

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-36651; File No. SR-DTC-95-21]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Permanent Approval of a Proposed Rule Change Concerning Short Position Reclamation Procedures

December 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 9, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-95-21) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant permanent approval of the proposed rule change on an accelerated basis.

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

The proposed rule change seeks permanent approval of DTC's existing procedures for the recall of securities deliveries that have created short positions as a result of call lotteries or rejected deposits. The Commission previously granted temporary approval to proposed rule changes establishing DTC's procedures for the recall of certain deliveries which have created short positions as a result of call lotteries or rejected deposits.²

¹ 15 U.S.C. 78s(b)(1) (1988).

² For a complete description and discussion of the procedures designed to eliminate short positions caused by call lotteries or rejected deposits, refer to Securities Exchange Act Release Nos. 30552 (April 2, 1992), 57 FR 12352 [File No. SR-DTC-90-02] (order granting temporary approval through April 1, 1994, of DTC's procedures to recall certain deliveries that have created short positions as a result of call lotteries); 35034 (November 30, 1994), 59 FR 63396 [File Nos. SR-DTC-94-08 and SR-DTC-94-09] (ordering granting temporary approval through May 1, 1995, of DTC's procedures to recall certain deliveries that have created short positions as a result of call lotteries and rejected deposits); and 35940 (July 6, 1995), 60 FR 36318 [File No. SR-DTC-95-07] (order granting temporary approval through December 31, 1995, of DTC's procedures to recall certain deliveries that have created short positions as a result of call lotteries and rejected deposits).

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 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 such statements.³

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

The proposed rule change seeks permanent approval of procedures that (1) enable a participant to recall book-entry deliveries of callable securities⁴ if the participant's account becomes short as a result of deliveries made between the call publication date⁵ and the date of DTC's call lottery⁶ and (2) enable a participant to recall securities deliveries that have created short positions as a result of rejected deposits.⁷ The proposed rule change is part of a program that is being implemented at the request of participants and securities industry groups to eliminate short positions.

Pursuant to DTC's proposal, a participant with a short position created either because of a delivery made between the call publication date and the date of DTC's lottery or because of a rejected deposit may initiate the recall

³ The Commission has modified the text of the summaries submitted by DTC.

⁴ Callable securities are either preferred stock or bonds which the issuer is permitted or required to redeem before the stated maturity date at a specified price.

⁵ The call publication date is the date on which the issuer gives notice of redemption.

⁶ DTC has established a lottery process to allocate called securities in a partially called issue among participants having positions in the issue. DTC allocates the called securities among participants that had positions in the issue on the call publication date rather than on the day when the lottery is held. For a description of DTC's lottery processing procedures, refer to Securities Exchange Act Release No. 21523 (November 27, 1984), 49 FR 47352 [File No. SR-DTC-84-09].

⁷ Under DTC procedures, a participant depositing securities receives immediate credit in its securities account (*i.e.*, before the certificates are sent to the transfer agent for transfer and registration in DTC's nominee name). Once the participant's account is credited, the securities are available to the depositing participant for deliveries, withdrawals, and pledges. If the transfer agent rejects a deposit after the depositing participant has made a book-entry delivery of the credited securities, elimination of the credit from the participant's account may create a short position.

process within ten business days of the creation of the short position by sending a broadcast message directly to the receiver of the book-entry delivery.⁸ Participants are able to transmit this message through DTC's Participant Terminal System network. The receiving participant will have five business days to comply with the recall request if it has a position in that security at DTC. If the receiving participant no longer has such a position at DTC, it must comply with the recall request within fifteen business days. If the short position is less than the amount of the delivery, the receiver has the option to return the entire delivery or just a portion equal to the delivering participant's short position. If the receiving participant does not comply with the recall request within the applicable time, the recalling participant may request DTC's intervention.⁹ Recalls will reverse only the book-entry delivery while the original transaction still must be settled by the delivering and receiving participants (*i.e.*, the delivering participant still must deliver securities to the receiving participant).

DTC believes that the reclamation procedures have been effective in reducing short positions caused by call lotteries and rejected deposits. Through September 1995, a total of 287 short positions valued at \$54,289,000 have been eliminated through the use of the reclamation procedures.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal seeks to make permanent procedures that should help reduce the number of short positions created either by call lotteries or by rejected deposits and thus should assure the safeguarding of securities and funds which are in the custody and control of DTC or for which DTC is responsible.

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

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

⁸ If the securities are rejected by the transfer agent after ninety days of the deposit for registered securities and after nine months for bearer securities, the participant will not be able to recall the book-entry delivery and the participant's account will remain short.

⁹ The intervention request must be submitted to DTC no later than twenty-five days after the original reclamation request was made.

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

No written comments have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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

Section 17A(b)(3)(F) of the Act¹⁰ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's short position reclamation procedures are consistent with DTC's obligations under Section 17A(b)(3)(F) because the proposed procedures should help DTC assure the safeguarding of securities and funds by reducing the number of outstanding short positions at DTC created either by call lotteries or by rejected deposits.

Under the DTC's procedures, participants are obligated to cover their short positions immediately. As an incentive to cover a short position as soon as possible and as a cushion to protect DTC in the event of a sharp rise in the market price of the security, DTC participants are assessed a daily charge of 130% of the market value of each security for which the participant has a short position at DTC.¹¹ With this rule change, DTC should further reduce its risk of loss by allowing DTC participants to recall certain deliveries which have resulted in short positions which should further reduce the total number of outstanding short positions. Thus, the proposal is consistent with Section 17A(b)(3)(F)¹² of the Act in that it should help DTC to reduce its risk of loss and thereby should enhance DTC's ability to safeguard securities and funds under its control.

Because the Commission was concerned that the proposed reclamation procedures could inadvertently cause broker-dealers to create possession or control deficits,¹³

the Commission previously approved the proposed rule change on a temporary basis in order that the reclamation procedures could be carefully monitored before they were approved permanently. The Commission is now permanently approving the reclamation procedures because during the temporary approval period the Commission has not received any reports of possession or control deficit problems caused by the procedures.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule change because the Commission has noticed the procedures on several separate occasions without receiving any comment letters and because accelerated approval will allow DTC participants to continue to utilize the procedures without any disruption when the current temporary approval expires.

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, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-95-21 and should be submitted by January 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

of a customer [17 CFR 240.15c3-3(b)(1)]. If as a result of a recall procedure, DTC reverses the delivery of a security that is a fully-paid or excess margin security at the receiving broker-dealer participant, the participant could incur a deficit in the number of securities that should be under its physical possession or control.

proposed rule change (File No. SR-DTC-95-21) be, and hereby is, permanently approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,
Secretary.

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[Release No. 34-36656; International Series Release No. 912; File No. SR-ISCC-95-06]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Global Clearance Network Service

December 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 2, 1995, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have prepared primarily by ISCC. On December 12, 1995, and on December 13, 1995, ISCC filed amendments to its proposed rule change.² 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 proposed rule change is to accommodate an additional service provider, Standard Chartered Bank ("SCB") in ISCC's Global Clearance Network ("GCN") service.

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

In its filing with the Commission, ISCC 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. ISCC has prepared summaries, set forth in sections (A), (B),

¹⁴ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988)

² Letters from Julie Beyers, Associate Counsel, ISCC, to Michele Bianco, Division of Market Regulation, Commission (December 12, 1995, and December 13, 1995).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹¹ Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185 [File No. SR-DTC-89-07] (order approving a proposed rule change concerning invitations to tender to cover short positions).

¹² 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹³ The Commission was concerned with the proposal's impact on broker-dealers' compliance with Rule 15c3-3 under the Act [17 CFR 240.15c3-3]. This rule requires broker-dealers to obtain and thereafter to maintain physical possession or control of fully-paid securities and excess margin securities carried by a broker-dealer for the account