Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 3, 1995—Filing of Appeal letter
March 13, 1995—Commission Notice and Order of Filing of Appeal
March 28, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
April 7, 1995—Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
April 27, 1995—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 12, 1995—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 19, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
July 1, 1995—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35474; File No. SR–BSE–95–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

March 10, 1995.

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 February 13, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 28, 1995, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain language in the original filing and to request accelerated approval of the proposal.[3] The Commission is publishing this notice to solicit comments 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 seeks a four month extension of its pilot program regarding stopping stock in minimum variations markets.[4] The text of the proposed rule change is available at the Commission.

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 self-regulatory organization 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 III below. The self-regulatory organization 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 purpose of the proposed rule change is to extend the SEC-approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional four months. The pilot provision expires on March 21, 1995, and this proposal would extend the pilot until July 21, 1995.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[5] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives 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

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated February 28, 1995 (''Amendment No. 1'').

[4] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a pilot program permitting specialists to stop stock in minimum variation markets in Securities Exchange Act Release No. 35068 (December 8, 1994), 59 FR 64717 (December 15, 1994) (File No. SR–BSE–94–09) (''1994 Pilot Approval Order''). *See also* Ch. II, Sec. 38 of the BSE Rules.

Independent of the BSE's request for an extension of its pilot program, the Commission has received a comment letter regarding permanent approval of the New York Stock Exchange's procedures for stopping stock in minimum variation markets. *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995. The comment letter addresses the broader issue of whether stopping stock is consistent with the specialist's agency obligations and recommends that the Commission not grant permanent approval to the minimum variation market pilot programs. The current BSE filing, however, merely extends its pilot program for four months to permit additional information to be gathered and reviewed. The Commission believes that it would be more appropriate to address the issues raised by the comment letter in the context of proposals requesting permanent approval of the exchanges' stopping stock pilot programs.

[5] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

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; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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 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

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

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–03 and should be submitted by April 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder,[7] that specialist transactions must contribute to the maintenance of fair and orderly markets.

In its order approving the pilot procedures,[8] the Commission asked the BSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has begun to gather certain information requested by the Commission and to upgrade its technological capabilities in this regard, there has not been sufficient time since initial approval of the pilot program for the Exchange to produce conclusive results. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission fairly can evaluate the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[9] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[10] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote. The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities markets.

Despite these potential benefits, the Commission continues to be particularly concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price. For that reason, the Commission has required that procedures for stopping stock in minimum variation markets be implemented on a pilot basis. These pilot programs have been extended until July 21, 1995, in order to allow the Commission and the relevant exchanges to determine whether the benefits of the practice substantially outweight the costs thereof.[11]

The Commission has concluded that it is appropriate to place the BSE on equal competitive footing with the other exchanges by extending its pilot program until July 21, 1995. Nevertheless, the Commission believes that the BSE rule, specifically the provisions regarding execution of stopped orders at an improved price before limit order interest at the price is exhausted,[12] raises certain unique issues. Accordingly, before the Commission would consider another extension or permanent approval of the

[6] 15 U.S.C. 78f(b) (1988).

[7] 17 CFR 240.11b–1 (1991).

[8] *See* 1994 Pilot Approval Order, *supra,* note 4.

[9] *See, e.g.,* SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[10] *See* NYSE Rule 116.30; American Stock Exchange (''Amex'') Rule 109; and Article XX, Rule 12 of the Chicago Stock Exchange (''CHX'') Rules. The relevant NYSE, Amex and CHX rules incorporate their pilot programs to permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange (''Phlx'') proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[11] For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until July 21, 1995, *see* Securities Exchange Act Release Nos. 35309 (January 31, 1995), 60 FR 7247 (February 7, 1995) (File No. SR–NYSE–95–02); 35310 (January 31, 1995), 60 FR 7236 (February 7, 1995) (File No. SR–Amex–95–01); and 35431 (March 1, 1995) (File No. SR–CHX–95–04).

[12] *See supra,* note 5.

Exchange's pilot program, the Commission would expect the BSE to submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and to demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

At a minimum, the Commission requests that the BSE calculate (1) the average number of limit orders and the average number of shares on the book ahead of the stopped stock and (2) how much of that volume typically is executed by the close. Similarly, the Exchange should determine how often limit orders against which stock is stopped in a minimum variation market are executed by the close of the day's trading. This should include a one-day review of all book orders in the five stocks receiving the greatest numbers of stops.

Finally, in its order initially approving the BSE proposal, the Commission requested that the BSE determine how often stopped orders received price improvement and which investors were most affected by the pilot program. At this time, the Commission believes that further information is necessary to ensure that BSE specialists are handling stopped orders in a manner which is consistent with their obligation to maintain fair and orderly markets. Accordingly, the Exchange should continue to monitor (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that receive price improvement.

The Commission requests that the BSE submit a report describing its findings on the above matters by April 15, 1995. In addition, if the Exchange determines to request an extension of the pilot program beyond July 21, 1995, the BSE should submit to the Commission a proposed rule change by April 15, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[13]

It is therefore ordered, pursuant to Section 19(b)(2)[14] that the proposed rule change (SR–BSE–95–03) is hereby approved on a pilot basis until July 21, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6571 Filed 3–16–95; 8:45 am]

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[Release No. 34–35469; File No. SR–DTC–95–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking to Establish a Procedure to Buy-in Securities to Eliminate Participants' Short Positions Older than Ninety Days

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 13, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–01) 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 persons.

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

DTC proposes to establish a buy-in procedure to eliminate participants' short positions that are outstanding for more than ninety calendar days.

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 that it received on the proposed rule change. The test 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 such statements.

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

DTC currently employs procedures to help eliminate short positions caused by book entry deliveries of callable securities made between the call publication date and the lottery processing date and procedures to help eliminate short positions caused by rejected deposits.[2] Under DTC rules when DTC participants have short positions in their accounts, DTC debits the participants' accounts by an amount equal to 130% of the market value of the short position as determined by DTC. DTC believes collecting 130% of the value of the short position protects DTC against risk and provides participants with an incentive to cover short positions promptly. the charge is marked to the market until the short position is covered or matures.

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[13] No comments were received in connection with the proposed rule change that implemented these procedures. *See* Approval Order, *supra* note 4.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of DTC's procedures, refer to Securities Exchange Act Release No. 35034 (December 8, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of procedures to recall certain deliveries which have created short positions as a