

regulations applicable to firms that are fully-registered with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant and fully-registered with the SEC as a broker-dealer relating to the treatment of customer funds, securities or property, maintenance of books and records, financial reporting or other financial responsibility rules involving security futures products ("SFPs"), as directed by the Commodity Futures Modernization Act of 2000. The amendments are also designed to avoid certain conflicting or duplicative recordkeeping, reporting, telegraphic notice, and quarterly count requirements involving SFPs for firms that are "notice" registered with the Commission under Exchange Act Section 15(b)(11)(A). These amendments were developed in consultation with the CFTC.

3. The Commission will consider whether to issue, jointly with the CFTC, an order to permit the listing of security futures based on shares of exchange-traded funds, trust issued receipts, or shares of a closed-end management investment company.

4. The Commission will consider whether to issue an order granting exemptive relief pursuant to Sections 15(a)(2) and 36(a)(1) of the Exchange Act in response to an application from Evangelical Christian Credit Union for an exemption to permit it to offer to sweep account balances into no-load money market funds on the same terms and conditions that would be applicable to banks when the Gramm-Leach-Bliley Act amendments to the definition of "broker" become effective. In light of an informal request for similar relief on behalf of other credit unions, the Commission also will consider whether to make such relief applicable to all credit unions with deposits insured by the National Credit Union Share Insurance Fund. In addition, the Commission will consider whether to request public comment on the issues such an exemption would raise for review in connection with consideration of amendments to the May 11, 2001 interim final rules implementing the functional regulation exceptions from broker-dealer registration of the Gramm-Leach-Bliley Act.

5. The Commission will consider whether to propose amendments to Form 8-K under the Securities Exchange Act of 1934 to add several new disclosure items to Form 8-K, amend many of the existing Form 8-K disclosure items, shorten the Form 8-K filing deadline to two business days, and reorganize the disclosure items into logical categories. These proposed

amendments are part of the series of initiatives to change the corporate disclosure rules that the Commission announced its intention to consider in Press Release 2002-22 on February 13, 2002.

6. The Commission will consider whether to issue proposed rules that would require a company's principal executive officer and principal financial officer to certify the company's quarterly and annual reports. In addition, the proposed rules would require companies to regularly review and evaluate their procedures that enable them to fulfill their periodic reporting obligations.

The subject matter of the Open Meeting scheduled for Thursday, June 13, 2002, will be:

1. The Commission will hear oral argument on an appeal by George J. Kolar from the decision of an administrative law judge. The law judge found that Kolar failed to exercise reasonable supervision over a salesman in Dean Witter's Troy, Michigan branch office, who violated registration and antifraud provisions of the securities laws. The law judge ordered that Kolar be suspended for six months from acting in a supervisory capacity with any registered broker or dealer, and fined him \$20,000.

The subject matter of the Closed Meeting scheduled for Thursday, June 13, 2002, will be:

Regulatory matter regarding a financial institution;

Formal orders of investigation;

Institution and settlement of injunctive actions;

Report of investigation;

Institution and settlement of administrative proceedings of an enforcement nature; and a

Post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: June 6, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46026; File No. SR-Amex-2002-12]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto To Retroactively Apply Amended Options Trading Fees

June 4, 2002.

On March 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to retroactively apply options trading fees that were amended in SR-Amex-2002-11.<sup>3</sup> Specifically, the Exchange proposes to impose the fee change as of December 1, 2001. The Amex filed Amendment No. 1 to the proposed rule change on April 16, 2002.<sup>4</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on April 26, 2002.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 45783 (April 18, 2002), 67 FR 20851 (April 26, 2002) for a description of these fees changes. These fee amendments were filed pursuant to Section 19(b)(3)(A)(ii) of the Act and were effective upon filing on April 16, 2002.

<sup>4</sup> See letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

<sup>5</sup> See Securities Exchange Act Release No. 45784 (April 18, 2002), 67 FR 20847.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act<sup>8</sup>, which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange proposes not to apply the prior fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. The Exchange further proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange has stated that it wants to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions, and given that the Exchange has increased a number of fees to its membership in recent months, it believes that the implementation of any type of reduction in fees should be put in place as of December 1, 2001.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change (File No. SR-Amex-2002-12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-14571 Filed 6-10-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46028; File No. SR-DTC-2002-06]

### Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Use of the Federal Reserve Banks' Net Settlement System by Settling Banks

June 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 7, 2002, The Depository Trust

Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change relates to DTC's End-of-Day Settlement Process for settling bank participants of DTC.<sup>2</sup> Currently settling banks can use the Net Settlement Service ("NSS") of the Federal Reserve Banks (the "FRBs") as one method to satisfy their net-net debit balances at DTC. NSS permits DTC to submit an instruction to a FRB to have the account of the settling bank charged for their DTC end-of-day net-net debit balance. Utilization of NSS serves to eliminate the need for a settling bank to initiate a wire to DTC's account at a FRB in satisfaction of a net-net debit balance. As a result, the risk that a settling bank may incur a late payment fee due to a delay in wiring funds to DTC is reduced. Under the proposed rule change, as described more fully below, (i) all settling banks will be required to use NSS and (ii) any settling bank that only settles for its own account using NSS may opt to not acknowledge its net-net balance at the end of the day.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The purpose of the proposed rule change is to reduce settlement risk. In February 2001, DTC adopted NSS as an alternative method for settling banks to

satisfy their end-of-day net-net debits.<sup>4</sup> To date, 31 of the 83 DTC settling banks are using NSS.

NSS eliminates the need for a settling bank to initiate a wire to DTC's FRB account in satisfaction of its end-of-the-day net-net balance and reduces the risk that the settling bank will be delayed in wiring funds to DTC. By reducing the likelihood of late payments, usage of NSS should reduce the likelihood that settling banks will be assessed a late payment fee and that the completion of DTC settlement will be delayed.

The importance of settling banks being able to wire funds to DTC became obvious during the week of September 11, 2001. Completion of settlement at DTC is at risk if all settling banks that are in a net-net debit position cannot initiate a wire to DTC's FRB account. Although DTC expects additional settling banks to begin to use NSS over the next year, DTC believes it is important that the net-net debits of all DTC settling banks are collected using NSS. Therefore DTC proposes to require all settling banks to use NSS to pay their DTC end-of-the-day net-net debit balances by August 31, 2001.

Prior to using NSS, settling banks are required to sign a Settler Agreement with an FRB which incorporates a requirement that settling banks agree to the terms of the Fed's Operating Circular No. 12.<sup>5</sup> The signed Settler Agreement must be submitted to a FRB through DTC. The Settler Agreement must be on the settling bank's letterhead and must be signed by an authorized signer recognized by the FRB.

DTC proposes that settling banks use of NSS will be governed by DTC's procedures, including its End-of-Day Settlement Process section of DTC's Settlement Service Guide, as amended by this filing.<sup>6</sup> Fees connected with the End-of-Day Settlement Process remain unchanged.

Under Section 6.4 of Operating Circular No. 12, the settlement agent (in this case, DTC) has certain responsibilities regarding the allocation among settling banks using NSS of a claim for indemnity by a FRB. In making such an allocation, DTC will attempt to apply the same loss allocation procedures found in Section

<sup>4</sup> Exchange Act Release No. 44176 (April 11, 2001), 66 FR 19821 (April 17, 2001) [File No. SR-DTC-2001-02]. See also Important Notice to Participants Nos. 0842 (November 20, 2000) and 2728 (May 2, 2002) and DTC's memorandum (April 14, 2000). DTC's current and proposed use of NSS, all of which are attached as part of DTC's filing.

<sup>5</sup> The Settler Agreement and Operating Circular No. 12 is attached as part of DTC's filing.

<sup>6</sup> An amended version of this section of the Settlement Service guide is attached as part of DTC's filing.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> A copy of the text of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.