less than \$15 million, the reclaim would override the DTC Risk Management controls for OCC's account creating a debit in OCC's account. The debit would be eliminated if OCC entered a reclaim to the lending Participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to DTC because it should promote the prompt and accurate clearance and settlement of stock loan transactions which would settle through the Look-Ahead process and achieve a more efficient level of straight-through processing.

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

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

<sup>8</sup> A "reclaim" is an instruction to DTC to undo a delivery and is typically invoked in the event of an error where a Participant does not recognize the delivery.

<sup>9</sup> If OCC does not submit a redelivery to the lender, then the borrower's reclaim to OCC will drop at the recycle cutoff (*i.e.*, the borrower will retain the securities and the debit for the stock loan delivery it received from OCC). This is how DTC currently treats reclaims that are over \$15 million.

<sup>10</sup> 15 U.S.C. 78q-1.

#### *(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. DTC will notify the Commission if it receives additional comments.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).<sup>11</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Commission finds that the approval of DTC's rule change is consistent with this section because it will allow DTC to provide to OCC settlement of stock loan transactions which will settle through the Look-Ahead process and will achieve a more efficient level of straight-through processing.

DTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC to implement the proposed rule change by the end of January 2009 when OCC plans to commence its proposed Market Loan Program in which OCC will act as a central counterparty for stock loan transactions.

#### **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-2008-15 on the subject line.

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

### Paper Comments

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

All submissions should refer to File Number SR-DTC-2008-15. 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, 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 and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2008/dtc/2008-15.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008-15.pdf). 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-2008-15 and should be submitted on or before February 20, 2009.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-DTC-2008-15) be and hereby is approved.<sup>13</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59287; File No. SR-ISE-2006-26]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Professional Account Holders

January 23, 2009.

#### I. Introduction

On May 5, 2006, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to amend ISE rules to give certain non-broker-dealer orders, identified as "professional orders," the priority given broker-dealer orders and market maker quotes rather than the priority currently given all public customer orders and to charge the same transaction fees for professional orders as charged for the orders of broker-dealers and market makers. On January 25, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 7, 2008.<sup>3</sup> The Commission received ten comment letters on the proposal.<sup>4</sup> The Exchange filed Amendment No. 2 to the proposed rule change on June 17, 2008,<sup>5</sup> and submitted a response to the SIFMA

<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. 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) ("Notice").

<sup>4</sup> See letters from Abe Lampert, dated May 25, 2006 ("Lampert Letter"); Charles B. Cox III, dated May 26, 2006 ("Cox Letter I"); B. Thomas Rule, dated May 28, 2006 ("Rule Letter"); Bryan Weisberg, dated May 31, 2006 ("Weisberg Letter"); Andrea Schneider, dated June 18, 2006 ("A. Schneider Letter"); Gerald Schneider, dated February 6, 2008 ("G. Schneider Letter"); Andrew Carr, dated March 4, 2008 ("Carr Letter"); Charles B. Cox III, dated March 4, 2008 ("Cox Letter II"); Charles B. Cox III, dated April 16, 2008 ("Cox Letter III"); and Securities Industry and Financial Markets Association ("SIFMA"), dated July 23, 2008 ("SIFMA Letter").

<sup>5</sup> In Amendment No. 2, ISE deleted proposed changes to ISE Rules 715 and 723 (d)(2). These revisions clarify that the proposed rule change would not limit a Public Customer's access to the Exchange's Price Improvement Mechanism ("PIM"). See *infra* note 75.

Letter on January 12, 2009.<sup>6</sup> This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

#### II. Description of ISE's Proposal

Currently, ISE grants certain advantages to Public Customer Orders<sup>7</sup> over Non-Customer Orders.<sup>8</sup> In particular, Public Customer Orders receive priority over Non-Customer Orders and market maker quotes at the same price. In addition, subject to certain exceptions, Public Customer Orders do not incur transaction charges.<sup>9</sup> The ISE states that the purpose, generally, of providing these marketplace advantages to Public Customer Orders is to attract retail investor order flow to the Exchange by leveling the playing field for retail investors over market professionals and providing competitive pricing.<sup>10</sup> According to the Exchange, market professionals have access to sophisticated trading systems that contain functionality not available to a retail customer, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously, and order and risk management tools.<sup>11</sup>

With respect to the marketplace advantages of priority in trading and waiver of fees, the Exchange does not believe at this time that the definitions of Public Customer and Non-Customer properly distinguish between the kind of non-professional retail investors for whom these advantages were intended and certain professionals. The Exchange believes that distinguishing solely between registered broker-dealers and non-broker-dealers with respect to these

<sup>6</sup> See letter from Michael J. Simon, Secretary, ISE, to Florence Harmon, Acting Secretary, Commission, dated January 12, 2009 ("ISE Response Letter").

<sup>7</sup> A "Public Customer" is defined in ISE's rules as "a person that is not a broker or dealer in securities." A "Public Customer Order" is defined as "an order for the account of a Public Customer." ISE Rules 100(a)(38) and (39).

<sup>8</sup> A "Non-Customer" is defined in ISE's rules as "a person or entity that is a broker or dealer in securities." A "Non-Customer Order" is defined as "any order that is not a Public Customer Order." ISE Rules 100(a)(27) and (28).

<sup>9</sup> For example, Public Customer Orders currently incur fees for certain transactions in "Premium Products" (defined in the ISE Schedule of Fees) and Complex Orders that take liquidity on the Exchange's complex order book. In addition, transaction fees are charged for Public Customer Orders entered in response to special order broadcasts, such as Facilitation orders, Solicitation orders, Block orders, and orders entered in the Exchange's PIM. Public Customer Orders also are subject to fees for order cancellations. See ISE Schedule of Fees.

<sup>10</sup> See Notice, *supra* note 3, at 73 FR 7346.

<sup>11</sup> See Notice, *supra* note 3, at 73 FR 7346 n.7.