[Release No. 34–35484; File No. SR–MSTC–94–21]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Establishing an Automated Program for the Transfer of Certain Securities Between the Midwest Securities Trust Company and Transfer Agents

March 14, 1995.

On December 28, 1994, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSTC–94–21) under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to establish an automated program for the transfer of certain securities between MSTC and transfer agents. Notice of the proposal was published in the **Federal Register** on March 6, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

MSTC is establishing an automated program, to be known as ATS, for the transfer of certain securities between MSTC and transfer agents. Under MSTC's program, MSTC and the transfer agents participating in the program will use a master balance certificate[3] to evidence the number of securities of a particular issue transferred into or out of MSTC and through the transfer agents. The transfer agents will have custody of the securities in the form of balance certificates registered in MSTC's nominee name. The balance certificates will be adjusted daily to reflect MSTC's withdrawal and deposit activity.

Previously, if a participant requested the withdrawal of one hundred shares of a security from MSTC, MSTC would send an electronic or written instruction to the transfer agent followed by a physical transfer of the shares from MSTC to the transfer agent. The transfer agent would reissue the shares in the requested name and would send the shares back to MSTC. Using the ATS program, an electronic instruction will immediately effectuate the withdrawal transfer, eliminating the extra step of physically transferring the security from MSTC to the transfer agent.

For issues eligible for ATS, MSTC will deliver to participating transfer agents nominee and/or non-nominee certificates[4] for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue in the name of Kray & Co. The transfer agent will retain possession of the balance certificates, holding them in a secured area at all times, and MSTC will be provided a sample balance certificate for each issue.

MSTC will deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the non-nominee certificates into the name of Kray & Co. and to include the securities evidenced by the non-nominee and/or nominee certificates in the balance certificate for the issue represented by such balance certificate. MSTC also may issue instructions to the transfer agent to register the transfer of securities evidenced by a balance certificate to a name other than Kray & Co. or to issue a certificate to a name other than Kray & Co.

After issuing a balance certificate, the transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day it will evidence the number of securities equal to the previous balance plus any securities received from MSTC to be registered in the name Kray & Co. less any transfers and issuance of certificates in a name other than Kray & Co. The transfer agent will confirm in writing, on a daily or other periodic basis as MSTC may reasonably request, the number of securities evidenced by each balance certificate.

The obligations of the ATS transfer agents and MSTC will be set forth in a Balance Certificate Agreement (''Agreement'') executed by each ATS transfer agent and MSTC.[5] The Agreement provides that all shares or units or the amount of any obligations evidenced by the balance certificate which come into possession of the transfer agent pursuant to ATS will be the sole property of MSTC. The transfer agent will not obtain any legal or equitable right, title, or interest in or to such securities evidenced by the balance certificates.

The Agreement also provides that upon request from MSTC, the transfer agent will be obligated to deliver, within twenty-four hours, all securities evidenced by a balance certificate. If the transfer agent determines that any security held by it is lost, destroyed, stolen, or otherwise unaccounted for, the transfer agent must notify MSTC immediately and issue a replacement certificate.

The Agreement provides that the transfer agent must maintain an insurance policy in the form of a customary bankers blanket bond to cover any securities received from MSTC or held by the transfer agent pursuant to ATS. The bond must be in the maximum amount of one hundred million dollars. The Agreement further states that the transfer agent must provide annually to MSTC's satisfaction evidence that such blanket bond or comparable plan of insurance is in full effect.[6] When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provide adequate insurance coverage or require coverage from the carrier to cover losses that occur while in transit to and until received by MSTC. The amount of coverage must be equal to or exceed 110% of the fair market value of the securities shipped. The transfer agent is not obligated to deliver shares evidenced by balance certificates within twenty four hours of such a request from MSTC if the aggregate value of the shares to be delivered exceeds the amount of the bankers blanket bond. The transfer agent will instead deliver

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

[2] Securities Exchange Act Release No. 35424 (February 28, 1995), 60 FR 12258.

[3] For the purpose of the ATS program, ''balance certificates'' shall mean a certificate registered in the name Kray & Co., which is MSTC's nominee name, which evidences (1) record ownership by Kray & Co. of the number of shares or units of the issue shown from time to time on the records of the issuer thereof or (2) the duties of the issuer thereof to perform the obligations shown from time to time on the records of the issuer thereof, which records are maintained by a transfer agent, as being evidenced by such certificate, which certificate shall be retained by a transfer agent.

[4] For the purpose of the ATS program, the term ''nominee certificates'' shall mean a certificate of an issue registered in the name of Kray & Co. The term ''non-nominee certificate'' shall mean a certificate of an issue registered in a name other than Kray & Co.

[5] If a transfer agent employs a processor to perform the transfer agent's duties in ATS, the transfer agent and processor must enter into a separate agreement obligating the processor to perform the duties described in the Agreement. The transfer agent must notify MSTC if there is any material change to the terms of the agreement between the transfer agent and processor, if there is a termination or anticipated termination of the agreement, or if there is breach of the agreement or an event that will affect or might reasonably be expected to affect the processor's ability to perform any of its obligations under the agreement. MSTC only will permit a transfer agent to employ a processor as its agent if the transfer agent represents and warrants that it will bear any and all liability and responsibility for all securities held by, all actions taken by, and all obligations assigned to the processor with the same force and effect as if the securities were held by, the actions were taken by, or the obligations were those of the transfer agent.

[6] The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to MSTC.

or make available the certificates as promptly as possible.[7]

Instructions from MSTC to register the transfer of securities evidenced by a balance certificate in a name other than MSTC will constitute a presentation of the balance certificate to the transfer agent under applicable law. The same warranties that would apply if MSTC physically presented the balance certificate to the transfer agent will be applicable in this instance.

II. Discussion

The Commission believes that MSTC's proposal is consistent with Section 17A of the Act[8] and specifically with Sections 17A(b)(3)(A) and (F).[9] Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

Under MSTC's proposed rule change, an electronic instructions will replace the physical transfer of securities between MSTC and transfer agents. The proposal should help alleviate the inefficiencies associated with the physical transfer of securities and should help reduce the possibility of loss while securities are in transit between MSTC and the transfer agent. The transfer of securities will be factor and more efficient with the likely effect of reducing costs related to the preparation of written instructions and physical delivery of the securities. MSTC's proposed rule change also should help MSTC fulfill its safekeeping obligations by allowing MSTC to maintain securities in a form which should reduce the chances of loss and theft.

MSTC's proposed rule change requires that the transfer agent be insured by a customary bankers blanket bond which will cover any securities received from MSTC and/or held by the transfer agent or processor on behalf of MSTC under the Agreement. Where balance certificates have an aggregate current market value in excess of the maximum value of the bankers blanket bond, the transfer agent will not create or maintain certificates in excess of that value, other than any balance certificate, prior to delivery to MSTC. These insurance requirement should better enable MSTC to safeguard securities which are at the transfer agent or are in transit from the transfer agent to MSTC and should aid in the safekeeping of securities with a market value in excess of the bankers blanket bond.

MSTC 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 the filing. The Commission finds good cause for so approving the proposed rule change because the ATS program allows for an electronic communication between brokers and transfer agents through MSTC. Such communication will be necessary for transfer agents to participate in the direct registration system (''DRS'') recently proposed by the Commission.[10] The Commission believes it is prudent to allow MSTC to begin use of the ATS as soon as possible in order that MSTC and its participants will have time to become proficient in using such a system before a DRS is implemented. The Commission also believes that accelerated approval will allow MSTC participants to utilize and to take full advantage in a more timely fashion of the benefits of the ATS service.

III. Conclusion

The Commission finds that MSTC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSTC–94–21) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

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[7] Before delivering to MSTC certificates with an aggregate current market value in excess of the maximum amount of the blanket bond, the transfer agent may not create or maintain certificates, other than any balance certificate, having a value in excess of the blanket bond.

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[10] For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 [File No. S7–34–94] (concept release soliciting comment on a transfer agent operated book-entry registration system).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35497; File No. SR–PSE–95–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Obligations for Regulatory Cooperation

March 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1995, the Pacific Stock Exchange, Incorporated (''PSE'' 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 prepared by the self-regulatory organization. On March 3, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.[1] 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 is proposing to amend its rules to require regulatory cooperation by members, member organizations, and others over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) in connection with certain investigations and proceedings that are initiated by other exchanges or self-regulatory organizations. The text of the proposed rule change is as follow [new text is italicized]:

Rule 10.2

Regulatory Cooperation

(d) No member, member organization, person associated with a number or member organization, or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1(b), shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered

[1] *See* letter from Michael D. Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, Division of Market Regulation, SEC, dated March 2, 1995. Amendment No. 1 adds .02 of the Commentary to the proposed rule change.