

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60594; File No. SR-DTC-2009-11]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Eliminate One of the Indemnity Surety Programs in the Profile Modification System

August 31, 2009.

#### I. Introduction

On June 11, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on July 20, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change eliminates one of the Indemnity Surety Programs ("PSP II") of DTC's Profile Modification System ("Profile").<sup>3</sup>

On April 19, 2000, the Commission approved a DTC rule filing to establish Profile,<sup>4</sup> an electronic communication system between transfer agents that are Direct Registration System ("DRS") Limited Participants ("Limited Participants") and broker-dealers that are DRS Participants ("Participants"). In May 2000, DTC implemented Profile. Profile allows Participants to submit electronically an instruction to move a share position from an account at the Limited Participant to the Participant's account at DTC ("Electronic Participant Instruction"). Profile also allows Limited Participants to submit an instruction for the movement of a share

position from a Participant's account at DTC to an account at the Limited Participant ("Electronic Limited Participant Instruction;" together with Electronic Participant Instruction, "Electronic Instruction"). A Participant or Limited Participant submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System ("PTS") screen indemnity ("Screen Indemnity").

On November 17, 2000, the Commission approved a DTC rule filing to establish the Profile Indemnity Surety Program ("PSP").<sup>5</sup> Under PSP, all users of Profile that agree to the Screen Indemnity as part of their use of Profile must procure a surety bond ("Surety Bond") to back the representations under the Screen Indemnity.<sup>6</sup>

On June 26, 2008, the Commission approved a DTC rule filing to establish PSP II,<sup>7</sup> which provides for a coverage limit of \$7.5 million per transaction with an annual aggregate limit of \$15 million. Users of PSP II are required to pay an annual premium of \$6,000 to a surety provider and a DTC administration fee of \$250.

On June 3, 2009, the Commission approved a DTC rule filing to establish a new Profile Indemnity Insurance Program ("PIP II") to replace PSP II.<sup>8</sup> PIP II will account for the additional, larger value Profile transactions that DRS currently handles by providing the same coverage limits (*i.e.*, \$7.5 million per transaction with an annual aggregate limit of \$15 million) at the same annual premium (*i.e.*, \$6,000 to a provider and a \$250 administration fee to DTC) as PSP II without requiring users of Profile to procure a surety bond. Since PIP II

will perform the same function of PSP II, DTC is eliminating PSP II.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>9</sup> which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-DTC-2009-11) be, and hereby is, approved.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60610; File No. SR-BX-2009-058]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

<sup>12</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>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> Securities Exchange Act Release No. 43586 (Nov. 17, 2000), 65 FR 70745 (Nov. 27, 2000) [File No. SR-DTC-2000-09].

<sup>6</sup> Participation in PSP requires the payment of an annual premium of \$3,150 to a surety provider and an administration fee of \$250 to DTC. The PSP surety provider provides for a coverage limit of \$3 million per transaction with an annual aggregate limit of \$6 million. On September 14, 2005, the Commission approved a DTC rule filing to establish the Profile Indemnity Insurance Program ("PIP"), which serves as an alternative to PSP. Securities Exchange Act Release No. 52422 (Sept. 14, 2005), 70 FR 55196 (Sept. 20, 2005) [File No. SR-DTC-2005-11]. PIP allows users of Profile that agree to the Screen Indemnity have the option to procure insurance relating to a particular securities transaction according to the value of the securities transaction. PIP provides a coverage limit of \$25 million per transaction with an annual aggregate limit of \$100 million. In addition to any pass-through fee from the insurer, DTC charges users participating in PIP an annual administration fee of \$250 and a per transaction fee of \$27.50.

<sup>7</sup> Securities Exchange Act Release No. 58042 (Jun. 26, 2008), 73 FR 39067 (July 8, 2008) [File No. SR-DTC-2008-04].

<sup>8</sup> Securities Exchange Act Release No. 60036 (Jun. 3, 2009) 74 FR 28085 (Jun. 12, 2009) [File No. DTC-2009-09].

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

<sup>2</sup> Securities Exchange Act Release No. 60304 (Jul. 14, 2009), 74 FR 35221.

<sup>3</sup> DTC has created a Profile Indemnity Insurance Program ("PIP II") to replace the PSP II. Securities Exchange Act Release No. 60036 (Jun. 3, 2009), 74 FR 28085 (Jun. 12, 2009) [File No. SR-DTC-2009-09].

<sup>4</sup> Securities Exchange Act Release No. 42704 (Apr. 19, 2000), 65 FR 24242 (Apr. 25, 2000) [File No. SR-DTC-2000-04].