

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

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).

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.