

Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

The CBOE proposal contains several safeguards in connection with the expanded facilitation exemption that will serve to minimize any potential disruption or manipulation concerns. These safeguards are very similar to the structure and process that is currently employed in obtaining a facilitation exemption in SPX and interest rate options.<sup>16</sup>

First, the facilitation firm must receive approval from the Exchange's Exemption Committee prior to executing facilitating trades. Although Exchange approval may be granted on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the facilitation firm is required to furnish to the Exchange's Department of Market Regulation, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption.

Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Department of Market Regulation documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested

<sup>16</sup>In approving the firm facilitation exemptions for SPX and interest rate options, the Commission expressed its opinion that providing member organizations with exemptions for the purpose of facilitating large customer orders would better serve the needs of the investing public. At that time, the Commission also noted that safeguards were built into the exemption to minimize any potential disruption or manipulation concerns. See *supra* notes 6 and 7.

concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on "all or none" or "fill or kill" instructions, and the orders may not be executed until Exchange Rule 6.74(b) procedures have been satisfied and crowd members have been given a reasonable time to participate in the trade.

Fifth, in no event may the aggregate exempted position under this interpretation exceed the number of contracts specified in the exemption's table, *i.e.*, twice the applicable standard limit, excluding SPX and interest rate options.<sup>17</sup>

Sixth, the facilitation firm may not increase the exempted options position once it is closed, unless approval from the Exchange is again received pursuant to a reapplication under Interpretation .06.

In summary, the Commission believes that the safeguards built into the facilitation exemption process discussed above should serve to minimize the potential for disruption and manipulation concerns, while at the same time benefitting market participants by allowing member firms greater flexibility to facilitate large customer orders. This structure substantially mirrors the process that has existed for granting firm facilitation exemption requests for SPX and interest rate options, and the CBOE has surveillance procedures to surveil for compliance with the rule's requirements. Accordingly, the Commission believes it is appropriate to extend the benefits of the SPX and interest rate option facilitation exemptions to other option classes traded on the CBOE.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 deletes reference to a facilitating firm's ability to receive a position limit exemption when hedging a facilitation exemption order with opposite side of the market option contracts. In addition, Amendment No. 1 clarifies the Exchange's proposal by stating the facilitation exempted positions are to be viewed in the aggregate. Both revisions

<sup>17</sup>The Commission notes that for SPX options, the facilitating exemption is 100,000 contracts, and for interest rate options, the facilitating exemption is three times the applicable standard limit. These levels are the same as under the current rules.

narrow the scope of the proposed rule change, thereby reducing concerns regarding the potential for manipulation or market disruption. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-68 and should be submitted by April 10, 1996.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to expand the firm facilitation exemption for position and exercise limits to all non-multiply-listed Exchange option classes is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-CBOE-95-68), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority,<sup>19</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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<sup>18</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>19</sup> 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36965; File Nos. SR-MCC-96-02 and SR-MSTC-96-02]

**Self-Regulatory Organizations;  
Midwest Clearing Corporation;  
Midwest Securities Trust Company;  
Notice of Filing and Immediate  
Effectiveness of Proposed Rule  
Changes Relating to Termination of  
Services Provided by Midwest Clearing  
Corporation and Midwest Securities  
Trust Company**

March 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 16, 1996, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-MCC-96-02 and SR-MSTC-96-02) as described in Items I, II, and III below, which items have been prepared primarily by MCC and MSTC. On February 26, 1996, MCC and MSTC filed an amendment to the proposed rule changes to make technical corrections which did not affect the substance of the proposals.<sup>2</sup> The Commission is publishing this notice to solicit comments from interested persons.

**I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes**

On February 16, 1996, MCC and MSTC notified their participants of the procedures that MCC and MSTC will follow with respect to returning to participants their MCC and MSTC participant funds contributions. MSTC also notified its participants on February 16, 1996, that the interface between MSTC and The Depository Trust Company ("DTC") was to be discontinued on February 20, 1996.

**II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in section (A), (B),

and (C) below, of the most significant aspects of such statements.<sup>3</sup>

**(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

On January 5, 1996, the Commission approved proposed rule changes filed by MCC, MSTC, and Chicago Stock Exchange, Incorporated regarding their decisions to terminate as of January 15, 1996, securities clearing and depository services offered by MCC and MSTC. The decision to terminate such services was made in conjunction with an agreement with the National Securities Clearing Corporation and DTC.<sup>4</sup>

MCC and MSTC have issued a Conversion Flash describing a method for the orderly and equitable return of participants' MCC and MSTC participant funds contributions.<sup>5</sup> MSTC also issued a Conversion Flash on February 16, 1996, notifying its participants that the MSTC/DTC interface would be discontinued with the close of business on February 20, 1996, in anticipation of the conversion to same-day funds settlement on February 22, 1996.<sup>6</sup>

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the proposals will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in MCC's and MSTC's custody or control of for which MCC and MSTC are responsible.

**(B) Self-Regulatory Organizations' Statement on Burden on Competition**

MCC and MSTC do not believe the proposed rule changes will impose any burden on competition.

**(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others**

MCC and MSTC have neither solicited nor received written comments on the proposed rule changes.

<sup>3</sup> The Commission has modified the text of the summaries prepared by MCC and MSTC.

<sup>4</sup> Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195, [File Nos. SR-MCC-95-04 and SR-MSTC-95-10] (order approving proposed rule changes).

<sup>5</sup> The Conversion Flash is attached as Exhibit A to MCC's and MSTC's filings and is available in the Commission's Public Reference Room or through MCC or MSTC.

<sup>6</sup> The Conversion Flash is attached as Exhibit A to MSTC's proposed rule change and is available in the Commission's Public Reference Room or through MSTC.

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

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i) <sup>7</sup> of the Act and pursuant to Rule 19b-4(e)(1) <sup>8</sup> promulgated thereunder because the proposals constitute stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of existing rules of MCC and MSTC. At any time within sixty days of the filing of such rule changes, 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal offices of MCC and MSTC.

All submissions should refer to the file numbers SR-MCC-96-02 and SR-MSTC-96-02 and should be submitted by April 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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<sup>7</sup> 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

<sup>8</sup> 17 CFR 240.19b-4(e)(1) (1995).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> Letter from David T. Rusoff, Foley & Lardner [counsel to MCC/MSTC], to Cheryl Tumlin, Staff Attorney, Division of Market Regulation, Commission (February 26, 1996).