

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40206; File Nos. SR-MCC-98-01 and SR-MSTC-98-01]

### Self-Regulatory Organizations; The Midwest Clearing Corporation; the Midwest Securities Trust Company; Order Approving Proposed Rule Changes Relating to the Structure and Composition of the Board of Directors

July 15, 1998.

On February 9, 1998, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company (MSTC) filed proposed rule changes with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on February 25, 1998, amended the proposed rule changes. Notice of the proposals was published in the **Federal Register** on April 22, 1998.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule changes.

#### I. Description

The proposed rule changes amend MCC's and MSTC's by-laws in order to reflect the cessation of their securities clearing and depository services<sup>3</sup> and to streamline the structure and composition of their board of directors in order to remain consistent with the changes recently made by the Chicago Stock Exchange, Incorporated ("CHX").<sup>4</sup>

The proposed rule changes reduce the number of directors from 27 to 24 and realign the classes for both MCC and MSTC. The directors are still divided into three classes, but the size and composition will be adjusted as follows. At the 1998 annual election, class I will be reduced by two directors. At the 1999 annual election, class II will be reduced by four directors. At the 2000 annual election, class III will be reduced by one

director, and class II will be increased by one director. The board of directors will also be increased by three additional "non-industry" directors by the 1999 annual election to serve for staggered terms so as to balance the classes as determined by the nominating committee.<sup>5</sup>

#### II. Discussion

Section 17A(b)(3)(F)<sup>6</sup> of the Act requires that the rules of a clearing agency be designed to protect investors and the public interest. The Commission believes that the change in the composition of MCC's and MSTC's board of directors should help MCC and MSTC to better protect investors and the public interest. As a result of the modifications to the boards, there will be fifty percent representation of non-industry directors on MCC's and MSTC's board of directors. If carefully selected, non-industry directors should bring diverse experience to the boards and thus enable MCC and MSTC to better perform their self-regulatory obligations.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 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-MCC-98-01 and SR-MSTC-98-01) be and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40214; File No. SR-NASD-97-35]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change Filed by the National Association of Securities Dealers, Inc. Relating to the Regulation of Non-Cash Compensation in Connection With the Sale of Investment Company Securities and Variable Contracts

July 15, 1998.

#### I. Introduction and Background

On May 7, 1997,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder<sup>3</sup> to amend NASD Conduct Rules relating to the regulation of non-cash compensation in connection with the sale of investment company securities and variable contracts.

Over the past years, the SEC, the investing public and the securities industry have raised concerns about actual and potential conflicts of interest in the retail brokerage business. Responding to these concerns, in May

<sup>1</sup> On July 15, 1997, the NASD filed Amendment No. 1 to the proposed rule change. On July 23, 1997, the NASD filed Amendment No. 2 to the proposed rule change. On August 28, 1997, the NASD filed Amendment No. 3 to the proposed rule change. A final amendment, Amendment No. 4, was filed on December 2, 1997. Amendment No. 1 made several changes to the proposed rule language and the rule filing. See letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. ("NASD Regulation") to Katherine A. England, Assistant Director, Commission, dated July 11, 1997. The changes made by Amendment No. 1 were incorporated into and published in the **Federal Register** notice of the proposed rule change. See Securities Exchange Act Release No. 38993 (August 29, 1997), 62 FR 47080 (September 5, 1997). Amendment No. 2 made technical changes to Amendment No. 1. See letter from John Ramsay, NASD Regulation to Katherine A. England, Assistant Director, Commission, dated July 22, 1997. Amendment No. 3 states that the NASD Board of Governors has reviewed the proposed rule change and that no other action by the NASD is necessary for Commission consideration of the rule proposal. See letter from John Ramsay, NASD Regulation to Katherine A. England, Commission, dated August 27, 1997. These two technical amendments do not need to be published for comment. Amendment No. 4 was filed on December 2, 1997. See letter from John Ramsay, NASD Regulation to Katherine A. England, Assistant Director, Commission Amendment No. 4 responds to comment letters received by the Commission in response to its notice of the filing and solicitation of comment. It is a technical amendment and therefore not subject to notice and comment. NASD Regulation's response is discussed in detail in Section III of this approval order.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>2</sup> Securities Exchange Act Release No. 39872 (April 14, 1998), 63 FR 19991 (File Nos. SR-MCC-98-01 and SR-MSTC-98-01).

<sup>3</sup> Securities Exchange Act Release No. 36684 (January 5, 1995), 61 FR 1195 (File Nos. SR-MCC-95-04, SR-MSTC-95-10) (order approving proposed rule changes relating to the withdrawal of the Chicago Stock Exchange, Incorporated from the clearance and settlement and securities depository businesses, conducted principally through its subsidiaries, MCC and MSTC).

<sup>4</sup> Securities Exchange Act Release No. 39759 (March 6, 1998), 63 FR 14153 (order approving a proposed rule change relating to the structure and composition of CHX's board of governors). Historically, the MCC's and MSTC's board of directors have been the same as the CHX's board of governors. As a result of these changes, half of MCC and MSTC's boards will be "non-industry" directors as defined in CHX's constitution.

<sup>5</sup> Class I will consist of seven directors, class II will consist of seven directors, and class III will consist of eight directors.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 200.30-3(a)(12).