

arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-CBOE-2004-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-23. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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-CBOE-2004-23 and should be submitted on or before May 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49618; File No. SR-DTC-2003-12]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to the Processing of Maturity Presentments in DTC's Money Market Instrument Program

April 26, 2004.

On September 30, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-DTC-2003-12 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on November 19, 2003.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of this filing is to allow DTC to implement new procedures regarding the processing of Maturity Presentments ("MP") to its Money Market Instrument ("MMI") Program.³ Specifically, the new procedures allow DTC to implement an alignment approach in processing MPs and will allow an Issuing/Paying Agent ("IPA") to assign processing priorities to the MMI issuers for which the IPA acts as agent.

Under DTC's current procedures for the processing of MPs, early on the maturity date (generally around 2 a.m. eastern standard time) DTC initiates deliveries of the maturing paper from the accounts of participants having positions in the maturing paper to the MMI participant account of the IPA. Each MP is processed as the equivalent of a book-entry delivery-versus-payment transfer. As such, MPs "recycle" just as any delivery would if the net debit cap or collateralization controls applicable to an IPA's account prevent the delivery from updating (*i.e.*, being completed). Recycling MPs update once additional funds (*e.g.*, from intraday settlement progress payments ("SPP") or from new

issuances) are credited to the IPA's account.

With the exception of a recent DTC rule change enabling an IPA to target settlement credits from an SPP to a specific issuer's maturity presentments, MPs update on a random basis.⁴ There is no provision in DTC's current procedures enabling an IPA to assure that the recycling MPs of a specific issuer update by allocating to that issuer's MPs all or a specified portion of the IPA's net debit cap or by applying new issuance settlement credits of a specific issuer to that issuer's MPs. By the same token, because of the random nature of MP processing, the IPA is unable to prevent a portion of its net debit cap as well as any "excess" or "residual" credits from being used to update the MPs of an issuer to which the IPA would prefer not to extend credit.⁵

The rule change provides for the application of new issuance settlement credits to the MPs of the same issuer on a best efforts basis and would give IPAs the option to prioritize the order and manner in which MPs are processed, including the option to designate an issuer as self-funding.⁶ Systemically, it is DTC's intention to align activities within the MMI system so that monies from Issuer A's credits are generally applied to Issuer A's MPs, subject to existing collateral monitor and net debit controls.

Under the alignment approach, once an IPA has incurred a net debit up to its applicable net debit cap (or the IPA's collateral is fully used), subsequent MPs presented to the IPA's account will still recycle as they do today. When an IPA processes a new issuance of an MMI into the system and the issuance transaction updates into the receiving participant's account, the resulting credit will then become available in the

⁴ Securities Exchange Act Release No. 48145 (July 9, 2003), 68 FR 42442 (July 17, 2003) [File No. SR-DTC-2003-03] (proposed rule change allowing DTC to modify its settlement progress payment procedures to allow DTC participants to direct proceeds from a specific SPP be used to fund a particular transaction).

⁵ "Excess" credits refer to credits resulting from an issuer's new issuances that exceed that issuer's offsetting MPs, SPPs that are not targeted to a specific issuer's MPs, and any unallocated net debit cap. "Residual" credits refer to credit balances from new issuances and targeted SPPs that are not large enough to completely offset the same issuer's MPs.

⁶ IPAs will be able to prioritize between issuers by using new Participant Terminal System ("PTS") functions. IPAs logged into DTC's MMII PTS function would select "Issuer Priority Control" to access the main menu of IPA-issuer options. This new functionality would allow IPAs to select which issuers' MPs would recycle at the bottom of the ATP queue, perform an issuer control inquiry on selected issuers, maintain an audit trail for selected issuers, and inquire about MPs for selected issuers.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 48775 (November 12, 2003), 68 FR 65333 (November 19, 2003).

³ The references to maturity presentments are intended to cover, in addition to MPs, other payment obligations of MMI issuers, such as periodic principal payments and periodic interest payments.

¹⁴ 17 CFR 200.30-3(a)(12).

IPA's account to fund a recycling MP. At that time, the revised MMI system will inquire against the queue of recycling MPs to determine if there is an MP for the same issuer with the same base CUSIP that could be processed against the available credit. Once the appropriate MP is identified, that MP will be taken off the recycle queue and will be processed into the IPA's account. As further issuances for that issuer occur, additional MPs for the issuer will be processed so that MP processing will remain in rough alignment with the related issuance activity. If no offsetting MP is available in the recycle queue, the credit would be applied to an MP from another issuer, as is the case today, to make use of the available liquidity in the IPA's settlement account.

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. The rule change addresses concerns that IPAs have raised about the random nature of DTC's process for updating maturity presentments by providing IPAs with the means to exercise greater control of their intra-day liquidity requirements and credit risks.

II. Discussion

Section 17A(b)(3)(F) ⁷ of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By implementing a targeted, rather than random, processing methodology that provides for a better correlation of MP activity with issuance activity, DTC's proposed rule change will enable IPAs to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-DTC-2003-12) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49602; File No. SR-ISE-2003-26]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval to a Proposed Rule Change by the International Securities Exchange, Inc. To Amend Its Rules Governing Limits on the Entry of Orders of Less Than Ten Contracts and Revising the Quotation Size Requirements for Market Makers

April 22, 2004.

On October 14, 2003, the International Securities Exchange, Inc. ("ISE" 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 repeal the limits on the entry of orders and revise the quotation requirements of market makers. On January 13, 2004, the ISE filed Amendment No. 1 to the proposed rule change.³ On January 30, 2004, the ISE filed Amendment No. 2 to the proposed rule change.⁴ On March 8, 2004, the ISE filed Amendment No. 3 to the proposed rule change.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 17, 2004.⁶ The

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 12, 2004 ("Amendment No. 1").

⁴ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 29, 2004. ("Amendment No. 2").

⁵ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 5, 2004. ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 49393 (March 10, 2004), 69 FR 12724.

Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change revises the ISE's restrictions on the entry of orders of less than 10 contracts, along with related market maker quotation requirements. Specifically, the proposed rule change removes the prohibition on Electronic Access Members ("EAMs") submitting orders for non-customers that cause the ISE's best bid and offer ("BBO") to be for less than 10 contracts, and removes the prohibition on EAMs entering multiple orders for the same trading interest if one or more orders are for less than 10 contracts. Further, the proposed rule change repeals the obligation of the Primary Market Maker ("PMM") either to "trade out" customer orders of less than 10 contracts or "derive" additional size to maintain a 10-contract displayed size. PMMs must continue, however, to "derive" size by buying or selling the number of contracts needed to maintain a firm quote for at least 10 contracts to incoming orders from the Options Market Linkage. Finally, the proposed rule change repeals the requirement that market makers refresh their quotations if there is an execution that results in the size of the ISE's BBO falling below 10 contracts. The proposed rule change, however, retains the obligation that market makers initially enter quotations for a size of at least 10 contracts, which the ISE believes is a necessary obligation for market makers to provide reasonable liquidity to the market place.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange ⁷ and, in particular, the requirements of section 6 of the Act⁸ and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ which, among other things, requires that the ISE's 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.

The Commission believes that the proposed rule change, as amended,

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78q-1(b)(3)(F).