

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act²³ and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,²⁴ for approving the proposed rule change prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that proposed NYSE Arca Equities Rule 5.2(j)(7) is solely designed to accommodate the listing and trading of the Amex Trust Certificates, which are currently listed and trading on NYSE Alternext US, on the Exchange. The Commission further notes that, if the Exchange seeks to list and trade, or trade pursuant to unlisted trading privileges, any additional series of Trust Certificates, the Exchange is required to file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. The Commission finds that the proposed rule change would benefit investors by permitting the listing of the Amex Trust Certificates on the Exchange and providing investors and other market participants seamless and uninterrupted trading opportunities in the Amex Trust Certificates, while maintaining sufficient minimum standards with respect to the continued trading of such Trust Certificates.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,²⁵ that the proposed rule change (SR-NYSEArca-2008-123), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58895; File No. SR-NYSEArca-2008-122]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Program for NYSE Arca Realtime Reference Prices Service

Correction

In notice document E8-26627 beginning on page 66956 in the issue of Wednesday, November 12, 2008 make the following correction:

On page 66957, in the third column, under heading **III. Solicitation of Comments**, in the last paragraph, in the second to last line "December 1, 2008" should read "December 3, 2008".

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59054; File Nos. SR-OCC-2008-13 and SR-OCC-2008-14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares

December 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 23, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-OCC-2008-13 and SR-OCC-2008-14 as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule changes.

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

The proposed rule changes would remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition

of "fund share" in Article I, Section 1 of OCC's By-Laws.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

The purpose of the proposed rule changes is to remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added this interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares.³ Under the proposed rule changes, OCC would also (1) clear and treat as securities options any option contracts on iShares COMEX Gold shares and iShares Silver Trust shares that are traded on securities exchanges and (2) clear and treat as security futures any futures contracts on iShares COMEX Gold shares and iShares Silver Trust shares.⁴

In its capacity as a "derivatives clearing organization" registered as such with the Commodity Futures Trading Commission ("CFTC"), OCC also filed the proposed rule changes with the CFTC for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options or that the clearing

² The Commission has modified the text of the summaries prepared by OCC.

³ Securities Exchange Act Release No. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008).

⁴ The exact language of the interpretation can be found at http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_13.pdf and http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_14.pdf.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ *Id.*

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

of such futures as security futures constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares that OCC currently clears pursuant to the rule change referred to above and an exemption issued by the CFTC.⁵ OCC believes that this filing raises no new regulatory or policy issues.

OCC believes that the proposed interpretation of its By-Laws is consistent with the purposes and requirements of Section 17A of the Act⁶ because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction, or shared jurisdiction in the case of security futures, over derivatives based on iShares COMEX Gold Trust shares and iShares Silver Trust shares. The proposed rule changes are not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule changes would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

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

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.⁷ By amending its By-Laws

to help clarify that options and security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares will be treated and cleared as securities options or security futures, OCC's proposed rule changes should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and accurate clearance and settlement of securities transactions. In accordance with the Memorandum of Understanding entered into between the CFTC and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposed rule changes prior to the thirtieth day after the publication of notice in the **Federal Register**. The proposed rule changes are similar to the proposal previously approved by the Commission regarding the treatment and clearing of options and security futures on SPDR Gold Shares.⁹ Therefore, the Commission does not believe that the proposed rule changes raise any new regulatory issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR-OCC-2008-13 and SR-OCC-2008-14 on the subject line.

Paper Comments

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

All submissions should refer to File Numbers SR-OCC-2008-13 and SR-

OCC-2008-14. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_13.pdf and http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_14.pdf. 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 Numbers SR-OCC-2008-13 and SR-OCC-2008-14 and should be submitted on or before December 31, 2008.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.¹⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-OCC-2008-13 and SR-OCC-2008-14) be and hereby are approved on an accelerated basis.

⁵ *Supra* note 3. CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008).

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78s(b)(2).

⁹ *Supra* note 3.

¹⁰ In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29156 Filed 12-9-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59035; File No. SR-DTC-2007-07]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Amend the Applicant Disqualification Criteria Contained in Its Rules

December 1, 2008.

I. Introduction

On April 30, 2007, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 7, 2008, and March 18, 2008, amended proposed rule change SR-DTC-2007-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change was published for comment in the **Federal Register** on July 16, 2008.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change amends the applicant disqualification criteria contained in DTC's rules in order to harmonize them with similar rules of DTC's affiliates, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC").

A. Statutory Disqualification

DTC Rule 2 sets forth the basic standards for the admission of DTC Participants and defines certain criteria that may disqualify an applicant from participation. While the factors that may disqualify an applicant are generally consistent among DTC, FICC, and NSCC rules, DTC's rules do not specifically reference an order of statutory disqualification as defined in Section 3(a)(39) of the Act³ among its disqualification criteria.⁴ To promote uniformity among the rules of DTC and

its affiliates, DTC is adding such a provision to its rules.

B. Associated Persons

DTC rules include applicant disqualification criteria for persons and/or entities "associated" with an applicant. Because it is not easily ascertainable as to what entities or individuals are "associated" with a particular entity, DTC is amending these provisions in its rules so that they are consistent with internal surveillance procedures. DTC is changing references to persons "associated" with the applicant to references to "controlling management," which shall be defined to mean the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or their equivalents. These are the officers that are currently screened by DTC's risk management pursuant to internal procedures. DTC is also adding language to its rules that would require applicants to inform DTC as to any member of its controlling management that is or becomes subject to statutory disqualification.

C. Amendment to Willful Violation

DTC rules currently include as a disqualification criterion the applicant's or an associated person's "willful" violation of the Securities Act of 1933,⁵ the Act, the Investment Company Act of 1940,⁶ the Investment Advisors Act of 1940,⁷ or any rule or regulation promulgated thereunder. DTC is removing the word "willful" from this provision because DTC believes that any violation of these provisions should be a disqualification criterion.

Changes similar to those outlined in Sections A, B, and C above will be made to DTC Rule 10, "Discretionary Termination."

III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁸ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section

17A(b)(3)(H)⁹ which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which amends DTC's applicant disqualification criteria contained within its rules, is consistent with those statutory obligations.

IV. 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 Act¹⁰ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-DTC-2007-07) be, and hereby is, approved.¹²

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59043; File No. SR-NASDAQ-2008-089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the Nasdaq Options Market

December 3, 2008.

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 November 21, 2008, the NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has filed

⁹ 15 U.S.C. 78q-1(b)(3)(H).

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58122 (Jul. 9, 2008), 73 FR 40888.

³ 15 U.S.C. 78c(a)(39).

⁴ As a clearing agency registered under the Act, DTC must evaluate its participants subject to an order of statutory disqualification.

⁵ 15 U.S.C. 77a et seq.

⁶ 15 U.S.C. 80a-1 et seq.

⁷ 15 U.S.C. 80b-1 et seq.

⁸ 15 U.S.C. 78q-1(b)(3)(F).