

may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because CBOE is proposing to merge educational material into the sales literature category,¹⁶ this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposes to redesignate Section D of Interpretation and Policy .04 as proposed Interpretation and Policy .04. The Exchange proposes to delete Sections E and F of Interpretation and Policy .04. The Exchange believes Section E is unnecessary because worksheets are included in the definition of "Sales Literature." The Exchange believes Section F is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 9.21(b)(iv).

2. Statutory Basis

The proposed amendments to Exchange Rule 9.21 would reflect the exemption from the provisions of the Securities Act (other than the anti-fraud provisions) for standardized options that are traded on a registered national securities exchange or on a registered national securities association and would update and reorganize the rule. The proposed amendments to Exchange Rule 9.21 are consistent with Section 6(b) of the Exchange Act¹⁷ in general and would further the objectives of Section 6(b)(5)¹⁸ in particular in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by providing the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between CBOE's and other SROs' options communications rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be 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 Exchange 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-2007-30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2007-30. 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 Room, 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 the Exchange. 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-2007-30 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58122; File No. SR-DTC-2007-07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Applicant Disqualification Criteria Contained in Its Rules

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on April 30, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), and on February 7, 2008, and March 18, 2008, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change seeks to amend the applicant disqualification criteria contained in DTC's rules in an effort to harmonize them with similar rules of DTC's affiliates, National Securities Clearing Corporation

¹⁶ See Proposed Rule 9.21(a)(ii).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

("NSCC") and Fixed Income Clearing Corporation ("FICC").

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.³

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

(1) Statutory Disqualification

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants and defines certain criteria that may disqualify an applicant from participation. While the factors that may disqualify an applicant are generally consistent among DTC, FICC, and NSCC rules, DTC's rules do not specifically reference an order of statutory disqualification as defined in Section 3(a)(39) of the Act⁴ among its disqualification criteria.⁵ To promote uniformity among the rules of DTC and its affiliates, DTC is proposing to add such a provision to its rules.

(2) Associated Persons

DTC rules include applicant disqualification criteria for persons and/or entities "associated" with the applicant firm. Because it is not easily ascertainable as to what entities or individuals are "associated" with a particular entity, DTC is proposing to amend these provisions in its rules so that they are consistent with internal surveillance procedures. DTC proposes to change references to persons "associated" with the applicant to references to "controlling management," which shall be defined to mean the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or their equivalents. These are the officers that are currently screened by DTC's risk management pursuant to internal procedures. Finally, DTC proposes to add language to its rules that would

require applicants to inform DTC as to any member of its controlling management that is or becomes subject to statutory disqualification.

(3) Amendment to Willful Violation

DTC rules currently include as a disqualification criterion the applicant's or an associated person's "willful" violation of the Securities Act of 1933,⁶ the Act, the Investment Company Act of 1940,⁷ the Investment Advisors Act of 1940,⁸ or any rule or regulation promulgated thereunder. DTC proposes to remove the word "willful" from this provision because DTC believes that any violation of these provisions should be a disqualification criterion.

Changes similar to those outlined in sections (1), (2), and (3) above will be made to DTC Rule 10, "Discretionary Termination."

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder because the proposed changes provide transparency with respect to the applicant and member disqualification criteria in DTC rules and uniformity with NSCC and FICC rules and thereby promote the prompt and accurate clearance and settlement of securities transactions.

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

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

(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 of any written comments received by DTC.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2007-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-DTC-2007-07. 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 filings 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/2007/dtc/2007-07.pdf, http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-07-amendment.pdf, and http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-07-amendment2.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ 15 U.S.C. 78c(a)(39).

⁵ As a clearing agency registered under the Act, DTC must evaluate those members subject to an order of statutory disqualification as defined in the Act.

⁶ 15 U.S.C. 77a *et seq.*

⁷ 15 U.S.C. 80a-1 *et seq.*

⁸ 15 U.S.C. 80b-1 *et seq.*

⁹ 15 U.S.C. 78q-1.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2007-07 and should be submitted on or before August 6, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58124; File No. SR-FINRA-2008-031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Arbitration Uniform Submission Agreement and Related Rules

July 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") on June 19, 2008, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA Dispute Resolution. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA Dispute Resolution is proposing to amend the Uniform Submission Agreement ("USA"), which parties must sign prior to entering into arbitration, and certain rules of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") that contain references to the agreement. The proposed revisions to the USA would: (1) Clarify what the parties are attesting to when they execute the USA; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert the USA to a FINRA-specific

agreement; and (4) use plain English to make the agreement easier to read.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038800.pdf. The text of the proposed Submission Agreement is available at FINRA, the Commission's Public Reference Room, and http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p038817.pdf.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(a) Purpose

The USA is an agreement that claimants and respondents (hereinafter, collectively referred to as "parties") must sign prior to entering into arbitration. Rule 12302(a) of the Customer Code and Rule 13302(a) of the Industry Code require a claimant to file a signed and dated USA and a statement of claim to initiate an arbitration. Similarly, Rule 12303(a) of the Customer Code and Rule 13303(a) of the Industry Code require a respondent to directly serve each other party with a signed and dated USA and an answer within 45 days of receipt of the statement of claim. By signing the USA, the parties agree to submit to the arbitration process, and to be bound by the determination that may be rendered by the arbitrator(s).

FINRA proposes to amend the USA to: (1) Clarify what the parties are attesting to when they execute the agreement; (2) require parties to indicate in what capacity they are signing the agreement; (3) convert it to a FINRA-specific agreement; and (4) use plain English to make the agreement easier to read. FINRA also proposes to amend the rules of the Customer Code and the Industry Code that refer to the USA.

First, FINRA proposes to amend paragraph 2 of the USA to clarify what

the parties are attesting to when they execute the agreement. Currently, this section states that the parties have read the procedures and rules relating to arbitration. FINRA understands that few investors who are represented by counsel actually read the relevant self-regulatory organization (SRO) rules (such as the Customer Code). Rather, in most cases, these investors are relying on their attorneys or other representatives to know the rules. Thus, some investors have been reluctant to sign a statement that they have read all the relevant rules. In light of these concerns, FINRA is proposing to amend paragraph 2 to permit parties to certify that they or their representatives read the relevant procedures and rules and that the parties agree to be bound by them. FINRA believes that the provision as proposed to be amended would reflect more accurately what the parties are attesting to when they execute the USA. The new language would make clear that the parties themselves are bound by the procedures and rules, whether or not they read them personally.

Second, FINRA proposes to require that parties indicate in what capacity they are signing the agreement. Because the USA is a contract between the parties and FINRA's dispute resolution forum, FINRA must ensure that the parties entering the agreement have the authority or standing to sign the agreement. In those cases in which the signatory is not an individually named party, the signatory must state the capacity in which he or she is acting if other than an individual and sign in that capacity, so that FINRA can determine from the statement of claim and other supporting information whether he or she is authorized to enter the agreement. For example, a person signing as the trustee of a family trust would sign his or her name exactly as shown on the trust documents and then write "Trustee" on the line below the instruction "State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)." This change would simply formalize an existing practice. Currently, if a party fails to sign the USA in the capacity in which he or she is submitting the claim, FINRA classifies the claim as deficient, which can delay the arbitration and increase the party's costs. FINRA believes that the proposed change would clarify how the agreement must be signed, and should help expedite the processing of claims, thereby minimizing unnecessary delays and expenses that parties could incur.

Third, FINRA proposes to convert the USA into a FINRA-specific agreement.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.