

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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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-2008-109 and should be submitted on or before December 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Acting Secretary,*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58944; File No. SR-DTC-2008-09]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Expand DTC's Debit Cap Look-Ahead Processing

November 13, 2008.

#### I. Introduction

On September 12, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2008-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 7, 2008.<sup>2</sup> No

comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change amends the Look-Ahead Process in DTC's Settlement Services Guide to allow Money Market Issuance Deliveries pending for a Custodian's or Dealer's net debit cap to complete against Maturity Presentments pending for an Issuing/Paying Agent's net debit cap. DTC's processing system will calculate the net effect of the dollar amount of offsetting transactions in the accounts of the two Participants involved. If the net of the transactions result in positive risk management controls in those two accounts, the transactions will be completed.

On June 10, 2003, the Commission approved a proposed rule change to establish a transaction Look-Ahead Process which became available for municipal and corporate bonds, including Money Market Instruments ("MMIs").<sup>3</sup> On August 11, 2004, the Commission approved another proposed rule change which expanded the application and extended the benefit of the Look-Ahead Process to all equity transactions.<sup>4</sup> With this proposed rule change, DTC is proposing to expand the Look-Ahead Process to MMIs.

The purpose of DTC's Look-Ahead Process is to reduce the number of recycling transactions in the system caused by the Net Debit Cap Risk Management Control.<sup>5</sup> The existing Look-Ahead Process finds delivery transactions that are pending because the Receiving Participant has reached its net debit cap.<sup>6</sup> It then looks to see whether the Receiving Participant has a pending delivery for the same security to another Participant.<sup>7</sup> In such a situation, DTC's Account Transaction

Processor ("ATP")<sup>8</sup> will calculate the net effect to the collateral<sup>9</sup> and net debit cap controls for all three Participants involved. If the net effect will not result in a deficit in the collateral or net debit cap controls for any of the three Participants, ATP processes the transactions simultaneously. Without the Look-Ahead Process, the transaction would pend in DTC's system until another transaction created sufficient credit in the Receiving Participant's account. Most credits are generated when a Participant delivers securities versus payment, pledges securities for value, receives principal, dividend or other interest allocations, or wires funds (a Settlement Progress Payment ("SPP")) to DTC's account at the Federal Reserve Bank of New York in order to reduce its DTC net debit.

In order to further reduce the number of recycling transactions in the system and to further improve the timeliness and certainty of transactions completing, DTC is expanding the Look-Ahead Process beyond same securities for MMIs to allow pairs of money market instrument transactions between two Participants (*i.e.*, an Issuing Paying Agent ["IPA"] and a custodian or dealer) that are pending for both parties' net debit caps to complete. This situation occurs when an IPA has a delivery of a new money market instrument to a custodian or a dealer for X dollars and that same custodian or dealer has a maturity of a money market instrument of equal or greater value awaiting acceptance by the same IPA. The proposed rule change will allow ATP to process those transactions simultaneously, as long as neither Participant's risk management controls were overridden.

This enhancement to the Look-Ahead Process will reduce the number of MMI recycling transactions. The Look-Ahead enhancement to DTC's processing system will not result in any systematic changes for Participants.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the

<sup>3</sup>Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. SR-DTC-2003-07).

<sup>4</sup>Securities Exchange Act Release No. 50182 (August 11, 2004), 69 FR 51341 (August 18, 2004) (File No. SR-DTC-2004-05).

<sup>5</sup>Net debit caps help ensure that DTC can complete settlement, even if a Participant fails to settle.

<sup>6</sup>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 and determines whether the resulting net balance would exceed the Participant's 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 (recycling) queue until another transaction creates credits in the Participant's account.

<sup>7</sup>For example, Participant A is delivering shares to Participant B and Participant B has a delivery obligation of shares with the same CUSIP to Participant C.

<sup>8</sup>ATP is the core processing system for all transaction activity affecting security positions held at DTC.

<sup>9</sup>DTC tracks collateral in a Participant's account through its Collateral Monitor ("CM"). At all times, the CM 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 CMs will not become negative when the transaction completes. If the transaction would cause either party to have a negative CM, the transaction will recycle until the deficient account has sufficient collateral for the transaction to complete.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 58730 (October 3, 2008), 73 FR 59694 (October 9, 2008).

safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>10</sup> When the Commission approved DTC's Debit Cap Look-Ahead Process in 2003 for municipal and corporate debt transactions and the expansion of the process to include all equity transactions, all valued pledge transactions, and all valued release transactions in 2004, the Commission found that the Look-Ahead Process was consistent with DTC's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions.<sup>11</sup> Similarly, the expansion of the Look-Ahead Process beyond same securities for MMIs is designed to reduce the number of pending MMI transactions at DTC without compromising DTC's risk management controls. Accordingly, based on this and the earlier findings, we find that the expansion of the Debit Cap Look-Ahead Process for MMIs should promote the prompt and accurate clearance and settlement of securities transactions.

#### IV. 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.<sup>12</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2008-09) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58959; File No. SR-NYSEArca-2008-120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NYSE Arca Options Rule Governing the Anti-Money Laundering Compliance Program

November 14, 2008.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on October 28, 2008, NYSE Arca, Inc. ("NYSE Arca" or "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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act. <sup>4</sup> 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 the NYSE Arca Options Rule governing the Anti-Money Laundering Compliance Program ("AMLCP"). The proposed rule change would clarify the frequency with which an Options Trading Permit ("OTP") Holder must conduct independent testing of its AMLCP and would establish the qualifications of the person designated to perform AMLCP testing as well as provide guidelines for establishing the independence of the person performing the test. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, 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 Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

Financial institutions, including broker-dealers, must develop and implement AML Programs pursuant to the Bank Secrecy Act,<sup>5</sup> as amended by Section 352 of the Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 ("PATRIOT Act").<sup>6</sup> Consistent with Department of Treasury regulation 31 CFR 103.120 under the BSA, Exchange Rule 11.19 requires that each member organization develop and implement a written Anti-money laundering ("AML") program that specifies the minimum requirement for these programs.

The AML program must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an "AML Officer"); ongoing training for appropriate persons; and an independent testing function for overall compliance.

The Exchange proposes to change NYSE Arca Options Rule 11.19(c) to clarify the language governing the frequency with which an OTP Holder must conduct independent testing of its AMLCP. Additionally, the Exchange proposes to add new commentary to Rule 11.19 that establishes qualifications of the person designated to perform AMLCP testing and guidelines for establishing the independence of the person performing the test. In addition, this proposed rule change will clarify the applicability of the rule to all OTP Holders and OTP Firms.

##### Timeframes for Independent Testing

The proposed rule change would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by OTP Holders, unless the OTP Holder does not execute transactions for customers or otherwise hold customer

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> Securities Exchange Act Release Nos. 48007 and 50182.

<sup>12</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>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>5</sup> 31 U.S.C. 5311 et seq.

<sup>6</sup> Public Law 107-56, 115 Stat. 272 (2001).