

local governments to meet mandate standards and timetables; and, (6) Lack of coordinated federal policy with no federal agency empowered to make binding decisions about a mandate's requirements.

Summary of Recommendations on Individual Mandates

The Preliminary Report summarizes proposed recommendations for each of the 14 individual mandates reviewed into three categories. [Note: The Preliminary Report includes a fuller discussion of the individual mandates and the respective proposed recommendations. In addition, Appendix A contains a description of the requirements imposed by the mandate, a discussion of the mandate's background and history, a listing of the concerns expressed by state and local governments, and the recommendation options considered.]

The Commission finds that the following mandates as they apply to state and local governments do not have a sufficient national interest to justify intruding on state and local government abilities to control their own affairs. Thus, ACIR recommends *repealing* the provisions in these laws that extend coverage to state and local governments.

- Fair Labor Standards Act.
- Family and Medical Leave Act.
- Occupational Safety and Health Act.
- Drug and Alcohol Testing of Commercial Drivers.
- Metric Conversion for Plans and Specifications.
- Medicaid: Boren Amendment.
- Required Use of Recycled Crumb Rubber.

The Commission finds that the following mandates are necessary because national policy goals justify their use. Thus, ACIR recommends *retaining* these mandates with modifications to accommodate budgetary and administrative constraints on state and local governments.

- Clean Water Act.
- Individuals with Disabilities Education Act.
- American with Disabilities Act.

The Commission finds that the following mandates are related to acceptable national policy goals, but they should be revised to provide greater flexibility in implementation procedures and more participation by state and local governments in development of mandate policies. Thus, ACIR recommends *revising* these mandates to provide greater flexibility and increased consultation.

- Safe Drinking Water Act.

- Endangered Species Act.
- Clean Air Act.
- Davis-Bacon Related Acts.

Report Availability and Public Comments

The Unfunded Mandates Reform Act of 1995 requires ACIR to hold public hearings on the recommendations contained in the Preliminary Report. To satisfy the statutory requirement, ACIR is sponsoring a Conference on Mandates, March 6-7, 1996, in Washington, DC. In addition, ACIR is soliciting comments on the Preliminary Report from all interested parties.

Copies of the Preliminary Report and information on the conference may be obtained from ACIR, 800 K Street, NW., Suite 450, South Tower, Washington, DC 20575. Phone: (202) 653-5540, FAX: (202) 653-5429. Comments on the Preliminary Report should be addressed to Philip M. Dearborn, Director, Government Finance Research, ACIR. To assure consideration prior to the drafting of a final report, comments should be received by ACIR on or before March 15, 1996.

Dated: January 11, 1996.

William E. Davis,
Executive Director.

[FR Doc. 96-448 Filed 1-16-96; 8:45 am]

BILLING CODE 5500-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36684; File Nos. SR-CHX-95-27, SR-DTC-95-22, SR-MCC-95-04, SR-MSTC-95-10, SR-NSCC-95-15]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; the Depository Trust Company; National Securities Clearing Corporation; Midwest Securities Trust Company; Midwest Clearing Corporation; Order Approving Proposed Rule Changes Regarding Arrangements Relating to a Decision by the Chicago Stock Exchange, Incorporated To Withdraw From the Clearance and Settlement, Securities Depository, and Branch Receive Businesses

January 5, 1995.

In November 1995, several self-regulatory organizations ("SROs") filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ concerning the decision by the Chicago Stock

Exchange, Incorporated ("CHX") to terminate the clearance and settlement services offered by several of its subsidiaries. Those SROs include the CHX, the Midwest Clearing Corporation ("MCC"), the Midwest Securities Trust Company ("MSTC"), The Depository Trust Company ("DTC"), and the National Securities Clearing Corporation ("NSCC").² Notice of the proposals were published in the Federal Register on November 28, 1995,³ December 1, 1995,⁴ and on December 8, 1995.⁵ The Commission received one comment letter expressing concern about the proposed CHX decision⁶ and responses from CHX, MSTC, MCC, and NSCC.⁷ For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description of the Proposals

CHX's filing notes that it is closing its clearance and settlement and securities depository businesses, conducted principally through three subsidiaries, in order to focus its resources on the operations of the exchange. This decision was made by the CHX Board of Directors on November 13, 1995, and approved by the CHX membership on December 14, 1995. The proposals filed by CHX, MSTC, MCC, DTC, and NSCC involve the proposed arrangements relating the CHX's decision. Parties to the proposed arrangements are CHX, MSTC, MCC, Securities Trust Company of New Jersey ("STC/NJ"),⁸ DTC, and NSCC.

As noted in the proposal MSTC and MCC will cease providing securities

² On November 16, 1995, CHX, MCC, and MSTC filed with the Commission proposed rule changes (File Nos. SR-CHX-95-27, SR-MCC-95-04, and SR-MSTC-95-10). On November 13, and November 24, 1995, respectively, DTC and NSCC filed with the Commission proposed rule changes (File Nos. SR-DTC-95-22 and SR-NSCC-95-15).

³ Securities Exchange Act Release No. 36497, (November 20, 1995), 60 FR 58693.

⁴ Securities Exchange Act Release Nos. 36509, (November 27, 1995) 60 FR 61720; 36510, (November 27, 1995), 60 FR 61724; and 36511, (November 27, 1995), 60 FR 61722.

⁵ Securities Exchange Act Release No. 36547 (December 1, 1995), 60 FR 63090.

⁶ Letter from Leland W. Hutchinson, Jr., Freeborn & Peters, [counsel for Scattered Corporation and Laura Bryant ("Scattered and Bryant") members of CHX] to Richard R. Lyndsey, Director, Division of Market Regulation, Commission (December 15, 1995).

⁷ Letters from J. Craig Long, Foley & Lardner [counsel to CHX, MSTC, and MCC], to Mr. Jonathan G. Katz, Secretary, Commission (December 22, 1995) and from Robert J. Woldow, General Counsel, NSCC, to Mr. Jonathan G. Katz, Secretary, Commission (December 27, 1995).

⁸ STC/NJ is a wholly-owned subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

¹ 15 U.S.C. 78s(b)(1) (1988).

depository and securities clearing services, respectively, by January 15, 1996. CHX will assist members of MCC and MSTC to find substitute service providers including other registered clearing agencies and will develop plans to assist floor brokers and specialists to obtain access to NSCC and DTC services by pursuing arrangements with those organizations similar to the arrangements structured by the Pacific and Boston Stock Exchanges.

In general, for a period of ten years CHX, MCC, MSTC, and STC/NJ will not engage in the businesses from which they have decided to withdraw (*i.e.*, the securities clearing, securities depository, and branch receive businesses). However, CHX and its subsidiaries will be free to provide specified securities depository-related and securities clearing-related services and products to CHX members and certain third-parties under certain circumstances.⁹

The proposed rule change modifies CHX's Constitution to reduce the size of the Board of Governors. This reduction conforms with the simultaneous reductions in the size of the boards of directors of MCC and MSTC. Because of its withdrawal from the businesses described above, CHX no longer believes it is necessary to maintain such a large board of directors. As a result, CHX is eliminating the board positions specifically reserved for representatives of MCC and MSTC. Those current board members whose slots have been eliminated may serve out the remainder of their terms.

DTC will offer sole MSTC participants an opportunity to become DTC participants if they meet DTC's qualifications. DTC and MSTC will cooperate to assure the orderly transfer of securities from the custody of MSTC to the custody of DTC for (i) sole MSTC participants and (ii) dual DTC/MSTC participants which authorize such transfer. DTC will acquire certain assets and assume certain lease and other contractual obligations of STC/NJ. DTC also will assume certain lease obligations of CHX and make certain payments to CHX, MSTC, and STC/NJ.

The proposal also makes conforming changes in DTC procedures to, among other things, eliminate the service of providing fourth-party deliveries between participants of the Philadelphia Depository Trust Company ("Philadep")

and participants of MSTC through the facilities of DTC. The proposal also includes an adjustment to reallocate some of the DTC general refund to sole DTC participants to the extent necessary to equalize between sole DTC participants and dual DTC/MSTC participants the significant cost savings dual DTC/MSTC participants will realize as a result of the proposed arrangements.¹⁰

NSCC will offer sole MCC participants an opportunity to become NSCC participants if they meet NSCC's qualifications. NSCC and MCC will cooperate to assure to orderly transfer of continuous net settlement securities positions of (i) Sole MCC participants and (ii) dual NSCC MCC participants which authorize such transfer. NSCC will make certain payments to CHX and MCC.

DTC and NSCC believe that the proposed arrangements will facilitate the industry's planned conversion to same-day funds settlement¹¹ and that the proposal will result in substantial savings for securities industry

¹⁰ DTC has a policy of refunding to its participants each year all revenues in excess of current and anticipated needs. In order to equalize the return on DTC's investment in the arrangements as between dual DTC/MSTC participants and sole DTC participant's DTC proposes to "ear-mark" a portion of its general refund for 1995 and to the extent necessary for 1996 and subsequent years for allocation to sole DTC participants only. Dual DTC/MSTC participants will realize savings because they will no longer have to pay MSTC fees for largely redundant custody-related processing.

¹¹ The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means. Currently, transactions in equities, corporate debt, and municipal debt are settled in "next-day funds" (a term that refers to payment by means of certified checks that are for value on the following day). Transactions in commercial paper and other money market instruments are settled in same-day funds. DTC and NSCC have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. DTC's and NSCC's efforts have been encouraged by and their plans have been monitored by the staffs of the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York. In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it believes the overall conversion to a same-day funds settlement system will help reduce systemic risk by eliminating overnight credit risk. The same-day funds settlement system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets. Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. ST-DTC-95-06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system). Under the conversion plan, all issues currently settling in next-day funds will convert to settlement in same-day funds on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996.

The SROs have stated that where there are interfaces between securities depositories, and interfaces among the securities clearing corporations, same-day funds settlement exposes each depository or clearing corporation to certain risks. These include risks such as the failure of another depository or clearing corporation to settle its new payment obligation because of a failure by one of the participants of such other depository or clearing corporation to settle with it or because such other depository or clearing corporation is experiencing a major system problem. The SROs believe these risks cannot be entirely avoided with existing and available risk management controls. The SROs have stated the CHX's withdrawal from the securities depository and securities clearing corporation business will eliminate the exposure of DTC and its participants and NSCC and its participants to the payment system risks associated with the DTC-MSTC and NSCC-MCC interfaces. At the same time, the SROs believe that their proposed arrangements will provide for the interests of MSTC and MCC participants in an orderly manner that will help assure their successful integration in the process of converting the same-day funds settlement.

Furthermore, interdepository and interclearing corporation interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal the SROs believe the substantial costs incurred by both DTC and MSTC and by NSCC and MCC in operating their interfaces would be eliminated.¹²

II. Discussion

The Commission must approve proposed exchange and clearing agency rule changes if it finds that the proposals are consistent with the requirements of the Act and the rules

¹² Because CHX no longer will be operating a securities depository, certain changes will be required in DTC procedures, principally the elimination of fourth-party deliveries between MSTC participants and Philadep participants through the interfaces that DTC has maintained with MSTC and Philadep. MSTC and Philadep never established their own interface. In addition, the SROs noted that dual DTC/MSTC and dual NSCC/MCC participants would achieve special savings by discontinuing their payment of MSTC and MCC fees for largely redundant processing costs related to securities clearing and settlement. Furthermore, both DTC and NSCC anticipate an increase in the number of their participants. DTC and NSCC have stated that this increase will result in higher DTC and NSCC transaction volumes thereby reducing the per-unit service costs that must be recovered through DTC and NSCC participant service fees.

⁹ Refer to File Nos. SR-CHX-95-27, Exhibit 2, SR-MCC-95-04, Exhibit 2, and SR-MSTC-95-10, Exhibit 2, for a more detailed description of the proposed arrangements by and among the SROs. A copy of each of the filings and all respective exhibits is available for copying and inspection in the Commission's Public Reference Room.

and regulations thereunder that govern those organizations.¹³ In evaluating a given proposal, the Commission examines the record before it and relevant factors and information.¹⁴ Competition among clearing agencies is a factor that the Commission must consider in its examination.¹⁵ However, Congress explicitly refused to require the Commission to achieve its regulatory objectives in the least

¹³ 15 U.S.C. 78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards. See, S.Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975) (hereinafter "S.Rep.").

¹⁴ The Court of Appeals has noted that in adopting the 1975 amendments to the Act ("1975 Amendments") "Congress recognized the need for a [n]ational system for clearance and settlement of securities transactions," the objective of which is to interconnect all American clearing agencies and place them under uniform rules, so that together they can provide prompt, safe, and efficient clearance facilities that take full advantage of modern data processing and communication technology." *Bradford National Clearing Corporation v. Securities and Exchange Commission*, 590 F.2d 1085, 1091 (D.C. Ct. App. 1978), citing, 15 U.S.C. § 78q-1(a)(1). The 1975 Amendments direct the Commission to establish a national clearing system in accordance with these objectives and with due regard to several concerns, including the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents. *Bradford*, 590 F.2d at 1091-92, citing, 15 U.S.C. 78q-1(a)(2). Furthermore, to carry out its broad statutory directive, Congress gave the Commission the authority to register clearing agencies that meet certain criteria and "cemented the [Commission's] control over the shape of the clearing industry by requiring its approval of any new or modified rules adopted by a clearing agency." *Bradford*, 590 F.2d at 1092 and 1094.

¹⁵ The Commission received one comment letter in connection with the proposed rule changes filed by CHX, MCC, MSTC, DTC, and NSCC. In the comment letter, Scattered and Bryant expressed concern that the proposed transaction was unduly anticompetitive and would lead to an inevitable monopoly and monopolistic abuse by NSCC and DTC in the business of clearance and settlement. With due consideration given to the concerns raised by Scattered and Bryant, as set forth below, the Commission does not believe that the proposed arrangements will have an effect on or impose a burden on competition not necessary or appropriate in furtherance of Section 17A of the Act. The Commission notes, as asserted by CHX, MSTC, MCC, and NSCC in their response letters, that some of Scattered and Bryant's conclusions appear to blur the distinct standards and objectives applicable to the Commission's examination of issues relating to the national market system as opposed to the national clearance and settlement system. Although "[t]he drafters of the 1975 Amendments assumed that the national market system and national clearing systems would reinforce each other," the national market system and the national clearing system were "not perceived by Congress as identical pillars supporting the legislators' conception of a modernized approach to securities marketing." *Bradford*, 590 F.2d at 1095. In fact, Congress's "directives to the Commission with respect to the [national market and clearing] systems vary slightly but significantly." *Id.* Specifically, fair competition is included as an objective of the national market system, but is not an objective of the national clearance and settlement system. *Id.* at 1095-96. See, 15 U.S.C. §§ 78k-1(a)(1), 78q-1(a)(1), and S.Rep. at 2, 55.

anticompetitive manner and stated that "[c]ompetition was simply not to become paramount to the great purposes of the (1934) Act * * *." ¹⁶ Rather, "at most, [the Act] only requires the Commission to decide that any anticompetitive effects of its actions are 'necessary or appropriate' to the achievement of its objectives." ¹⁷ Thus, in assessing anticompetitive conduct the Commission is required to do no more than balance the maintenance of fair competition along with a number of other equally important express purposes of the Act.¹⁸ In balancing competition concerns, the Commission cannot preserve or promote competition at an unjustifiable cost to its statutory objectives.

Section 6(b)(5) of the Act¹⁹ requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes CHX's proposed rule change is consistent with section 6(b)(5) of the Act in that it will enable the CHX to focus its resources and efforts on implementing a more viable and profitable long-term strategy for its core business, the exchange, including reengineering and restructuring of the exchange. CHX anticipates that the proceeds of the proposed transaction also will help provide liquidity for the operations of the exchange and that the transaction will allow CHX to avoid significant future capital expenditures for the businesses of MCC, MSTC, and STC/NJ. Consequently, the Commission believes that the proposal should help promote just and equitable principles of trade, remove impediments and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest. In addition, the Commission believes the proposal provides for an orderly closing of services by MCC, MSTC, and STC/NJ and an orderly transition for participants to substitute clearing and depository service providers and to the conversion to same-day funds settlement. Thus, the proposal fosters

cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Section 17A(b)(3)(F)²⁰ of the Act requires that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions and 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 the proposed rule changes by CHX, MCC, MSTC, DTC, and NSCC are consistent with the requirements of section 17A(b)(3)(F) because the proposals will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby will facilitate the prompt and accurate clearance and settlement of such transactions. The Commission also believes CHX's withdrawal from the securities depository and securities clearing businesses pursuant to the proposed transactions should help make the conversion to and operation of the same-day funds settlement system safer for DTC and NSCC and their respective participants by eliminating the financial exposure and payment system risks associated with the DTC-MSTC and NSCC-MCC interfaces. The Commission also believes the proposals facilitate prompt and accurate clearance and settlement of securities of securities transactions by providing more efficient and less expensive clearing and depository services.²¹ Moreover, because the proposals provide qualified sole MCC participants with access to NSCC's facilities and qualified sole MSTC participants with access to DTC's facilities and provide for the orderly transfer of open positions and securities, the Commission believes the proposals are being implemented consistently with the SROs' obligations to safeguard securities and funds in their custody and control. The Commission appreciates the efforts of the SROs and other regulators during the transition and will continue to monitor developments to facilitate an orderly transfer of accounts.

²⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

²¹ The Commission also believes the proposed allocation of DTC's general refund is consistent with the requirements of Section 17A(b)(3)(D) of the Act, which requires the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants, by assuring that DTC's costs associated with the proposed arrangements are equitably allocated among sole DTC participants and dual DTC/MSTC participants based upon DTC's estimate of the savings that each of these groups will obtain as a result of the proposed arrangements.

¹⁶ *Bradford*, 590 F.2d at 1105, quoting, S.Rep. at 14.

¹⁷ *Bradford*, 590 F.2d at 1105.

¹⁸ *Id.* at 1106.

¹⁹ 15 U.S.C. 78f(b)(5) (1988).

The Commission shares the commenter's concern that CHX's decision to withdraw from the clearance and settlement businesses reduces competition in that market. Nevertheless, as discussed in more detail below, the Commission believes circumstances exist that mitigate these concerns. The Commission will monitor developments in various areas closely, including progress in such areas as services pricing²² and service innovation, and will not hesitate to use its authority under the Act to address future competitive concerns.

Despite the dominant market position of DTC and NSCC, the Commission believes the current regulatory scheme and the particular structure and nature of the clearing and depository industries provide ample means of avoiding the potential negative effects of a monopoly. Sections 17A and 19 of the Act and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC and NSCC.²³ DTC is owned by its members

²² Any change to dues or fees charged by a clearing agency must be filed with the Commission for public comment. 15 U.S.C. § 78s(b)(3)(A) (1988).

²³ The 1975 Amendments provided the Commission with broad authority in the establishment of a national clearance and settlement system through the registration and rule filing processes. Section 17A(b)(3)(A) of the Act requires, among other things that—

A clearing agency shall not be registered unless the Commission determines that * * * [s]uch clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder * * *.

Section 17A further requires that the rules of a clearing agency—

* * * assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs, * * * provide for the equitable allocation of reasonable dues, fees, and other charges among its participants, * * * [and] promote the prompt and accurate clearance and settlement of securities transactions, * * * assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, * * * foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, * * * remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, * * * and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency * * *.

15 U.S.C. 78q-1(b)(3)(C)-(F) (1988).

Section 19(b) of the Act requires, among other things, that a clearing agency file its proposed rule changes with the Commission for approval and that the Commission publish the proposed rule changes for public comment prior to approval. Accordingly, all interested persons have an opportunity to submit written data, views and arguments

who utilize its services; NSCC is owned by the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers, which are themselves membership organizations. DTC's and NSCC's boards of directors are comprised of their members. Both NSCC and DTC must assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. In addition, as previously noted, NSCC and DTC not only provide services at costs reviewed by their user comprised boards of directors and subject to public notice and comment. NSCC provides monthly discounts and DTC provides annual rebates to their participants in the event that any fees collected have not been expended. The Commission believes existing regulations and member control have provided and will continue to provide the appropriate mechanisms to monitor the operations of DTC and NSCC.

The Commission also believes that after consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository and clearing services provided under the mandate of the Act. The overall cost to the industry of having such services available should be reduced, thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's and a clearing corporation's interface costs must be mutualized thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal from the depository and clearing businesses should reduce costs to its members and to participants of DTC and NSCC and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets. The Commission believes, based upon its obligation to balance the foregoing factors against the competition concerns attendant to the proposed transaction, that the proposed transaction advances the objectives of the national clearance and settlement system without an inappropriate or unnecessary burden upon competition.

However, the Commission recognizes that consolidation of core services poses a risk that support for innovative products, trading systems, and clearing procedures could flounder.

concerning such proposed rule changes. 15 U.S.C. 78s(b)(1) (1988).

Accordingly, NSCC and DTC must be responsive to the particular needs of their constituents, including exchanges, to support innovation and application of new technologies. The existence of competitive organizations such as an independent depository for mortgage-backed securities and clearing corporations for options, as well as the potential for new clearing agency registrants, offer potent checks on monopoly power.²⁴ The Commission notes that the proposed transaction itself provides for certain competition by CHX, MCC, and MSTC notwithstanding the general ten-year noncompetition provisions. The proposed transaction permits CHX, MSTC, and MCC to, among other things, develop securities depository services or securities clearing services for new products of CHX if DTC and/or NSCC cannot develop and provide services for the new product at a fee that is reasonably acceptable to CHX.

The Commission intends to monitor closely NSCC and DTC actions in such areas as integration of post-trade information proceeding, settlements in foreign currency, and developing links to clearing agencies for options and futures. Currently, the Commission is anticipating such innovative actions as the implementation of the Direct Registration System by DTC and others and the execution of the accord between NSCC and the Options Clearing Corporation. If necessary, the Commission will use its authority to require clearing agency action to promote prompt and accurate clearance and settlement or the safeguarding of funds and securities.²⁵

²⁴ Although NSCC and DTC have maintained and even increased their large market share in the industry, in recent years there has been increasing competition by clearing corporations that provide services in connection with particular securities. *E.g.*, Securities Exchange Act Release Nos. 35198 (January 6, 1995) 60 FR 3286 [File No. 600-24] (notice of filing and order approving application by Delta Government Options Corporation for extension of temporary registration as a clearing agency); 35482 (March 13, 1995) 60 FR 14806 [File No. 600-25] (notice of filing of request and order approving application by Participants Trust Company for extension of temporary registration as a clearing agency); and 36573 (December 12, 1995), [File No. 600-27] (order approving application by the Clearing Corporation for Options and Securities for exemption from registration as a clearing agency). These specialized clearance and settlement service providers have developed markets that are unlikely to encounter the competitive strain and inefficiencies associated with the redundant services and infrastructure described in the proposed rule changes.

²⁵ The Commission's broad rulemaking authority set forth in Section 17A(d) of the Act provides in part that "[n]o registered clearing agency * * * shall, directly or indirectly, engage in any activity as a clearing agency, * * * in contravention of such rules and regulations (A) as the Commission may

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Sections 6(b)(5) and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-CHX-95-27, SR-MSTC-95-10, SR-MCC-95-04, SR-DTC-95-22, and SR-NSCC-95-15) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-426 Filed 1-16-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36686; File No. SR-DTC-95-25]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change To Allow Participants To Make Intraday Withdrawals of Principal and Income Payments

January 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 15, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-95-25) 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

The purpose of the proposed rule change is to allow DTC participants to make intraday withdrawals of certain principal and income payments ("P&I payments")² that have been credited to

prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, or (B) as the appropriate regulatory agency for such clearing agency * * * may prescribe as necessary or appropriate for the safeguarding of securities and funds." 15 U.S.C. 78q-1(d)(1) (1988).

²⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² These payments include dividend, interest, reorganization and redemption payments, and other periodic payments.

the participants' money settlement accounts at DTC.

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

In a memorandum dated July 29, 1994, which was issued jointly with the National Securities Clearing Corporation ("NSCC") and which described the planned conversion of DTC's money settlement system to an entirely same-day funds settlement ("SDFS") system, DTC announced plans to offer a service for intraday withdrawal of P&I payments. The service was developed in response to participants' requests to have the funds resulting from P&I payments available for participants' use prior to the time of DTC money settlement at the end of the day. DTC plans to begin the new service in the first quarter of 1996.

In the current next-day funds settlement ("NDFS") environment, P&I payment allocations are credited to participants' accounts on a regular basis at a specific time during the day. Under the proposed rule change, P&I payment allocations for SDFS issues will be credited to participants' money settlement accounts throughout each processing day as funds are received by DTC from issuers and their paying agents. A participant only may withdraw P&I payments that have been credited to its account. Withdrawal requests for P&I payments will be subject to the risk management controls of the SDFS system (*i.e.*, collateral monitor and net debit caps). Any withdrawal request that is blocked due to insufficient collateral or a net debit cap will recycle until enough collateral or settlement credits have been generated to satisfy the collateral or net debit cap deficiency or until the end of the recycle period on that day. Any

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

early withdrawal requests still recycling at the end of the recycle period will be dropped from the system, and the P&I payment allocation will be included in the end-of-day settlement.

DTC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposed rule change will facilitate the processing of P&I payments through DTC's facilities. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the intraday withdrawals of P&I payments will be subject to DTC's existing SDFS system risk management controls.

(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.

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

All participants were informed of the proposed rule change by a DTC Important Notice dated October 12, 1995, as well as by the 1994 memorandum referred to above. Written comments from DTC participants or others have not been solicited or received on the proposed rule change. 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

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