

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61593; File No. SR-DTC-2009-17]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Allow The Depository Trust Company To Provide Settlement Services to European Central Counterparty Limited for U.S. Securities Traded on European Trading Venues

February 25, 2010.

I. Introduction

On December 17, 2009, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-DTC-2009-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the **Federal Register** on January 5, 2010.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

European Central Counterparty Limited (“EuroCCP”) is a clearing house recognized by the United Kingdom and regulated by the Financial Services Authority (“FSA”). It provides central counterparty clearance and settlement services to its participants for their securities transactions executed on or through European trading venues. Several of the trading platforms EuroCCP services asked EuroCCP to clear and settle trades in U.S. equities, Exchange Traded Funds (“ETFs”), and American Depositary Receipts (“ADRs”) (collectively, “U.S. Securities”) that are executed on or through them.³ Trades in these securities will be routed to EuroCCP through existing interfaces with the trading platforms and will be novated and netted in accordance with EuroCCP’s Rules and Procedures. DTC will notify Participants by Important Notice of the effective date of the service. EuroCCP will employ its current trade day netting methodology to produce each day for each of its participants in the EuroCCP U.S. Program a single settlement obligation for each U.S. Security.⁴

Under the EuroCCP U.S. Program, EuroCCP will use DTC’s settlement services for these netted securities obligations by opening and operating an account at DTC. Each EuroCCP participant in the EuroCCP U.S. Program will be required to appoint a DTC participant U.S. settlement agent to settle obligations on its behalf.⁵ EuroCCP will be subject to the same net debit cap⁶ and collateral monitor (“Risk Management Controls”)⁷ as any other DTC participant.

DTC is modifying its Settlement Service Guide in three ways to maximize settlement efficiencies for DTC participants acting as U.S. settlement agents in the EuroCCP U.S. Program. First, reclaims to EuroCCP’s account will not be “matched”. A reclaim is an instruction from a participant to DTC to return a delivery. It is generally used in the event of an error where a participant does not recognize the delivery. DTC’s systems attempt to identify a corresponding original transaction for every reclaim presented for processing. If DTC’s systems identify a corresponding original transaction, the reclaim is processed.⁸

Under DTC’s existing Settlement Service Guide procedures, a matched reclaim for less than \$15 million is not subject to DTC’s risk management controls. As a result a matched reclaim to EuroCCP for less than \$15 million would not be subject to DTC’s risk

management controls for EuroCCP’s account and could create a debit in the EuroCCP account that could exceed EuroCCP’s liquidity resources and cause EuroCCP to be unable to complete settlement with DTC. To avoid this outcome, DTC is changing its procedures so that all reclaims to the EuroCCP account, including matched reclaims under \$15 million, will be subject to DTC’s risk management controls. Consequently, all reclaims violating EuroCCP’s net debit cap or collateral monitor will recycle until the reclaim can settle without violating the risk management controls or until the reclaim drops at the recycle cutoff.⁹ This is how DTC currently treats reclaims that are over \$15 million dollars.

Second, DTC is modifying its Settlement Service Guide so that pending valued transactions and pending free transactions to or from the EuroCCP account will fail to settle or “drop”¹⁰ at 3:10 p.m.¹¹ This cutoff time will allow EuroCCP to close its business day.

Third, the Receiver Authorized Delivery (“RAD”) cutoff time will be 3:30 p.m. for both valued transactions and free delivery transactions.¹² DTC’s current RAD deadline for valued transactions is 3:30 p.m., and the RAD deadline for free delivery transactions is 6:30 p.m. To allow EuroCCP to halt transaction processing in the EuroCCP account and end its processing day, DTC will require a synchronized RAD cutoff time of 3:30 p.m.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act¹³ and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes that the amendments DTC is making to its rules in connection to it providing settlement services to EuroCCP for U.S. Securities traded on European trading venues are consistent with DTC’s obligations under

⁵ EuroCCP will be given a reason code for the transactions it processes through its DTC account. As part of this filing, DTC proposes updating its Settlement Service Guide to reflect this reason code. In addition, DTC will update the language in the Memo Segregation section of the Settlement Service Guide and the reason codes that receive Memo Segregation treatment to reflect this reason code and to reflect certain other technical, non-substantive changes to the reason codes.

⁶ Before completing a transaction in which a participant is the receiver, DTC calculates the resulting effect the transaction would have on the participant’s account to determine whether the resulting net settlement balance would exceed the participant’s assigned net debit cap. Any transaction that would cause the participant’s net settlement debit to exceed its net debit cap is placed in a pending queue that recycles until another transaction or payment creates credits in the participant’s account such that the participant’s net settlement debit is below its net debit cap.

⁷ DTC tracks collateral in a participant’s account through its collateral monitor. At all times, the collateral monitor reflects the amount by which the collateral in the account exceeds the net debit in the account. When processing a transaction, DTC verifies that the deliverer’s and receiver’s collateral monitors will not become negative when the transaction completes. If the transaction would cause either party to have a negative collateral monitor, the transaction will recycle until the deficient account has sufficient collateral.

⁸ The following seven elements must be consistent for the system to process a reclaim as matched: Receiver, deliverer, CUSIP, quantity, dollar amount, shares, and settlement date.

⁹ If the reclaim drops at the recycle cutoff, then the receiving participant will retain the securities and the debit for the delivery it received from EuroCCP.

¹⁰ Items that will drop will include deliveries to EuroCCP failing due to lack of position by the delivering participant and items failing DTC’s risk management controls.

¹¹ DTC’s current cutoff time for pending valued transactions is 3:10 p.m. and for pending free transactions is 6:35 p.m.

¹² RAD is a control mechanism which allows a participant to review transactions prior to completion of processing. It limits the exposure from misdirected or erroneously entered deliver orders, payment orders, and pledges.

¹³ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 61249 (December 29, 2009), 75 FR 0947.

³ The trading platforms will support trading activity of U.S. issues in U.S. dollars. The platforms currently operate from 8 a.m. to 4:30 p.m. London time.

⁴ Each single settlement obligation calculated by EuroCCP will settle at DTC on T+3.

Section 17A(b)(3)(F),¹⁴ which requires, among other things, that the rules of a clearing agency are designed to provide for the safekeeping of securities and funds under its possession or control or for which it is responsible.

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 Act¹⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (File No. SR-DTC-2009-17) be, and hereby is, approved.¹⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-4457 Filed 3-3-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61590; File No. SR-Phlx-2009-113]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Approval of Proposed Rule Change Relating to Index Option Position Limits

February 25, 2010.

On December 29, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the position limits for certain narrow-based (industry) index option contracts. The Commission published the proposed rule change for comment in the **Federal Register** on January 19, 2010.³ The Commission received no comments on the proposed

rule change. This order approves the proposed rule change.

The Exchange proposes to revise the three tiered levels of position limits that are set forth in Phlx Rule 1001A by increasing those limits for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, PHLX Utility Sector, PHLX Gold/Silver Sector, PHLX Housing Sector, SIG Energy MLP Index, SIG Oil Exploration & Production Index, and the NASDAQ China Index (collectively, the “Specified Index Options”).⁴ Currently, the Specified Index Options are subject to position limits of 18,000, 24,000, or 31,500 contracts based generally on the degree of concentration of a single component stock or groups of component stocks comprising the index.⁵ The Exchange proposes to increase these limits to 54,000, 72,000, and 94,500 contracts, respectively, for the Specified Index Options. In addition, the Exchange proposes to delete certain obsolete references in Rule 1001A.⁶

The Exchange states that it recognizes that the purpose of position limits is to prevent manipulation and protect against disruption of the markets for both the option as well as the underlying security. The Exchange states that it has considered the effects of increased position limits for the Specified Index Options on the marketplace, and believes that manipulation and disruption concerns are addressed by a combination of existing surveillance functions and the implementation of tiered position limits.

The Commission finds that the proposed rule change is consistent with

⁴ The SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

⁵ Specifically, Phlx Rule 1001A(b)(i) currently provides for the following position limits for narrow-based index options: (1) 18,000 contracts if the Exchange determines that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the semi-annual review of the pertinent index option required by Phlx Rule 1001A(b)(ii); (2) 24,000 contracts if the Exchange determines, at the time of the required semi-annual review, that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or (3) 31,500 contracts if the Exchange determines that the conditions specified above which would require the establishment of a lower limit have not occurred. In addition, the rule provides that position limits with respect to options on the KBW Bank Index are 44,000 contracts.

⁶ Phlx exercise limits in Phlx Rule 1002A, Exercise Limits, are established by reference to position limits. The proposed increase in position limits for the Specified Index Options would therefore effectively increase exercise limits for these options. See Phlx Rule 1002A.

the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁷ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the 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 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 believes that the Exchange’s proposal to increase the three tiered levels of position limits for the Specified Index Options is reasonable. Specifically, the Commission believes that increasing the three tiered levels of position limits for the Specified Index Options may bring additional depth and liquidity to these index options classes without significantly increasing concerns regarding manipulation or disruption of the market for index options or the underlying component securities.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Phlx-2009-113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-4458 Filed 3-3-10; 8:45 am]

BILLING CODE 8011-01-P

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

⁹ The Exchange states that it dedicates substantial resources to monitoring the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits, and that the proposed increased position limits would not diminish the surveillance function in this regard. See Notice, *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 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).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61326 (January 11, 2010), 75 FR 2902 (“Notice”).