schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–93–4). Environmental Training Records.
2. Department of the Air Force (N1–AFU–93–5). Depot Maintenance Records.
3. Department of the Army (N1–AU–93–2). Medical Malpractice Records.
4. Department of Commerce, Office of Environmental Affairs (N1–40–92–4). Environmental Impact Statements and other environmental records.
5. Department of Commerce, International Trade Administration (N1–151–92–8). Canadian lumber export notices.
6. Defense Investigative Service (N1–446–92–2). Routine and facilitative records relating to recurring reports, leave slips and port security.
7. Defense Investigative Service (N1–446–92–3). Export license forms received from Department of State.
8. Defense Logistics Agency (N1–361–93–1). Publications background files from field activities.
9. Defense Logistics Agency (N1–361–93–2). Flight operations records.
10. Department of Health and Human Services, Indian Health Service (N1–513–92–5). General program and administrative records.
11. Federal Bureau of Investigation (N1–65–93–1). Sound recordings which are duplicative, lack historical value, or exhibit poor quality.
12. Department of State, All Foreign Service Posts (N1–84–93–1). Personnel folders of uncompensated non-Americans.
13. Department of State, All Foreign Service Posts (N1–84–93–2). Cash receipts and records of fees.
14. Department of State, All Foreign Service Posts (N1–84–93–3). Legal inquiries.
15. Department of State, All Foreign Service Posts (N1–84–93–4). American citizens services precedent case files.
16. Office of Thrift Supervision (N1–483–92–9). Records relating to data processing and management information systems.
17. Panama Canal Commission (N1–185–92–2). Routine civilian personnel records.
18. Panama Canal Commission (N1–185–92–3). Police and Convict Records.
19. White House Conference on Library and Information Science (N1–220–92–2). Facilitative and housekeeping records.

Dated: December 23, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 93–260 Filed 1–6–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before February 8, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) the title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Guidelines and Application Forms for the Division of Preservation and Access

Form Number: Not Applicable

Frequency of Collection: Semi-annual

Respondents: Humanities researchers and institutions

Use: Application for funding

Estimated Number of Respondents: 250

Frequency of Response: Once

Estimated Hours for Respondents to Provide Information: 40 per respondent

Estimated Total Annual Reporting and Recordkeeping Burden: 12,500 hours

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–281 Filed 1–6–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 25–26, 1993 9 a.m.–5 p.m.

Place: National Science Foundation, 1800 'G' Street, NW., room 1243, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Alvin Thaler, Program Director, Division of Mathematical Sciences, Room 339, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–3691.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Grants for Scientific Computing Research Environments of the Mathematical Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 4, 1993.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 93-310 Filed 1-6-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.
2. The title of the information collection: Proposed Rule, "10 CFR Part 110: Requirements for the Specific Licensing of Exports of Certain Alpha-Emitting Radionuclides and Byproduct Material".
3. The form number if applicable: NRC Form 7.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Some exporters of bulk tritium, americium-242m, californium-249, californium-251, curium-245, curium-247 and certain alpha-emitting radionuclides.
6. An estimate of the number of reporting responses annually: 9.
7. An estimate of the total number of hours annually needed to complete the requirement or request: 28. 22 hours of reporting burden is estimated (an average of 2.4 hours per response) and 6 hours of recordkeeping burden is estimated.
8. An indication of whether section 3504(h), Public Law 96-511 applies: Applicable.
9. Abstract: 10 CFR part 110 provides application, reporting, and recordkeeping requirements for exports and imports of nuclear equipment and material. The proposed revision would require that specific licenses be obtained for certain exports of byproduct materials and some alpha-emitting radionuclides.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0036 and 3150-0027), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC clearance officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 23rd day of December 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93-267 Filed 1-6-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31673; File No. SR-DTC-92-16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to the Deposit of Nontransferable Securities

December 30, 1992.

On October 14, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-92-16) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will establish procedures that will enable DTC to provide expanded safekeeping and depository services for nontransferable securities. The Commission published notice of the proposed rule change in the **Federal Register** on November 18, 1992.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31439 (November 12, 1992), 57 FR 54432.

I. Description

The proposed rule change will establish procedures for the deposit of nontransferable securities at DTC. Securities may become nontransferable for a number of reasons, including the bankruptcy or insolvency of the issuer, the failure to pay fees to a transfer agent, a final or complete liquidation of the issuer, the filing of a certificate of dissolution, the placement of the issuer in receivership, or the revocation of the issuer's charter. Currently, nontransferable securities are eligible for limited clearing and depository services.

A. Background

In prior years, when a depository eligible security became nontransferable, depositories declared the security "ineligible" and distributed certificates to participants to the extent properly denominated certificates were available. When such certificates were unavailable, remaining participant positions were "frozen" in some fashion within the depositories to prevent further processing activities. This presented a variety of problems. Because no clearing or book-entry services were available, settlement could occur only by physical delivery or by a cumbersome process which debited a delivering participant and credited a receiving participant within the depository. In this environment, failed deliveries occurred regularly and remained outstanding as the result of trading and account transfer activity. Participants were burdened with the expense of safekeeping certificates exited by the depositories and monitoring the ongoing transferability status of the securities. Participants forced to assume these responsibilities individually developed procedures and practices to address this burden.

Over the past two years, depositories and clearing corporations have ameliorated this situation somewhat. Instead of declaring a security "ineligible," securities can now be designated as "inactive." This designation permits a more flexible determination of the specific types of services to be provided. Most depositories and clearing corporations now act to restrict continuous-net-settlement, deposit, withdrawal, and transfer activity for nontransferable securities, while permitting book-entry deliveries. This action has stopped the outflow of nontransferable securities from the depositories and permitted the settlement of fails to the extent a deliverer has a sufficient position within the depository at the time a security is designated inactive. Participants must continue, however, to safekeep certificates exited by depositories in prior years, in addition to safekeeping those securities registered in customer or firm name that the depositories will not currently accept as deposits, because they cannot be registered in the name of the depositories' nominees.

DTC currently has two ongoing programs for the deposit of nontransferable securities. The first is for the redeposit of nontransferable securities registered in DTC's nominee name, Cede & Co., and was introduced primarily to allow participants to make book-entry deliveries of these redeposited securities. The second allows participants to cover short positions, and permits deposits of securities registered in Cede & Co., customer, or street name. The procedures, forms, and loss allocation method of the proposed rule change, as described below, will replace those in the two ongoing programs and permit participants to deposit all DTC-eligible nontransferable securities at DTC, regardless of purpose, and allow them to make book-entry deliveries to one another where deliveries of physical certificates may not be possible.

B. Deposit Procedures

When DTC announces to participants that an issue is "nontransferable," DTC will change the transfer agent number on DTC's records, which may be viewed by participants via DTC's Participant Terminal System, to reflect the fact that the issue is nontransferable. Participants will then be permitted to deposit their DTC-eligible nontransferable securities by adhering to several procedures. Specifically, participants will be asked to:

(1) Send to their Participant Services representative a copy of the Blanket Indemnification executed by an authorized officer. Procedures set forth in the Indemnification will, among other things, require the participant to verify with the Securities Information Center ("SIC") that the certificate has not been reported to SIC as lost, stolen, missing, or counterfeit;

(2) Use a Legal deposit ticket clearly marked "N/T." No more than ten certificates may be included in each individual deposit. Participants will also be asked not to commingle different types of registrations on a single deposit ticket (*i.e.*, all nominee-name and street-name registrations will be deposited under separate tickets); and

(3) Check the certificates for assignment to Cede & Co., New York State tax waiver, endorsements, and other requirements, and provide the appropriate signature guarantees.

C. Procedures for Sharing of Loss Related to Deposit of Nontransferable Securities

Under the proposed rule change, DTC has developed a loss allocation method in the event that a certificate that represents a nontransferable security is deposited at DTC and later, most likely after the reinstatement of transfer services and presentation of the certificate for transfer, is found to be stolen, counterfeit, or otherwise defective. If the depositing/indemnifying participant is still in business or if DTC is holding the participant's Participants Fund deposit in an amount sufficient to cover the loss, DTC will first seek to charge the participant or its deposit. In the event, however, in which at the time that DTC becomes aware of the loss: (1) The depositing participant has transferred the underlying securities by book-entry; (2) the participant does not itself cover the loss because it is not in business or for some other reason; and (3) the participant's deposit to the Participants Fund is insufficient to cover the loss, then the loss will be allocated as follows.[3]

The loss will be shared *pro rata* among all participants that have a position in such issue on the date that DTC determines that the certificate is defective, excluding participants' positions, however, to the extent that positions existed on the day that DTC first announced to participants that the issue was "nontransferable."[4] For example, if a participant already held a position of 1,000 shares in an issue at the time that the issue was identified by DTC as being nontransferable and then acquires 500 additional shares later, any proportionate loss calculation would be only against the additional 500 shares and not against the 1,500 share total position. DTC will first seek to charge the participant's Participants Fund deposit in an amount sufficient to cover the loss. If the deposit will not cover the total amount of the loss, DTC will then charge the participant directly for the remaining amount. In the event, however, that the loss allocation method as described above does not cover the total amount of the loss related to the deposit of the nontransferable securities, DTC will then charge the loss in accordance with its current loss allocation scheme.[5]

II. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and specifically, with sections 17A(b)(3) (A) and (F) thereunder.[6] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to enable it to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. In addition, section 17A(a)(1) encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions.

The Commission believes that DTC's proposal will reduce the costs and inefficiencies associated with the clearance and settlement of nontransferable securities by bringing the benefits of centralized, automated book-entry clearance and settlement to nontransferable issues. At the present time, there are approximately 4,200 DTC-eligible nontransferable issues at DTC.[7] As a result of the proposed rule, which would enable participants to deposit these nontransferable issues at DTC, participants will be able to reduce their physical vault inventory, which will in turn allow them to reduce processing expense, audit time and interest expense that results from outstanding fails to deliver. This will eventually allow participants to

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[3] Assuming that book-entry transfers have been made, it would not be feasible for DTC to trace the transfers and attribute the security positions represents by the defective certificate to particular participants. According to DTC, in order to trace the transfers, DTC would have to keep records relating to these transactions indefinitely. At the present time, DTC retains records for a period not longer than 10 years. In the absence of a procedure to allocate losses, therefore, any such loss would be shared by all participants. Telephone conversation between Jack R. Wiener, Associate Counsel, DTC, and Ari Burstein, Law Clerk, Commission (October 26, 1992).

[4] To assure that the effect of this proposal is prospective, this procedure applies to issues that become "non-transferable" at DTC subsequent to the Commission's approval of this procedure. In the event that the issue is already "non-transferable" as of the date of the Commission's approval order, DTC will instead exclude participants' positions to the extent that positions existed on the date of the approval order.

[5] Conversation between Richard Nesson, General Counsel and Senior Vice President, DTC, and Ari Burstein, Law Clerk, Commission (November 9, 1992).

For further details see Rules of The Depository Trust Company, Rule 4 (Participants Fund).

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[7] Telephone conversation between Jack R. Wiener, Associate Counsel, DTC, and Ronald Burns, Vice President, Operations, DTC, and Ari Burstein, Law Clerk, Commission (October 26, 1992).

minimize their total overhead by reducing staff and insurance costs.

The proposed procedure is also consistent with industry efforts toward greater immobilization of securities certificates and with industry efforts to maximize efficiency in securities processing. The proposal, therefore, is consistent with the requirement of section 17A(b)(3)(F) of the Act requiring that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

DTC received ten comment letters from participants regarding the proposed rule change.[8] Six of the letters were in favor of the program as proposed by DTC to accept nontransferable securities and stated interest in participating in the program when it was approved.[9] One letter stated that there was no need for the proposed rule change in light of the two programs that DTC currently has in place for the deposit of transferable securities.[10] The remaining three letters had no objection to the rule change as proposed by DTC but instead provided several suggestions, as discussed below, relating to potential improvements to the nontransferable securities program.[11]

Two commenters expressed concern about the process by which DTC will notify participants of a security's nontransferable status.[12] These participants stated that because their current systems are completely automated, it would not be possible to extract the nontransferable issues from the regular daily transmissions of securities. These participants suggested that a special coding system be implemented to allow their automated systems to differentiate between a legal deposit and a regular deposit, which in turn will prevent their automated systems from becoming more manual in nature.

DTC stated that they are currently exploring the feasibility of implementing the suggested special coding system.[13] Under the proposed rule, once DTC announces that an issue is nontransferable, DTC will change the transfer agent number on DTC's records to "2400," which is a special transfer agent number assigned to nontransferable securities. Participants can then determine which issues are nontransferable by keying in the security's CUSIP number over DTC's Participant Terminal System and examining the transfer agent number assigned to the issue by DTC.

The Commission believes that the proposed system for notifying participants of the nontransferable status of an issue is consistent with the requirement of section 17A(b)(3)(F) of the Act that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission, however, encourages DTC to explore ways, including the suggested special coding system, to allow participants to process nontransferable deposits in the same manner as those currently employed for other DTC deposits.

Two other participants expressed concerns to DTC regarding the proposed loss allocation scheme.[14] The participants urged that the loss allocation procedure was inequitable and will unjustly penalize a participant for merely having a position in a security in which losses will result from deposits made by other participants. They suggested that DTC set up a reserve which would be funded by a portion of the nontransferable deposit fee, against which future losses could be allocated. In the absence of a reserve, the participants suggested that the loss be allocated among all participants in the nontransferable securities program, instead of merely against the participants in the particular nontransferable issue.

Under the proposed loss allocation procedure for the nontransferable securities program, DTC will first seek to charge the depositing/indemnifying participant for an amount sufficient to cover the loss. DTC will not charge the loss to participants that have positions in the nontransferable issue unless the depositing participant cannot cover the loss. Moreover, as described above, DTC will not allocate the loss to participants whose positions in a nontransferable issue predate the nontransferable status. Given these conditions and in the absence of identified losses to date, the Commission believes DTC's decision not to establish a specific reserve by raising or allocating nontransferable deposit fees is consistent with sections 17A(b)(3) (D) and (F) of the Act which require that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants and that the rules of the clearing agency are not designed to permit unfair discrimination among participants in the use of the clearing agency.

Commenters also expressed concern about the amount of the deposit fee that DTC is proposing to charge per deposit. One participant stated that because the securities are nontransferable, there should not be any transfer costs associated with the deposit except for expenses which are storage related. The participants claimed that the cost of the deposit fee is therefore excessive for the amount of service required.[15] DTC explained that since all of the deposits must be fully examined and indemnifications verified by DTC, it is necessary to charge the full service legal examination fee per deposit.

The deposit fee to be charged under the proposed nontransferable securities program is identical to that charged for other similar DTC services. In addition, the fee is needed to cover the additional safeguards DTC is required to implement under the proposed rule. Accordingly, the Commission believes that the amount of the deposit fee is consistent with the requirements of section 17A(b)(3)(D) of the Act which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

The restrictions on the number of certificates that can be deposited per deposit ticket and the requirement that

[8] See letter from Louis Chiaccheri, Vice President, The Bank of New York, to Ronald Burns, Vice President, DTC (September 18, 1992); letter from Jan Fenty, President, Cashiers' Association of Wall Street, Inc., to Val Stevens, Director, DTC (September 25, 1992); letter from Linda M. Rushlow, Vice President, Chase Lincoln First Bank, N.A., to Gerry Marotta, Participant Services Representative, DTC (September 29, 1992); letter from John Bertuzzi, Vice President, Dean Witter Reynolds Inc., to Ronald Burns, Vice President, DTC (September 17, 1992); letter from Philip Fox, Associate Vice President, A.G. Edwards & Sons, Inc., to Ronald Burns, Vice President, DTC (September 16, 1992); letter from Claude Schmook, Assistant Vice President, The First National Bank of Chicago, to Tony Gazzola, DTC (October 1, 1992); letter from Frank Delia, Vice President, Kidder Peabody & Co., to Everett Smith, Participant Services Representative, DTC (September 30, 1992); letter from Albert Howell, Vice President, Merrill Lynch, to Valentine Stevens, Director, DTC (September 29, 1992); letter from Maureen G. Tomshack, Vice President, NBD Bank, N.A., to Michael Miklas, Senior Securities Officer, DTC (October 1, 1992); and letter from Joe Ricca, Vice President, Pershing, to Valentine Stevens, Director, DTC (October 1, 1992).

[9] See supra, note 8, letters from Cashiers' Association of Wall street; Chase Lincoln First Bank; Kidder, Peabody; Merrill Lynch; NBD Bank; and Pershing.

[10] See supra, note 8, letter from First National Bank of Chicago.

[11] See supra, note 8, letters from The Bank of New York, Dean Witter Reynolds; and A.G. Edwards & Sons.

[12] See supra, note 8, letters from Dean Witter Reynolds and the Bank of New York.

[13] Telephone conversation between Jack R. Wiener, Associate Counsel, DTC, and Ron Burns, Vice President, Operations, DTC, and Ari Burstein, Law Clerk, Commission (October 26, 1992).

[14] See *supra*, note 8, letters from A.G. Edwards & Sons and The First National Bank of Chicago.

[15] See *supra*, note 8, A.G. Edwards & Sons letter.

registrations cannot be commingled was addressed in two comment letters from participants.[16] The participants stated that the restrictions can result in costly deposit fees and asked DTC to eliminate the restrictions to minimize costs. DTC believes that the restrictions are necessary to minimize the problems associated with the manual balancing of those deposits and to help safeguard the nontransferable program in general. In addition to the restrictions on the amount of certificates that can be deposited, other safeguards implemented by DTC include the requirement that participants, through the procedures set forth in the Blanket Indemnification, verify with the Securities Information Center ("SIC") that the certificate has not been reported as lost, stolen, missing, or counterfeit. Participants will also be asked to check the certificates for proper assignment, endorsements, and other requirements, and provide the appropriate signature guarantees.

The Commission believes that the safeguards and controls DTC has established under the nontransferable securities program are reasonable and that the proposal is consistent with the requirements of sections 17A (b)(3)(A) and (b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of funds and securities which are in DTC's custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–DTC–92–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–292 Filed 1–6–93; 8:45 am]

BILLING CODE 8010–01–M

[16] See *supra*, note 8, letters from The Bank of New York and A.G. Edwards & Sons.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–31674; File No. SR–MSTC–92–07]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change Relating to the Deposit of Nontransferable Securities

December 30, 1992.

On August 19, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSTC–92–07) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will establish procedures that will enable MSTC to provide safekeeping and limited depository services for nontransferable securities.[2] The Commission published notice of the proposed rule change in the **Federal Register** on October 14, 1992.[3] The Commission received one comment letter supporting the proposal.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will establish procedures for the safekeeping and limited depository services of nontransferable securities at MSTC. Securities may become nontransferable for a number of reasons, including the bankruptcy or insolvency of the issuer, failure to pay fees to a transfer agent, a final or complete liquidation of the issuer, the filing of a certificate of dissolution, placement of the issuer in receivership, or revocation of the issuer's charter. Currently, nontransferable securities are eligible for limited clearing and depository services.

A. Background

In prior years, when a depository eligible security became nontransferable, depositories declared the security "ineligible" and distributed certificates to participants to the extent properly denominated certificates were available. When such certificates were unavailable, remaining participant positions were "frozen" in some fashion within the depositories to prevent further processing activities. This presented a variety of problems. Because no clearing or book-entry services were available, settlement could occur only by physical delivery or via a cumbersome process which debited a delivering participant and credited a receiving participant within the depository. In this environment, failed deliveries occurred regulatory and remained outstanding as the result of trading and account transfer activity. Participants were burdened with the expense of safekeeping certificates exited by the depositories and monitoring the ongoing transferability status of the securities. Participants forced to assume these responsibilities individually developed procedures and practices to address this burden.

Over the past two years, depositories and clearing corporations have ameliorated this situation somewhat. Instead of declaring a security "ineligible," securities can now be designated as "inactive." This designation permits more flexible determination of the specific types of services to be provided. Most depositories and clearing corporations now act to restrict continuous-net-settlement, deposit, withdrawal, and transfer activity for nontransferable securities, while permitting book-entry deliveries. This action has stopped the outflow of nontransferable securities from the depositories and permitted the settlement of fails to the extent a deliverer has a sufficient position within the depository at the time a security is designated inactive. Participants must continue, however, to safekeep certificates exited by depositories in prior years, in addition to safekeeping those securities registered in customer or firm name that the depositories will not currently accept as deposits, because they cannot be registered in the name of the depositories' nominees.

The problem of adequately monitoring nontransferable securities to identify a change in transferable status is also of concern to participants. Because of tax considerations, it is often necessary for participants to verify whether a nontransferable security is worthless. Moreover, verification is important because it will allow participants to strike the position from their records. Under current procedures, it is extremely time consuming and cumbersome for participants to verify that a security is nontransferable and to ascertain whether the security has, to the best of anyone's knowledge, been declared worthless. As each participant

[1] 15 U.S.C. 78s(b)(1).

[2] On December 10, 1992, MSTC amended the proposed rule change by providing the indemnification agreement to be signed by participants in the nontransferable securities program. Letter from George T. Simon, Foley & Lardner, MSTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (December 10, 1992).

[3] Securities Exchange Act Release No. 31290 (October 6, 1992), 57 FR 47148.

[4] See letter from Albert Howell, Vice President, Merrill Lynch, to the Commission (June 1, 1992).

is verifying and validating nontransferable securities independently, enormous amounts of time, money, and resources are wasted. In response to these concerns, MSTC has developed a method of providing safekeeping and limited depository services for nontransferable securities.

B. Deposit Procedures

The proposed rule change, in conjunction with the implementation of new procedures, will allow nontransferable securities to be deposited in MSTC either through physical delivery or by book-entry. In the case of physical deliveries, MSTC will physically inspect the security to verify that no notorials [5] are attached to the security and that the appropriate NASD Ownership Transfer Indemnification Stamp is properly executed.[6] At the time of delivery, participants will provide a warranty and indemnification to MSTC to protect MSTC against the possibility that a defect in any documentation or ownership rights causes MSTC a financial loss in the event the security becomes transferable in the future but the transfer agent rejects the specific certificates held by MSTC.[7] Specifically, each participant will warrant that there are no defects in title in a security delivered to or deposited with MSTC, that they have inquired of the Securities Information Center ("SIC") regarding the particular security and that, as of the date of the deposit with MSTC, the security has not been reported to the SIC as lost, stolen, missing or counterfeit. In addition to physical deposits, all incoming interdepository book-entry movements of the nontransferable securities will be permitted. Once deposited, MSTC will make sure that the security has a CUSIP number and if not, MSTC will obtain one for the security.[8]

Under new procedures, MSTC will revalidate the continuing nontransferable status of each issue on a simi-annual basis and provide participants with the last date of revalidation, thereby reducing the cost that participants currently incur in monitoring the status of each nontransferable issue. In addition, MSTC will promptly restore an issue to full eligibility status for normal depository processing once it again becomes transferable, so long as it meets the current eligibility requirements for normal depository processing. Finally, at the time of regained transferability, MSTC will forward all prior participant deposits to the transfer agent for re-registration into the name of the depository's nominee. Rejected transfers would be reclaimed to the original depositing participant in accordance with MSTC's current reclamation procedures.

C. Procedures for Sharing of Loss Related to Deposit of Nontransferable Securities

Under the proposed rule change, in the event that a certificate that represents a nontransferable security is deposited at MSTC and later, most likely after the reinstatement of transfer services and presentation of the certificate for transfer, is found to be stolen, counterfeit, or otherwise defective, MSTC will initially seek to charge the depositing participant for the amount of the loss. In the event, however, that the depositing participant is no longer in business or for some other reason cannot cover the loss, the loss will then be charged to the individual who has signed the NASD indemnification accompanying the certificate, assuming they are also not the depositing participant.

If the loss allocation method as described above still does not cover the total amount of the loss related to the deposit of the nontransferable securities, MSTC will then charge the loss in accordance with MSTC's standard loss provision rules.[9]

II. Discussion

The Commission believes that MSTC's proposed rule change is consistent with section 17A of the Act and, specifically, with section 17A(b)(3) (A) and (F) thereunder.[10] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to enable it to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. In addition, section 17A(a)(1) encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions.

The Commission believes that MSTC's proposal will reduce the costs and inefficiencies associated with the clearance and settlement of nontransferable securities by bringing the benefits of centralized, automated book-entry clearance and settlement to nontransferable issues. At the present time, there are approximately 1,500 nontransferable issues at MSTC.[11] As a result of the proposed rule, which would enable the participants to deposit these nontransferable issues at MSTC, participants will be able to reduce their physical vault inventory, which will in turn allow them to reduce processing expense, audit time and interest expense that results from outstanding fails to deliver. This, in turn, will eventually allow participants to minimize their total overhead by reducing staff and insurance costs.

The proposed procedure also promotes industry efforts to immobilize securities certificates and to maximize efficiency in securities processing. Under the new procedures, MSTC will provide participants with uniform information regarding the status of nontransferable issues through a central database of information. This will eliminate the need for each participant to individually determine the status of an issue and will reduce the time and cost currently incurred by individual monitoring. The change, therefore, is consistent with section 17A(b)(3)(F) in that it removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

MSTC has established several safeguards under the nontransferable securities program to minimize the risk of loss in the event that a certificate is found to have a defect in title or is reported as lost, stolen, missing or

[5] A "notorial" is a legal form which is used to validate a signature when a security ceases to be active.

[6] The NASD Ownership Transfer Indemnification Stamp acknowledges that the transfer books for a specific stock issue have been closed and indemnifies future parties holding the certificate against claims on the security.

[7] See supra, note 2, amendment to proposed rule change providing the indemnification agreement to be signed by participants in the nontransferable securities program.

[8] Telephone conversation between George T. Simon, Attorney, Foley & Lardner, MSTC, and Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (December 28, 1992).

[9] Letter from George T. Simon, Foley & Lardner, MSTC, to Ari Burstein, Law Clerk, Commission (December 1, 1992).

For further details, see Rules of the Midwest Securities Trust Company, Article VI, Rule 2 (Participants Fund).

Today, the Commission is also approving a proposed rule change by The Depository Trust Company ("DTC") concerning safekeeping and depository services for nontransferable securities. See Securities Exchange Act Release No. 31673 (December 30, 1992). MSTC and DTC have proposed different procedures for the sharing of losses resulting from the deposit of nontransferable securities. The Commission believes that nothing in the Act explicitly requires uniform loss allocation schemes, as long as each such scheme is consistent with the Act.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[11] Telephone conversation between David Rusoff, Attorney, Foley & Lardner, MSTC, and Ari Burstein, Law Clerk, Commission (November 16, 1992).

counterfeit. As previously discussed, in the case of physical deliveries, MSTC will physically inspect the security to verify that no notorials are attached to the security and that the appropriate NASD stamp is properly executed. In addition, each participant will warrant that there are no defects in title in a security delivered to or deposited with MSTC, that they have inquired of SIC regarding the particular security and that, as of the date of the deposit with MSTC, the security has not been reported to the SIC as lost, stolen, missing or counterfeit. Accordingly, the Commission believes that the safeguards and controls MSTC has established under the nontransferable securities program are reasonable and that the proposal is consistent with the requirements of sections 17A(b)(3)(A) and (F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of funds and securities which are in MSTC's custody or control or for which it is responsible.

MSTC received three comment letters from participants regarding the proposed rule change.[12] All of the letters were in favor of the program to accept nontransferable securities as proposed by MSTC. In addition, the Commission received one letter from a participant expressing support for the proposed rule change.[13]

One comment letter expressed concern that the deposit charge for nontransferable securities will be prohibitive and will discourage brokers from using the depository.[14] MSTC has stated that the higher deposit charge is necessary to cover the additional cost of manually checking and examining each nontransferable securities deposit. The Commission believes that the amount of the deposit charge is consistent with the requirements of section 17A(b)(3)(D) of the Act, which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants, because the higher deposit charge will be allocated to processing the nontransferable securities deposits.

[12] See letter from Francis X. Hughes, Senior Vice President, United States Trust Company of New York, to Lou Klobuchar, Jr., Senior Vice President, MSTC (June 8, 1992); letter from Jan Fenty, President, The Cashiers' Association of Wall Street, to Lou Klobuchar, Jr., Senior Vice President, MSTC (June 12, 1992); and letter from Robert J. Petrizzo, Director, New York Operations, Charles Schwab & Co., Inc. to Lou Klobuchar, Jr., Senior Vice President, MSTC (June 15, 1992).

[13] See letter from Albert Howell, Vice President, Merrill Lynch, to the Commission (June 1, 1992).

[14] See supra, note 12, Cashiers' Association of Wall Street letter.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–MSTC–92–07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–293 Filed 1–6–93; 8:45 am]

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[Release No. 34–31675; File No. SR–MSTC–92–09]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of Fees for the Nontransferable Securities Program

December 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 3, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–92–09) as described in Items I, II and III below, which Items have been prepared primarily by the self-regulatory organization. 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 has amended its rules to provide for the deposit, safekeeping and monitoring of nontransferable securities.[2] The proposed rule change sets forth the fees (*see Exhibit A*) to be charged under the nontransferable securities program.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For further details concerning the nontransferable securities program, see Securities Exchange Act Release No. 31674 (December 30, 1992).

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization 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 purpose of the proposed rule change is to establish fees for the deposit, safekeeping and monitoring of nontransferable securities in connection with MSTC's nontransferable securities program. Under the proposal, MSTC will charge a deposit fee of $3.70 per deposit with a maximum of ten certificates permissible per deposit. MSTC also will charge a safekeeping fee per CUSIP per month. There are two types of safekeeping fees that will be charged under the proposed rule change. Every nontransferable CUSIP will be charged a "Position Fee" of $0.45 per CUSIP per month. In addition, where applicable, a "less active issue surcharge" will be imposed. If eight participants or less hold a position in a particular equity or corporate issue, a surcharge of $0.22 will be charged per CUSIP per month in addition to the Position Fee. If two participants or less hold a position in a particular municipal issue, a surcharge of $0.72 will be charged per CUSIP per month in addition to the Position Fee.[3]

MSTC also will divide nontransferable securities into monitored and nonmonitored classifications. For those securities that will be monitored, participants will have the option of subscribing to a service for a charge of $0.32 per CUSIP per month which will provide them with an on line inquiry of major events occurring with respect to that security, listed in chronological order. Other fees, where applicable, will be charged at existing rates.

[3] The "less active issue surcharge" is identical to the fee charged for transferable securities that are deemed "less active." Telephone conversation between David Rusoff, Attorney, Foley & Lardner, MSTC and Ari Burstein, Staff Attorney, Commission (December 11, 1992).