

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² this proposed rule change. The proposed rule change was published for comment in the **Federal Register** on October 8, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change amends Rule 24.9, *Terms of Index Option Contracts*, by adding a new interpretation that will allow the Exchange to list options on the Mini-Nasdaq-100 Index ("MNX" or "Mini-NDX"), which is based on 1/10th the value of the Nasdaq-100 Index, at \$1 or greater strike price intervals.⁴ For initial series, the Exchange will be able to list at least two strike prices above and two strike prices below the current value of the MNX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange will be able to list strike prices that are within five points from the closing value of the MNX on the preceding day.

The Exchange will be permitted to list additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the underlying MNX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the MNX. The Exchange also will be permitted to open

additional strike prices that are more than 30% above or below the current MNX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. The Exchange proposes that it shall not list LEAPS on Mini-NDX options at intervals less than \$5.

The Exchange also is proposing to set forth a delisting policy with respect to Mini-NDX options. The Exchange will, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the MNX and delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall be granted.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review, 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.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposal to permit listing of \$1 strike prices for Mini-NDX options will provide investors with added flexibility in the trading of Mini-NDX options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the

Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission notes that the existing restrictions on listing \$1 strike price intervals will continue to apply, *e.g.*, no \$1 strike price may be listed (a) that is greater than \$5 from MNX's closing price on the preceding day, or (b) that would result in strike prices being \$0.50 apart.

In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that CBOE will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2008-96) be, and it hereby is, approved.

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

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58910; File No. SR-DTC-2008-07]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Implement Processing Enhancements to the Profile Modification System Used in the Direct Registration System

November 6, 2008.

I. Introduction

On July 7, 2008, The Depository Trust Company ("DTC") filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58659 (September 26, 2008), 73 FR 58998 ("Notice").

⁴ Currently, under Interpretation and Policy .01(a)(xxv) to Rule 24.9, the Exchange has authority to list Mini-NDX options at \$2.50 strike price intervals. The Commission notes that the Exchange rules currently allow the Exchange to list series at \$1 or greater strike price intervals in similar options products. For example, Rule 24.9.01(b) allows the Exchange to list series on options based on one-one hundredth (1/100th) of the value of the Dow Jones Industrial Average Index at no less than \$0.50 intervals. Similarly, Rule 24.9.01(f) allows the Exchange to list strike price intervals at no less than \$1 for options on the CBOE S&P 500 BuyWrite Index (1/10th value). In addition, Rule 24.9.11 allows the Exchange to list strike price intervals at no less than \$1 for the reduced-value version of the Standard & Poor's S&P 500 Stock Index option ("Mini-SPX option"), which is based on 1/10th the value of the S&P 500 Index. See Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997); 58207 (July 29, 2008), 73 FR 43963 (July 22, 2008); 52625 (October 18, 2005), 70 FR 61479 (October 24, 2005); and 57049 (December 27, 2007), 73 FR 528 (January 3, 2008).

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on August 11, 2008.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As the use of the Direct Registration System ("DRS") continues to grow, attention has centered on reducing the number of rejected instructions submitted through the Profile Modification System ("Profile"), a facility administered by DTC that allows an investor's DRS position to be transferred from the records of the transfer agents³ to a broker-dealer and vice versa. In order to effectively transfer an investor's securities position using Profile, the broker-dealer DTC participant must enter into Profile an instruction containing certain identifying criteria of the investor, such as share quantity and a taxpayer identification number ("TIN") or Social Security Number. If the submitted information does not match the information the DRS Limited Participant (i.e., the transfer agent) has on its file, the Profile instruction is rejected, which may result in a rejection fee assessed by the DRS Limited Participant. More importantly, the rejection can also result in delays in transferring the position, which could possibly cause financial harm to an investor.

Today, nearly 25% of all Profile instructions are rejected by the transfer agents. The two most common reasons for rejections are the Profile instruction not matching the share quantity or the investor's TIN or Social Security number on the transfer agent's records. The DRS Ad Hoc Committee, an industry committee established to address operational issues related to DRS, believes that by implementing certain system and processing improvements, about 7,000 Profile rejections per month could potentially be eliminated.

A. Proposed Changes to Profile

In an effort to decrease the number of rejections in Profile, DTC will make the

following enhancements to Profile functionality.

Move All Instruction. Currently, Profile requires a participant to enter a specific share quantity or dollar value (in the case of debt) in its Profile instruction. Under the rule change, a participant submitting an instruction in Profile will be allowed to select one of the following options: (1) Enter a specific share quantity or dollar value; (2) "move all" of the investor's whole shares⁴ to the requesting participant's account at DTC; (3) "move all" of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, and have the cash proceeds mailed directly to the investor; (4) "move all" of the investor's whole shares to the requesting participant's account at DTC, liquidate any fractional share positions remaining in the account at the transfer agent, have the cash proceeds mailed directly to the investor, and close the investor's DRS and Dividend Reinvestment Plan ("DRIP") account.⁵ By using the "move-all" functionality, participants can forgo referencing a specific share quantity in the Profile instruction, which DTC believes should eliminate a major cause of Profile rejections.⁶

Dual TIN or Social Security Numbers. Currently, participants are permitted to enter only one TIN or Social Security number in its Profile instruction. Under the rule change, participants may elect to submit a Profile instruction with two TINs or Social Security numbers instead of one. The option to submit a Profile instruction with two TIN or Social Security numbers may be necessary, for example, where the investor's account is a joint account. For those Profile instructions with two TINs or Social Security Numbers, the transfer agent will only need to match on one of the TIN or Social security numbers on the Profile instruction to the its records for the investor account.

The rule change will require broker-dealers and transfer agents that process their DRS transactions through a direct electronic computer-to-computer link

with DTC to make internal system enhancements to accommodate DTC's changes to Profile.⁷ Specifically, internal systems will need to be enhanced so that they are able to accept DRS Profile instructions to "move all" shares from the investor's account at the transfer agent to the investor's broker-dealer's account at DTC. They will also need to be enhanced to provide for the processing of a Profile instruction with a second TIN/Social Security Number.

B. Proposed Remuneration

Pursuant to the new rule, broker-dealers will be required to pay transfer agents two types of remuneration: (1) Reimbursement to compensate for the initial system development of the enhancements contemplated under the move-all proposal and (2) a transaction fee to pay for the on-going administration of the proposed new functions. Accordingly, broker-dealers will pay for seventy-five percent of all system costs with a maximum payment of \$200,000 per transfer agent for project plans submitted by transfer agents to DTC by September 1, 2008. For project plans that will be managed by a third party vendor, broker-dealers will be required to pay a remuneration based on the vendor's total project cost. DTC will act as a conduit to collect and distribute the remuneration from the broker-dealers to transfer agents.

Under the "move all" proposal, transfer agents were required to submit a project plan to DTC by September 1, 2008, and should be ready to implement the "move all" Profile functionality by November 1, 2008, in order to be eligible to receive the system cost remuneration. DTC will make a one time payment to eligible transfer agents no later than ninety calendar days after the completion of the move all and dual TIN or Social Security Number functionality going live. DTC will collect a surcharge of \$1.00 from broker-dealers for no more than twenty-four calendar months for each Profile transaction submitted by a broker-dealer in order to offset the up-front remuneration made by DTC to transfer agents. DTC will eliminate the surcharge at the end of twenty-four calendar months or sooner if the total amount of up-front remuneration paid by DTC is collected before the twenty-four month period has expired.

DTC will also charge broker-dealers \$.75 per Profile transaction to offset the transfer agents' on-going costs of

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58292 (August 1, 2008), 73 FR 46693 (August 11, 2008) [File No. SR-DTC-2008-07].

³ Transfer agents must be designated as DRS Limited Participants by DTC in order to facilitate DRS instructions through Profile.

⁴ DTC's systems only process and allow whole shares to be processed and held in participants' accounts at DTC. They do not accommodate fractional shares.

⁵ Some transfer agents maintain separate investor accounts for DRIP shares and DRS positions. The participant's instruction through Profile to close the account would require a DRS Limited Participant to close both the DRIP and the DRS account.

⁶ Although DRS Limited Participants are able to enter Profile instructions to move DRS positions from a broker-dealer's account at DTC to the investor's account on the books of the transfer agent, the proposed rule change will not permit the "move all" function in Profile to be available to the DRS Limited Participant at this time.

⁷ It is anticipated that for those users that communicate Profile instructions through DTC through a dedicated terminal (PTS or PBS), they will only need to update their internal procedures and workflow.

supporting the “move all” function. The transaction fee will be adjusted annually to reflect DRS Profile transactional volume changes. The rule change will require transfer agents that wish to receive a transaction fee to have submitted their project plan by September 1, 2008. The transfer agents represented on the DRS Ad Hoc Committee have agreed that the remunerations from the transactional fee will be no more than \$25,000 per year per transfer agent. DTC will pay each eligible transfer agent with 2,000 or more Profile transactions monthly a set monthly amount of \$2,080, or \$24,960 annually. DTC will pay each eligible transfer agent with at least 200 transactions monthly but less than 2,000 transactions monthly a set monthly amount of \$800, or \$9,600 annually. DTC will not pay transfer agents with less than 200 transactions a month.

C. DRS Limited Participant Eligibility Requirements

DTC will amend its DRS Limited Participant rules to require transfer agents to be able to process Profile instructions requesting the “move all” options and instructions including dual TIN or Social Security Numbers. To maintain eligibility as a DRS Limited Participant, all current DRS Limited Participants must provide “move all” and dual TIN or Social Security number processing capability by no later than December 31, 2008.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.⁸ The rule change is consistent with the provisions of the Act because it improves efficiency and reduces risks in DRS.

Accordingly, for the reasons stated above the Commission finds that the rule change, is consistent with DTC's obligation under Section 17A of the Act to promote the prompt and accurate clearance and settlement of securities

transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

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 with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2008-07) be and hereby is approved.⁹

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58909; File No. SR-FINRA-2008-046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Realign the Representation of Industry Members on the National Adjudicatory Council To Follow More Closely the Categories of Industry Representation on the FINRA Board

November 6, 2008.

On September 8, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA,” f/k/a National Association of Securities Dealers, Inc. and NASD) 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 amend the By-Laws of FINRA's regulatory subsidiary, FINRA Regulation, Inc. (“FINRA Regulation,”

f/k/a NASD Regulation, Inc.). On September 17, 2008, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change was published in the **Federal Register** on September 30, 2008.³ The Commission received one comment on the proposal.⁴ This order approves the proposed rule change.

I. Background and Description of the Proposal

A. Background

On July 30, 2007, NASD and the New York Stock Exchange, Inc. consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the Commission approved amendments to the NASD By-Laws to implement governance and related changes.⁵ The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.⁶

FINRA Regulation is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the

³ Securities Exchange Act Release No. 58626 (September 23, 2008), 73 FR 56872 (“Notice”).

⁴ The commenter stated that FINRA's proposal seemed reasonable and that he generally favored it. However, he expressed concern about the elimination of the regional representation on the National Adjudicatory Council (“NAC”). See letter from Neal E. Nakagiri, Esq., NPB Financial Group, LLC, to Florence E. Harmon, Acting Secretary, Commission, dated October 20, 2008.

⁵ See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR-NASD-2007-023).

⁶ The FINRA Board consists of eleven Public Governors (who are appointed), ten Industry Governors (seven of whom are elected by industry members), the current Chief Executive Officer (“CEO”) of NYSE Regulation, and the current CEO of FINRA. The ten Industry Governors include: (a) Three elected Governors who are registered with member firms that employ 500 or more registered persons (Large Firm Governors); (b) one elected Governor who is registered with a member firm that employs at least 151 and no more than 499 registered persons (Mid-Size Firm Governor); (c) three elected Governors who are registered with member firms that employ at least one and no more than 150 registered persons (Small Firm Governors); (d) one appointed Governor who is associated with a floor member of the New York Stock Exchange; (e) one appointed Governor who is associated with an independent contractor financial planning member firm or an insurance company affiliate; and (f) one appointed Governor who is associated with an affiliate of an investment company. See FINRA By-Laws, Article VII (Board of Governors).

⁸ 15 U.S.C. 78q(b)(3)(F).

⁹ 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).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.