

### 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-2009-031. 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 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-2009-031 and should be submitted on or before April 29, 2009.

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. 34-59627; File No. SR-NYSEAmex-2009-02]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Formally Adopting and Codifying Its Wireless Data Communications Initiatives

April 2, 2009.

*Correction:* In FR Document No. E9-7291, published on Wednesday, April 1, 2009, beginning on page 14834, third column, first paragraph, fifth line, the name of the exchange is corrected to read "NYSE Amex LLC".

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7973 Filed 4-7-09; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59695; File No. SR-DTC-2009-02]

#### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Implement a Maturity Presentment Pend Function to Replace the Maturity Presentment Contingency System

April 2, 2009.

##### I. Introduction

On January 13, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-02 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 February 19, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

##### II. Description

The proposed rule change implements a Maturity Presentment Pend function ("IPA MP Pend Function") that will replace the Maturity Presentment Contingency System.

##### A. Current MMI Maturity Payment Procedure: Maturity Presentment Contingency System

Currently, as part of DTC's Money Market Instrument ("MMI") program

maturity payment procedures, DTC sweeps maturing MMI positions from investors' custodians accounts and generates Maturity Presentments ("MPs")<sup>3</sup> to the designated Issuing Agent or Paying Agent's (collectively, "IPA") accounts. DTC debits the IPA's account by the amount of the maturity proceeds for settlement that day and credits the same amount to the investor's custodian account for payment that day. Because MPs are processed against an IPA's DTC account, IPAs may refuse to pay for a specific issuer's MP in the event that the issuer defaults on its obligation to the IPA. DTC allows IPAs to enter refusal to pay notifications through the Participant Terminal System ("PTS") until 3 p.m. Eastern Time on the date of maturity.<sup>4</sup>

Under extraordinary circumstances or in times of unusual market stress, DTC may use the Maturity Presentment Contingency System ("MPCS") after consultation with the Commission on the days following a disaster to allow IPAs to review and manually release MPs. IPAs are able to release MPs for processing on a CUSIP or issuer acronym level basis. At the close of settlement, MPs that have not been released are rolled into the next business day's processing queue for presentation along with that day's scheduled obligations. This process continues until all maturities are funded and the IPA releases the MP, the IPA notifies DTC of its refusal to pay, or the MPCS contingency procedure is terminated.

##### B. Proposed MMI Maturity Payment Procedure: Maturity Presentment Pend Function

DTC is enhancing its systems in order to provide IPAs the ability to monitor their credit exposure to MMI issuers. DTC's IPA MP Pend Function will enable IPAs to review and manually release MPs in the ordinary course of business. IPAs will have the ability to set the pend request anytime prior to the MP sweep or at any point during the day for unknown rate maturities, based on acronym, product type, or the issuer MMI base CUSIP number. Each day by

<sup>3</sup> References to MPs also cover other payment obligations of MMI issuers such as periodic payments and periodic interest payments.

<sup>4</sup> If the IPA refuses to pay, then DTC follows its Defaulting Issuer procedures, which include devaluing the collateral value of all of the defaulting issuer's MMI to zero, reversing all of the issuer's issuances and maturities processed that day, notifying DTC participants of the default, and blocking all further issuances by the issuer from entering DTC. If an IPA then contacts DTC to reverse the refusal to pay instruction, DTC undoes all the actions it took under its Defaulting Issuer procedures.

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

<sup>2</sup> Securities Exchange Act Release No. 59388 (Feb. 11, 2009), 74 FR 7714.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

3 p.m. Eastern Time, the IPA will be required to (1) release all items held in pend or (2) invoke its right to refuse to pay.<sup>5</sup> If the IPA takes no action by 3 p.m. Eastern Time, the pending items will be released by DTC for normal processing.

All MP Pend requests will be time-stamped and will be immediately effective. Participants with MMI positions will be able to ascertain which MPs have been placed in pend status by the IPA.

Each time it uses the IPA MP Pend Function to create a pend request or make a change to its profile, the IPA will be required to represent and warrant that it has authority to submit the request appearing on the IPA's screen and that it will either release the items held in pend by 3 p.m. Eastern Time on the date of maturity or by such time communicate to DTC that it refuses to pay. Additionally, the IPA must acknowledge that it understands and agrees that all MPs will be released for normal processing if it does not communicate its intention to refuse to pay DTC by 3 p.m. Eastern Time. In extraordinary circumstances, DTC will maintain its ability to set the pend request based on an issuer acronym, product, program, base number, or globally for all IPAs or for individual IPAs. In all circumstances, the IPA will maintain its right to notify DTC of its refusal to pay.

### 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>6</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>7</sup>

and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-DTC-2009-02) be, and hereby is, approved.<sup>9</sup>

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7977 Filed 4-7-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59684; File No. SR-NYSE-2009-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend Until August 31, 2009, the Application of the NYSE Arca Transfer Standard

April 1, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 17, 2009, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>4</sup> under the Exchange Act. 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

The Exchange proposes to amend Section 102.01C of the Listed Company Manual (the "Manual") to extend until August 31, 2009, the application of the special initial listing standard applicable only to companies that are listed on NYSE Arca, Inc. ("NYSE Arca").

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</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>3</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 15 U.S.C. 78a.

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary and at the Commission's Public Reference room.

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

In its filing with the Commission, the self-regulatory organization 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. The NYSE 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

###### 1. Purpose

Section 102.01C of the Manual includes an initial listing standard that is applicable only to companies that are listed on NYSE Arca, Inc. ("NYSE Arca") as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009 (the "NYSE Arca Transfer Standard").<sup>5</sup> The NYSE Arca Transfer Standard was adopted in connection with NYSE Euronext's business strategy of consolidating its equities listings on two of the three U.S. registered securities exchanges it owns—the NYSE and NYSE Alternext US LLC. As part of this transition, the Exchange wished to offer the opportunity to list on the NYSE to all suitable NYSE Arca companies. Most companies currently listed on NYSE Arca would meet the NYSE's continued listing requirements set forth in Section 802.01B of the Manual for companies listed under the Exchange's Earnings Test.<sup>6</sup> However, a number of these companies that meet the NYSE's continued listing standards do not qualify to list under any of the existing

<sup>5</sup> See Securities Exchange Act Release No. 58741 (October 6, 2008), 73 FR 60378 (October 10, 2008) (SR-NYSE-2008-97).

<sup>6</sup> Companies listed under the Earnings Test are considered to be below compliance standards if their average global market capitalization over a consecutive 30-trading-day period is less than \$75,000,000 and, at the same time, total stockholders' equity is less than \$75,000,000. In addition Section 802.01B requires all listed companies to maintain a minimum of \$25 million in global market capitalization and Section 802.01C requires all listed companies to maintain a \$1.00 minimum stock price.

<sup>5</sup> The IPA MP Pend Function differs from the MPSC in this regard. Under the MPSC system, IPAs are not required to release items or invoke their right to refuse to pay each day since the MPs not acted on are rolled over into the next business day's processing queue.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1.