

within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-093 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-NASDAQ-2012-093. This file number should be included on the subject line if email 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 Web site viewing and printing 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 offices of NASDAQ. 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-NASDAQ-2012-093, and should be submitted on or before August 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67602; File No. SR-ISE-2012-52]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change To Allow Competitive Market Makers To Use Their Membership Points To Enter Multiple Quotes in an Options Class

August 6, 2012.

#### I. Introduction

On June 6, 2012, International Securities Exchange, LLC ("Exchange" or "ISE") 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 allow Competitive Market Makers ("CMMs") to use their membership points to enter multiple quotes in an options class. The proposed rule change was published for comment in the **Federal Register** on June 25, 2012.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange's structure of CMM appointments allows market makers flexibility in choosing the options classes to which they are appointed.<sup>4</sup> On a quarterly basis, the Exchange assigns point values to options classes based on their percentage of overall industry volume (not including exclusively traded index options).<sup>5</sup> A

<sup>8</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> See Securities Exchange Act Release No. 67216 (June 19, 2012), 77 FR 37944.

<sup>4</sup> See Securities Exchange Act Release Nos. 65534 (October 12, 2011), 76 FR 64417 (October 18, 2011)(SR-ISE-2011-58); and 65100 (Aug. 11, 2011), 76 FR 51075 (Aug. 17, 2011).

<sup>5</sup> See ISE Rule 802(c)(1).

CMM is allowed to seek appointments to options classes that total twenty points for the first CMM trading right owned or leased by a member, and ten points for each subsequent CMM trading right owned or leased by the same member.<sup>6</sup>

The Exchange proposes to adopt .03 of the Supplementary Material to Rule 802 (Appointment of Market Makers) to allow CMMs to seek appointment to options classes in which it or an affiliated market maker holds a CMM or Primary Market Maker appointment. Thus, the proposed rule would allow CMMs to use their membership points to enter multiple quotes in an options class, provided that such Member has sufficient CMM points for each such appointment. The Exchange states that the quoting requirements for CMMs would be applicable to each set of quotes that the CMM enters, and CMMs will not be permitted to aggregate multiple quotes in an options class in order to meet the quoting requirements under ISE rules.

#### III. Discussion and Commission Findings

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 national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> 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 proposal allows CMMs to seek appointment to options classes in which it or an affiliated market maker holds a CMM or Primary Market Maker appointment. The Commission believes that the proposal is consistent with the Act. The Commission notes that the proposal should allow CMMs more flexibility in using their membership points. The proposal may also promote

<sup>6</sup> CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. See ISE Rule 802(d).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

competition by increasing the number of competitive quotes in options classes traded on the Exchange. Moreover, the Commission notes that according to the ISE, each set of CMM quotes will have independent quoting obligations, and thus CMMs cannot aggregate multiple quotes in an options class to meet its quoting requirements under the ISE rules. The Exchange will run surveillance on each set of quotes for compliance with the quoting obligations of market makers, ISE Rules, and the Exchange Act.<sup>9</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2012-52), be, and hereby is, approved.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-19613 Filed 8-9-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67599; File No. SR-DTC-2012-03]

### Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Implement a Change in the Practices of the Depository Trust Company as They Relate to Post-Payable Adjustments

August 6, 2012.

#### I. Introduction

On April 25, 2012, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-DTC-2012-03 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

<sup>9</sup> See Telephone conversation between Katherine Simmons (“Katherine Simmons”), Deputy General Counsel, ISE, and John C. Roeser, Assistant Director, and David A. Garcia, Attorney-Advisor, Division of Trading and Markets (“Division”), Commission, on June 21, 2012; Telephone conversation between Katherine Simmons and Susie Cho, Special Counsel, Division, Commission, on July 23, 2012.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

May 5, 2012.<sup>2</sup> The Commission received three comment letters on the proposal.<sup>3</sup> On June 11, 2012, DTC requested an extension to the deadline for action on the proposed rule change by the Commission and August 6, 2012 was designated as the new date by which the Commission would be required to take action. On July 26, 2012, DTC filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”). The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, and to approve the proposed rule change, as modified by Amendment No.1, on an accelerated basis.

#### II. Description of the Proposal

Historically, DTC has accommodated issuers and/or their agents (“Paying Agents”) by facilitating the collection and, in many cases, the reallocation of certain misapplied, misdirected, or miscalculated principal and income payments (“P&I”).<sup>4</sup> Under today’s practices, these types of post-payable adjustments can occur up to one year after the initial payment is made. As more fully discussed below, DTC has proposed a change in practice, which will allocate assignment of accountability appropriately and mitigate risk associated with the reallocation of such P&I.

#### Background

Several years ago, DTC formed a cross-industry working group to study the severity of P&I processing problems and to analyze possible solutions. The working group at that time focused mainly on the timeliness of rate information submitted to DTC by Paying Agents and recommended several changes to DTC’s Operational Arrangements. Those changes were approved by the Commission and implemented in 2008 (“2008 Changes”).<sup>5</sup> Implementation of the 2008 Changes resulted in a 75% decrease in

<sup>2</sup> Securities Exchange Act Release No. 34-66894 (May 1, 2012), 77 FR 26796 (May 5, 2012).

<sup>3</sup> Letter from Dan W. Schneider, Counsel and Secretariat to The Association of Global Custodians, to Elizabeth M. Murray (sic), Secretary, Commission (May 29, 2012); letter from Cristeena G. Nasser, Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association, to Elizabeth M. Murphy, Secretary, Commission (May 31, 2011); and letter from Stephen M. Renna, Chief Executive Officer, CRE Financial Council, to Elizabeth M. Murray (sic), Secretary, Commission (June 29, 2012).

<sup>4</sup> P&I include Principal Pass-Thru payments, Full Calls, Partial Calls, Maturities, Pre-Refundings and all interest and dividend payments.

<sup>5</sup> Securities Exchange Act Release Numbers 34-57542 (March 20, 2008) 73 FR 16403 (March 27, 2008) (File No. SR-DTC-07-11).

late submission of rate information and a significant increase in the allocation of P&I on payment date. More recently, the working group has suggested that, among other things, DTC create a time limit for processing post-payable adjustments received from Paying Agents.

Under current practice, DTC will process post-payable adjustments received from Paying Agents for up to one year after the initial payment is made. After DTC processes the debits and credits for the misapplied P&I, DTC participants must process trade adjustments against any customer who traded the security since the error occurred. Participants must also process adjustments to their customers’ accounts for the misapplied principal and associated interest. DTC has been requested a number of times by the Association of Global Custodians (“AGC”) to focus more closely on the risks associated with income adjustments and to look for ways to reduce that risk.<sup>6</sup>

#### The Proposed Changes

In an effort to mitigate the risks associated with post-payable adjustments, DTC created the Post Payable Adjustment Task Force (“Task Force”). The Task Force is made up of Paying Agents and representative members of the AGC, the American Bankers Association, and the Corporate Actions division of the Securities Industry and Financial Markets Association. The Task Force has reviewed the current payments environment and proposed changes that will both reduce the volume of post-payable adjustments and the risks inherent in processing these adjustments in the future. The open participation by all segments of the industry has started to bring greater transparency to both challenges and pain points, which affect the entire industry. DTC recognizes that solutions will require some time to implement and for that reason is proposing the following staggered implementation plan, which has been approved by the Task Force:

1. Effective January 1, 2013:
  - a. DTC will require that all new issues submitted to DTC for issue eligibility

<sup>6</sup> In fact, AGC’s recommendation was to adopt a new practice in which DTC would state that: (i) misapplied, misdirected, or miscalculated principal payments must be reversed within two business days after the initial payment; and (ii) misapplied, misdirected, or miscalculated interest payments and cash dividend payments must be reversed within seven business days after payment. However, at this time, DTC is establishing an interim policy, which will put it closer to such an end state.