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–Amex–2006–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–29. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2006–29 and should be submitted on or before May 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–5919 Filed 4–19–06; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53640; File No. SR–Amex–2005–096]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Relocation of Registered Options Traders Assigned Options Classes

April 12, 2006.

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 on September 22, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 5, 2006, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to permit registered options traders (''ROTs'') to send proprietary electronic orders, representing a bona fide hedge or position liquidations, in an assigned option class for a period of up to three (3) months following a relocation of such option class when the ROT is no longer physically present in such trading crowd.

Below is the text of the proposed rule change. Proposed new language is in *italics.*

Options Transactions of Registered Options Traders

Rule 958–ANTE No registered options trader shall initiate an Exchange option transaction on the Floor and through the facilities of the Exchange for any account in which he has an interest except in accordance with the following provisions:

(a) through (i) No Change

Commentary * * *

.01 through .09 No Change

.10 A Registered Options Trader may apply to the Exchange for the ability to send electronic bona fide hedging and/or liquidating orders in a formerly assigned option class(es) that have been relocated to a different location on the trading floor, for up to a three (3) month period from the date the application is granted. The Registered Options Trader will not be required to be physically present in the new trading location for the purpose of sending bona fide hedging and/or liquidating orders to the option class(es) that have been relocated. Application is required to be made in writing to the Exchange's Division of Regulation and Compliance. The Exchange's Division of Regulation and Compliance is required to approve each application before a Registered Options Trader may send electronic orders pursuant to this Commentary. An extension of the three (3) month time period is not permitted. Upon the expiration of the three (3) month period, Registered Options Traders will no longer be permitted to electronically send orders from the floor of the Exchange for the purpose of bona fide hedging and/or liquidating positions in the formerly assigned options class.

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, as amended. The text of these 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 aspects of such statements.

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

1. Purpose

According to the Amex, the purpose of the proposed rule change is to provide ROTs who are no longer physically present in the trading crowd of his or her formerly assigned option class[4] with the ability to send electronic

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 (''Amendment No. 1'') supersedes and replaces the original filing in its entirety. The substance of Amendment No. 1 is incorporated into this notice.

[4] The Exchange states that a ROT would no longer be considered assigned to an option class once an assigned option class has been relocated to a different floor location and the ROT has not communicated his intention to relocate with such assigned options class. A ROT must communicate his intention to relocate if he wants to keep the assigned option class. This proposed rule change proposes a three (3) month grace period in which the ROT may electronically send orders to close-out or hedge those assigned options class positions.

orders in such option class or classes that have been relocated. The proprietary electronic orders of such ROT would be required to be part of a bona fide hedge [5] position or the liquidation of positions. The Exchange believes that providing ROTs with this limited ability to send orders for the purpose of creating a bona fide hedge or liquidating positions in an option class that has been relocated would provide an effective and efficient means for ROTs to reduce position risk.

The Exchange pursuant to Amex Rule 110 (applicable to options through Amex Rule 950–ANTE(a)) and Amex Rule 958–ANTE(a) require that each ROT be qualified and registered with the Exchange as a ROT and assigned by the Exchange in one or more classes of options. In addition, Amex Rule 958–ANTE(a) further provides that Exchange options transactions initiated by a ROT on the floor of the Exchange for any account in which such ROT has an interest must be in his or her assigned classes.

In those cases where an option class is relocated on the trading floor, a ROT has two alternatives: (i) Stay in his or her present location and no longer keep that assigned options class, in which case, the ROT may only hedge and/or liquidate positions by sending orders to another options exchange; [6] or (ii) keep the assigned options class and relocate with the option to the new location which may be difficult, and near impossible, depending on the ROTs other assigned classes. Accordingly, the Exchange submits that permitting ROTs, although not physically present in the trading crowd, to apply to the Exchange to send proprietary electronic orders constituting bona fide hedging and/or position liquidations in a formerly assigned option class or classes that have been relocated to different locations on the floor for up to a three (3) month period from the date the application is granted, would be reasonable and should help to reduce position risk and efficiently relocate options classes on the trading floor. The Exchange determined that three (3) months is a reasonable amount of time considering that that is the time period within which an expiration normally occurs. The Exchange also considered whether advance notice of an option class relocation is more suitable than a three (3) month extension; however, advance notice may be difficult, if not impossible, for such occurrences as market maker consolidations and mergers which is often the cause for the relocation. Therefore, the Exchange believes that the three (3) month extension is the best alternative to option class relocations.

Proposed Commentary .10 to Amex Rule 958–ANTE provides that a ROT would be required to apply to the Exchange and be granted approval in order to take advantage of the ability to send electronic orders under this proposal. Application in writing would have to be submitted to the Exchange's Division of Regulation and Compliance (''R&C''). The R&C would take into consideration several factors in determining whether to grant the ROT approval, including, but not limited to, if the ROT is in good standing with the Exchange, whether the ROT has had any recent regulatory issues and whether advance notice of the relocation was provided. The R&C would generally approve a ROT application to take advantage of the ability to send electronic orders under this proposal consistent with the absence of regulatory issues and sufficient advance notice of relocation. Once approved by R&C, a ROT would be able to send proprietary electronic orders, representing a bona fide hedge or position liquidation, in a formerly assigned option class, when such ROT is no longer physically present in the trading crowd, for a period of up to three (3) months without extension.

In connection with this proposal, the Exchange submits that rules governing ROTs relating to their assigned options classes would continue to apply to the use of electronic bona fide hedging and/or liquidating orders and that ROTs must continue to adhere to these rules. For example, ROTs would be required to adhere to their in-person trading requirements. Specifically, Amex Rule 958–NTE(g) provides that, except as otherwise determined by the Exchange, a minimum of 25% of a ROT's option contract volume, and a minimum of 25% of a ROT's total number of options transactions in any calendar quarter would have to be executed in person and not through the use of orders represented by another member or member organization. However, in any calendar quarter in which a ROT receives ROT treatment for off-floor orders in accordance with Commentary .01 of Amex Rule 958–ANTE, in addition to satisfying the requirements of Commentary .03 of Amex Rule 958–ANTE, the ROT would have to execute in person, and not through the use of orders represented by another member or member organization, at least 80% of his total transactions and option contract volume. Commentary .03 to Amex Rule 958–ANTE generally provides that at least 50% of a ROT's trading activity in any quarter be in his or her assigned classes. The Exchange notes that, if ROTs take advantage of this proposal, then they would become subject to the higher 75% requirement contained in Commentary .03 to Amex Rule 958–ANTE, whereby at least 75% of a ROT's trading activity in any quarter must be in his or her assigned classes.[7]

Amex Rule 935–ANTE(a) provides that non-broker-dealer customer orders are afforded priority over all other market participants. In addition, the orders for the accounts of all ''non-public customers,'' (*i.e.*, broker-dealers and members) are treated equally and may only retain priority over or be on parity with other orders of broker-dealers. Orders for the account of a ROT in connection with this proposal will not have priority over orders of

Therefore, for purposes of this rule filing, such relocated assigned option class shall be referred to as a ROT's ''formerly assigned option class.''

[5] Although the Act does not specifically define a ''bona fide hedge,'' the Exchange notes that the Commission has stated that it implies an appreciable offset of risk, for all or part of the position being hedged. A bona fide hedge may be established either by contemporaneous transactions in two securities where each position acquired reduces the risk of the other, or by a single transaction in which a position acquired in one security reduces the risk of a previously established position in another security. Any portion of a position that does more than offset the risk of the position or positions on the other side is not considered part of a bona fide hedge. *See* Commentary .13 to Amex Rule 111. An example of a bona fide hedge position would be owning the short sell position and then ''fully hedging'' (delta neutral) it with a long call position in the underlying securities.

[6] *See* Amex Rule 958–ANTE(a). In addition, Amex Rule 958–ANTE(h) provides, ''(i) Registered options traders may choose to either use an Exchange provided or proprietary automated quote calculation system to calculate and submit quotes in all or some of their assigned classes; join the specialist's disseminated quotation with the ability to manually change that quotation on a series-by-series basis in those classes the registered options trader has chosen not to use an automated quote calculation system; or enter orders into the ANTE System from their hand-held device. Whenever a registered options trader is either using an automated quote calculation system (pursuant to (i) above); joining the specialist's quote in a given option class (pursuant to (ii) above); or sending an order into the ANTE System, the registered options trader must be physically present at the specialist's post on the floor of the Exchange where that option class is traded.''

[7] According to the Exchange, the reason that a ROT would be subject to the higher 75% requirement is because the 50% requirement set forth in Commentary .03 to Amex Rule 958–ANTE applies to option transactions initiated by a ROT on the floor. Since the 75% requirement applies to ROTs receiving ROT treatment for off-floor orders, this higher 75% requirement would apply to ROTs who have been approved to take advantage of the ability to send electronic orders under this proposal due to the fact that electronic orders are considered off-floor orders.

customers and other broker-dealers, including specialists, other ROTs, away market makers and firms. Consistent with the Exchange's current rules on priority, parity, and precedence, the electronic hedging and/or liquidating orders of ROTs, as provided in this proposal, would be on parity with the orders of other broker-dealers, specialists, ROTs, and away market makers. The electronic hedging and/or liquidating orders of ROTs will continue to receive market maker treatment because the orders would be executed to reduce the risk of the positions put on by the ROT in connection with his market maker responsibilities in the formerly assigned option class.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that providing ROTs with this limited ability to send orders in connection with a bona fide hedge or liquidating position in an option class that has been relocated would provide an effective and efficient means for ROTs to reduce position risk, and thereby, promote a free and open national market system.

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

The Exchange believes the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 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 by the Exchange on this proposal, as amended.

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 the proposed rule change, as amended, 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, as amended, 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–Amex–2005–096 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–096. 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. Copies of the 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–Amex–2005–096 and should be submitted on or before May 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53655; File No. SR–DTC–2006–03]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Amend the Criteria Used to Place Participants on Surveillance Status

April 14, 2006.

I. Introduction

On February 3, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2006–03 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 March 14, 2006.[2] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Overview

DTC has developed certain criteria for placing participants on surveillance. Specifically, all broker-dealers from which DTC requires the submission of FOCUS or FOGS reports and banks from which DTC requires the submission of CALL reports [3] are assigned a rating that is generated by entering financial data of the participant into a risk evaluation matrix (''Matrix'') that was developed by

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53435 (March 7, 2006), 71 FR 13198.

[3] A small number of DTC member banks which submit CALL reports are not assigned a rating. Because these banks do not make loans and do not take deposits as part of their business activities, their CALL reports do not contain information on asset quality and/or liquidity. Asset quality and liquidity are among the financial figures used in the Matrix. Since these figures would be zero in the Matrix for these banks, their Matrix results would not adequately portray their financial status. DTC has therefore concluded that these banks do not lend themselves to appropriate analysis using the Matrix.