

not adversely affect the safeguarding of securities or funds in MSTC's custody or control and does not significantly affect the respective rights or obligations of MSTC or persons using MSTC's services. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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 MSTC. All submissions should refer to File No. SR-MSTC-95-01 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35424; File No. SR-MSTC-94-21]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change Seeking To Establish an Automated Program for the Transfer of Certain Securities Between the Midwest Securities Trust Company and Transfer Agents

February 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 28, 1994, the Midwest Securities Trust Company ("MSTC") 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 primarily by MSTC. 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

MSTC proposes to establish an automated program, to be known as ATS, for the transfer of certain securities between MSTC and transfer agents.

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

In its filing with the Commission, MSTC 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. MSTC 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

The proposed rule change seeks to establish an automated program for the transfer of securities between MSTC and transfer agents. Under MSTC's proposed program, MSTC and the transfer agents participating in the program will use a master balance certificate² to evidence

the number of securities of a particular issue registered in MSTC's nominee name and transferred into or out of MSTC 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.

Currently, if a participant requests the withdrawal of one hundred shares of a security from MSTC, MSTC will send a written instruction to the transfer agent followed by a physical surrender of the shares to the transfer agent. The transfer agent will reissue the shares in the requested name and will send the shares back to MSTC. Using the ATS program, an electronic instruction will immediately effectuate the withdrawal transfer thus eliminating the extra step of physically surrendering 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 certificates³ for each issue. The transfer agent will cancel the certificates delivered and issue one or more balance certificates per issue. The transfer agent will retain possession of the balance certificates and hold them in a secured area at all times.

In its normal course of business, MSTC will continue to deliver to participating transfer agents nominee certificates and/or non-nominee certificates with the instructions to register the transfer of the non-nominee certificates into the account of Kray & Co. MSTC also will instruct the transfer agent to include the securities evidenced by the nominee and/or non-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 all or some of the 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. The transfer agent will increase or decrease the number of securities evidenced by the balance certificate so that at the end of each day the balance certificate will evidence the number of securities equal to 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.

³ 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.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 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

⁶ 17 CFR 200.30-3(a)(12) (1994).

previous balance plus any securities received from MSTC to be registered in the name Kray & Co. minus 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.⁴ 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 balanced 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 banker's 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

⁴ 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 changed 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 a 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.

effect.⁵ When the transfer agent is responsible for the shipment of securities, the Agreement requires that the transfer agent provides 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 delivery 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 or make available the certificates as promptly as possible.⁶

Instructions from MSTC to register the transfer of securities evidenced by a balance certificate in a name other than Kray & Co. 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.

MSTC believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act⁷ in that it enhances MSTC's ability to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.

MSTC also believes the rule change will further MSTC's goal of minimizing the exposure of securities to loss in transit between MSTC and transfer agents. The program will eliminate needless movement of securities. Under ATS, securities will be maintained in a form that will no longer permit the ready negotiation of the securities in the event of theft.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose an inappropriate burden on competition.

⁵ The transfer agent may limit, decrease, or cancel the blanket bond protection upon thirty days prior notice of such action to MSTC.

⁶ Before delivering the 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.

⁷ 15 U.S.C. 78q-1(b)(3)(A) (1988).

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

Written comments were neither solicited nor received.

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

Within thirty-five days of the date of the 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 find such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MSTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change would be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. 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 persons, 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-94-21 and should be submitted by March 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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⁸ 17 CFR 200.20-3(a)(12) (1994).