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.

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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

DTC is proposing procedures that will permit DTC to use the short position charge as a funding source to attempt to buy-in securities to cover short positions which have not been covered by participants within ninety days. Under the proposed procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request (''ICSR'') using the Participant Terminal System (''PTS'') operated by DTC.

The invitations will be offered at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE

[Market value]

Minimum	Maximum	Premium percent	Maximum possible premium
$1	$50,000	12	$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	UP	2	([1])

[1] Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, long participants will be contacted by telephone. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) credit the securities to the participant's account, (2) reduce the short position charges by the amount of the purchase price of the securities together with the expenses of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

DTC believes the proposal is consistent with its obligation under Section 17A of the Act to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because the procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.

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

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition 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

Written comments from DTC participants concerning an earlier version of the proposed buy-in procedures were solicited by a DTC Important Notice dated July 29, 1994. DTC received comment letters from eleven organizations. Seven respondents opposed the earlier proposed version of the buy-in procedures. The commentators raised concerns about the potential risk of monetary loss that their organizations and clients could incur because of the procedures as proposed. Five commentators viewed the offering price range of 110–130% of market value as excessive and/or felt that the tiered approach (*i.e.*, offerings starting from 110% after ninety days, 120% after 120 days, and 130% after 150 days) would be counterproductive as sellers would ''hold out'' for the higher rate.

DTC revised the earlier version of the buy-in procedure to address the concerns raised with respect to seller ''hold-outs.'' The three-step invitation to tender successively at 110% of the current market value after 90 days, 120% after 120 days, and 130% after 150 days has been replaced by a single invitation after 90 days to tender at the current market value plus a premium ranging from 2–12% depending upon the current market value of the short position.

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

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(a) by order approve such proposed rule change 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. 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 in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

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[3] 17 CFR 200.30–3(a)(12) (1994).