

## 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 Amex 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 Amex 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

The Exchange currently imposes on associate memberships an annual electronic access fee for access to the Exchange's electronic systems. Pursuant to Article VII, section 1(e) of the Exchange Constitution, this annual electronic access fee is required to be fixed by the Board once a year and is calculated on a formula of ten (10%) percent of the average price at which regular memberships have been sold and transferred to applicants for regular memberships, other than for nominal consideration or through a private sale, during the preceding twelve months, from January through December. The electronic access fee for the year 2001 is the year 2000 fee fixed at \$61,363.00. The Exchange proposes to amend its Constitution by deleting both the 10% formula and the requirement that the Board fix the electronic access fee each year. The Exchange further proposes to fix the electronic access fee for the year 2001 at its current level at \$61,363.00 and add it to the Exchange's schedule of fees to treat it in the future on a schedule rather than on a formula basis.

It is cumbersome and inefficient for the Board to have to address, on an annual basis, the issue of one fee. Furthermore, the Exchange is in the process of reviewing its overall fee structure and intends to perform this review on an ongoing annual basis. The purpose of this review is to keep fees current, in accordance with prevailing economic conditions, and simplify the process while remaining competitive with other options and equities exchanges.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### 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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-15 and should be submitted by May 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44169; File No. SR-DTC-99-6]

### Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Establishment of a Matured Book-Entry Only Certificate Destruction Service

April 10, 2001.

On October 25, 1999, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-99-6) 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 June 15, 2000.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

Prior to this rule change, shortly before a debt security held by DTC matures, DTC sends to the redemption agent:<sup>3</sup> (i) A DTC "letter of transmittal;" (ii) a DTC "redemption payment summary form;" and (iii) the certificate(s) that represent the maturing issue. This procedure is in place for issues that are evidenced both by non-engraved certificates which are typically book entry only ("BEO") securities<sup>4</sup> and by engraved certificates. DTC then removes the security certificate(s) from its vault and delivers the certificate(s) to a commercial courier service that in turn delivers the certificates to the redemption agent. There, the certificates are processed in accordance with the redemption agent's individual policies and practices.<sup>5</sup>

Under DTC's rule change, DTC will offer a new optional service to

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

<sup>2</sup> Securities Exchange Act Release No. 42912 (June 8, 2000), 65 FR 37585.

<sup>3</sup> For the majority of maturing debt securities, the transfer agent is also the redemption agent. Sometimes the issuer itself will serve as the redemption agent or will appoint a third party other than the transfer agent to serve as the redemption agent.

<sup>4</sup> A BEO security is represented by a paper certificate held in a securities depository while all transactions relating to that security are completed electronically. Beneficial owners of BEO securities generally cannot obtain a paper certificate evidencing their ownership interests in BEO securities, and certificates are generally not moved outside the depository. This format is widely used for many debt securities.

<sup>5</sup> Historically, some agents have contracted with commercial vendors for the physical destruction of such certificates.

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).

redemption agents under which DTC will destroy BEO certificates in lieu of shipping the certificates to the redemption agent.<sup>6</sup> Redemption agents that wish to use this new service will deliver to DTC an executed "matured BEO certificate destruction request."<sup>7</sup> DTC will continue to present the DTC "letter of transmittal" and the DTC "redemption payment summary form" but not the BEO certificate(s) to the redemption agent in advance of the issue's maturity. In addition, DTC will present to the redemption agent a "notice of destruction"<sup>8</sup> stating that DTC intends to destroy the BEO certificate(s) in accordance with the procedures set forth in this rule filing as they may be amended from time to time. If the redemption agent requests in writing in a timely manner that DTC not destroy the certificates, DTC will honor the redemption agent's request.

The matured BEO security certificates will be physically destroyed on DTC's premises only after: (i) DTC has received the redemption proceeds in full and (ii) an additional thirty days have passed after DTC receives such proceeds. Authorized DTC personnel will oversee and witness the destruction of the cancelled certificates. DTC will maintain detailed ledger control over the BEO certificates through the point of destruction. An accurate record of all canceled certificates will be maintained and will be searchable by date of cancellation. Prior to destruction, the maturing BEO security certificates will be microfilmed or imaged by DTC. DTC will retain the microfilm or computer images of these BEO certificates for ten years following destruction of the certificates, and for the first six months, DTC will maintain the microfilm or computer images in a place that is easily accessible by authorized DTC personnel.<sup>9</sup> Copies of the microfilm (at

no fee) or eventually images (at a fee) will be available to the redemption agent during the ten years following destruction. DTC will be liable for gross negligence and willful misconduct.

As a result of this new service, such BEO security certificates, once deposited in DTC, will never have to be physically removed from DTC's vault. They will be maintained in a secure location that does not allow access to the public or unauthorized personnel. Additionally, by centralizing the destruction of matured BEO debt security certificates, DTC will provide uniform and consistent controls and procedures (as well as physical safeguards) for all such certificates in the U.S. capital market.

## II. Discussion

Section 17A(b)(3)(F)<sup>10</sup> of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities which are in the clearing agency's custody or control or for which it is responsible. The Commission believes that DTC's rule change is consistent with DTC's obligation under the Act because the new procedures will help to reduce the risks currently associated with the processing of matured BEO certificates by eliminating much of the physical handling currently involved in processing BEO certificates. In addition, the Commission believes that DTC's BEO certificate destruction policy contains sufficient safeguards concerning the selection of BEO certificates that will be destroyed, the oversight of the destruction, and the recordkeeping of destroyed BEO certificates.

## III. 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 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-99-6) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44138; File No. SR-PCX-01-15]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. to Trade Standardized Equity Options on Trust Issued Receipts

March 30, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 15, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to adopt new listing and maintenance standards to allow for trading of standardized equity options on trust issued receipts. The text of the proposed rule change follows. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### Options

Rule 3.6(a)-(b)—No Change.

\* \* \* \* \*

#### Commentary

.01-.06—No change.

.07 *Securities deemed appropriate for options trading shall include shares or other securities ("Trust Issued Receipts") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent ownership of the specific deposited securities held by a trust, provided:*

(a)(i) *the Trust Issued Receipts meet the criteria and guidelines for underlying securities set forth in Rule 3.6(a); or*

(ii) *the Trust Issued Receipts must be available for issuance or cancellation each business day from the Trust in exchange for the underlying deposited securities; and*

(b) *not more than 20% of the weight of the Trust Issued Receipt is represented by ADRs on securities for which the primary market is*

<sup>6</sup> At this time, DTC will offer this service only for non-engraved BEO certificates.

<sup>7</sup> A copy of the "matured BEO certificate destruction request" is set forth as Exhibit B of DTC's proposed rule change, which is available through the Commission's Public Reference Branch or through DTC.

<sup>8</sup> A copy of the "notice of destruction" is set forth in Exhibit C of DTC's proposed rule change, which is available through the Commission's Public Reference Room or through DTC.

<sup>9</sup> DTC has informed the Commission's staff that for the time period that such microfilm or imaged records must be maintained, whether by DTC or by a third party on behalf of DTC, such records will: (i) Be available at all times for examination by the Commission and the appropriate regulatory agency for immediate, easily readable projection/enlargement; (ii) be arranged and indexed in a manner that permits immediate location of any particular record; (iii) be immediately provided upon request by the Commission or appropriate regulatory agency; and (iv) be copied and stored separately from the original records.

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.