

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-57538; File No. SR-NSX-2008-07]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Post Only Orders

March 20, 2008.

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 17, 2008, the National Stock Exchange, Inc. (“NSX” 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 substantially prepared by the Exchange. The Exchange has designated this proposal as one effecting a change in an existing order-entry system of a self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> which renders the proposal immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comment 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 is proposing to clarify that a Post Only Order will be rejected without execution if it is immediately marketable against round-lot orders when entered. The Exchange will permit a Post Only Order to post if odd-lot orders are the only marketable orders in the book.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nsx.com>, at the principal office of the Exchange, 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 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 parts of such statements.

##### 1. Purpose

A Post Only Order is an order designed to encourage displayed liquidity on the Exchange. By its terms, a Post Only Order is posted on the Exchange and does not route away to another trading center. Currently, a Post Only Order is rejected by the Exchange if the order is immediately marketable against any order on the Exchange, even if the order is an odd-lot order.<sup>5</sup> The Exchange intends to change the operation of Post Only Orders so that such orders are rejected only if there are marketable round-lot orders in the book, resulting in Post Only Orders being posted when an odd lot order is the only marketable order in the book. In this way, the Exchange will enhance liquidity on the Exchange by permitting greater ability for the Post Only Order to be posted in the book.

NSX Rule 11.11(c)(5)(A) states that the “Post Only Order that is not a Zero Display Reserve Order will be rejected without execution if it is immediately marketable when entered.” To clarify this Rule, the Exchange is now amending the language to make clear that Post Only Orders will be rejected only if there are marketable round-lot orders in the book.<sup>6</sup> Orders marked Post Only will always be considered “liquidity providing” by the Exchange for purposes of application of the Exchange’s fees and rebate programs. By making a Post Only designation, ETP Holders are able to avoid the risk that their orders will be considered “liquidity taking” for purposes of application of the Exchange’s fees and rebate programs.

The Exchange’s clarification of Rule 11.11(c)(5) is consistent with Regulation NMS. Only round-lot orders are subject to the requirements of Regulation NMS in that only round-lot orders must be included in the Exchange’s automated quote.<sup>7</sup> In contrast, odd-lot orders are

not displayed, and the prohibitions against both locked and crossed markets and trade-throughs do not apply to odd-lots. Exchanges are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders.<sup>8</sup>

The Exchange believes that this clarification to the Post Only Order will enhance the use of Post Only Orders. Further, allowing Post Only Orders greater opportunities to post in the book will increase the displayed liquidity in the Exchange.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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.

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

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

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and subparagraph (f)(5) of Rule 19b-4 thereunder<sup>12</sup> because it effects a change in an existing order-entry system of a self-regulatory

definition of “protected bid” or “protected offer” in Rule 600(b)(57). 17 CFR 242.600(b).

<sup>8</sup> See Response No. 7.03 in “Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS,” Division of Trading and Markets, dated June 8, 2007.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(5).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>5</sup> In SR-NSX-2008-03, the Exchange adopted a new Zero Display Reserve Order type and changed the rule text to state that Post Only Orders that are not Zero Display Reserve Orders will be rejected without execution if immediately marketable. See Securities Exchange Act Release No. 57311 (February 12, 2008), 73 FR 9148 (February 19, 2008). The Zero Display Reserve Order type will commence trading in April 2008.

<sup>6</sup> The Exchange notes that odd lot orders are aggregated where possible to form round lots.

<sup>7</sup> Under Regulation NMS, Rule 600(b)(8) defines “bid” or “offer” as the bid price or offer price for one or more round lots of an NMS security. This definition is embedded in the definition of “quotation” in Rule 600(b)(62), as well as the

organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. The rule change is simply a language clarification of an existing NSX rule. Furthermore, the rule change raises no novel issues for the Commission and is consistent with odd-lot order handling as contemplated by Regulation NMS. Accordingly, the proposal is effective upon Commission receipt of the filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2008-07 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NSX-2008-07. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. 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-NSX-2008-07 and should be submitted on or before April 17, 2008.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57542; File No. SR-DTC-2007-11]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Operational Arrangements as It Applies to Structured Securities

March 20, 2008.

#### I. Introduction

On September 7, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2007-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on November 26, 2007.<sup>2</sup> The Commission received four comments to the proposed rule change.<sup>3</sup> On December 14, 2007,

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

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

<sup>2</sup> Securities Exchange Act Release No. 56795 (November 15, 2007), 72 FR 66009.

<sup>3</sup> Simon Griffiths, Vice President, JP Morgan (December 10, 2007); Tom Migneron, Principal, Edward Jones (December 11, 2007); Dan W. Schneider, Baker & McKenzie LLP, Counsel to the Association of Global Custodians, Chicago, Illinois (December 12, 2007); Norman Eaker, Chairman, Securities Industry and Financial Markets Association, Operations Committee, Gussie Tate, President, Securities Industry and Financial Markets Association, Dividend Division, and Thomas Hamilton, Vice Chairman, Securities Industry and Financial Markets Association, MBS and Securitized Products Division Executive Committee (December 19, 2007).

DTC filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as Modified by Amendment No. 1, was published for comment in the **Federal Register**.<sup>5</sup> The Commission received one comment to Amendment No. 1.<sup>6</sup> For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

#### II. Description

DTC's Operational Arrangements is a contractual agreement between DTC, issuers, and paying agents that outlines the procedural and operational requirements for an issue to become and remain DTC eligible. The proposed rule change amends DTC's "Operational Arrangements Necessary for an Issue to Become and Remain Eligible for DTC Services" ("Operational Arrangements") as it applies to Structured Securities in order to: extend the deadline by which paying agents of such securities must submit periodic payment rate information to DTC; establish Structured Securities classifications; establish an exception processing fee applied to certain Structured Securities whose features prevent paying agents from complying with the extended deadline; and provide that DTC track and make publicly available reports on paying agent performance as it relates to timeliness and accuracy of Structured Securities payment rate information submitted to DTC.

A Structured Security, such as a collateralized mortgage obligation or asset-backed security, is a bond backed by a pool of underlying financial assets. The underlying assets generally consist of receivables such as mortgages, credit card receivables, or student or other bank loans for which the timing of principal payments by the underlying obligors may be variable and unpredictable. A Structured Security may also incorporate credit enhancements or other rights that affect the amount and timing of payments to investors.

Communication of periodic payment rates of principal and interest ("P&I") to the end investors in Structured Securities depends on application of

<sup>4</sup> As explained below, Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 removed reference to the imposition of a processing fee on January 1, 2008, and corrected the identity of the party that will identify an issue as conforming or non-conforming and will submit a written attestation giving the reason for non-conformance.

<sup>5</sup> Securities Exchange Act Release No. 57283 (February 6, 2008), 73 FR 8384.

<sup>6</sup> Carol A. Jameson, Vice President and Senior Counsel, The Depository Trust Company (March 5, 2008).