

[Release No. 34-35468; File No. SR-MBSCC-95-01]

**Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Billing Procedures**

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 1, 1995, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. 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**

MBSCC proposes to modify its Source Book billing procedures to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices.

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

In its filing with the Commission, MBSCC 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. MBSCC 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*

On August 12, 1994, the Chicago Stock Exchange, Incorporated ("CHX") sold all of its ownership interest in MBSCC, a wholly-owned subsidiary of CHX, to MBSCC's participants and the National Securities Clearing Corporation.<sup>2</sup> The Board of Directors of the newly-owned MBSCC has now determined to establish a pricing policy for MBSCC's clearing services. The purpose of the proposed rule change is

to modify MBSCC's Source Book, Procedure IX, Billing, to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices. The proposed rule change enables MBSCC's Board of Directors to apply the pricing policy on a monthly, yearly, or other basis as determined by MBSCC's Board of Directors from time to time. This pricing policy will more accurately reflect the approximate costs of MBSCC's actual operations. MBSCC will implement the pricing policy commencing with participants' invoices for January 1995. Additionally, the proposed rule makes a technical change to MBSCC's Source Book to delete all references to Midwest Securities Trust Company.

MBSCC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

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

MBSCC does not believe that the proposed rule change will have an impact on 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*

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and pursuant to Rule 19b-4(e)(3)<sup>4</sup> promulgated thereunder because the proposed rule change is concerned solely with the administration of MBSCC. At any time within sixty days of the filing of such rule change, 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

argument 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 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 in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBSCC-95-01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority,<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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[Release No. 34-35472; File No. SR-OCC-95-01]

**Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Clarifying Rules Regarding the Unavailability of Current Index Values**

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 23, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-95-01) as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 clarify the respective rights

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

<sup>2</sup> For a description of the transaction, refer to Securities Exchange Act Release No. 34512 (August 10, 1994), 59 FR 42320 [File No. SR-MBSCC-94-3] (order granting accelerated approval of corporate governance changes to facilitate the sale of MBSCC).

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

<sup>4</sup> 17 CFR 240.19b-4(e)(3) (1994).

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1994).

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

and responsibilities of OCC and the options exchanges ("Exchanges") in the event that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would ordinarily be determined or in the event that the current index value is unreported or otherwise unavailable for purposes of calculating the exercise settlement amount. The proposed rule change also makes certain technical changes in OCC's By-Laws and Rules governing index options and its proposed By-Laws and Rules governing Flexible Structured Index Options Denominated in a Foreign Currency ("FX Index Options").<sup>2</sup>

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

In its filing with the Commission, OCC 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. OCC 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

On July 15, 1994, technical difficulties delayed the opening of the National Association of Securities Dealers Automated Quote System ("NASDAQ") until 11:55 a.m., Eastern Time, nearly two and a half hours after the time trading normally begins. Prior to the delayed opening, however, transactions in NASDAQ listed securities occurred via telephone and the Instinet on-line trading system. Prices reported in connection with those transactions ("preopening prices") had been transmitted to certain designated reporting authorities, and some or all of those reporting authorities used those prices in calculating values for certain stock indexes settling at the opening.

An issue arose that day as to whether the Exchanges would be able to provide OCC with settlement values for those indexes settling on the opening of the market whose component securities included NASDAQ listed issues. The

Exchanges were concerned that they would be unable to provide OCC with settlement values prior to OCC's exercise processing cut-off time.

Fortunately, the designated reporting authorities were able to calculate and report the settlement values for the affected series to the Exchanges. The Exchanges, in turn, reported those settlement values to OCC in time for OCC to conduct its normal expiration processing. Although the Exchanges reported the settlement values somewhat later than usual, the late reporting did not have a significant impact on OCC's processing. In fact, OCC clearing member reports were not delayed at all.

While the NASDAQ incident was resolved without significant impact, the incident prompted OCC to take a closer look at its rules respecting the unavailability of current index values and to consider more fully what steps would be taken in such a situation. Following its review, OCC determined that certain technical changes should be made to its rules to clarify the respective rights and responsibilities of OCC and the Exchanges with respect to the reporting of current index values and the determination of settlement values.

During the NASDAQ event, OCC was prepared to exercise this authority had it become necessary. However, questions arose as to what prices OCC would use to fix exercise settlement amounts, and what the basis for that determination would be. OCC's proposed changes are intended to address those issues. OCC is proposing to amend its By-Laws, Article XVII, Section 4, which empowers OCC to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable.

First, the proposed rule change will make it clear that OCC has the authority to fix an exercise settlement amount whenever the primary market for securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. OCC believes that this authority is implicit in the language of the present By-Law because in such circumstances the current index value would generally be "unreported or otherwise unavailable." However, the proposed rule change would make it explicit.

In addition, the proposed change assigns the responsibility for fixing exercise settlement amounts to a panel consisting of two designated representatives of each Exchange on

which the affected series is open for trading, one of whom shall be such Exchange's representative on OCC's Securities Committee, and OCC's Chairman. This structure, which assigns the decision-making responsibility to an exchange-controlled panel, conforms to the way in which determinations with respect to adjustments to terms of FX index option contracts are made pursuant to Article XXIII, Section 4. The proposed change authorizes the panel to fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest including, without limitation, fixing the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported.

Identical changes also are being made to Article XXIII, Section 5, which governs the fixing of exercise settlement amounts for FX Index Options. Under these proposed changes, the situation contemplated by the last two sentences of the definition of "expiration date" in Article XXIII, Section 1.E.(3) (*i.e.*, where the primary market for underlying securities representing a substantial part of the value of an index is closed on an expiration date) will be explicitly covered by Article XXIII, Section 5. Therefore, the last two sentences of Article XXIII, Section 1.E.(3) have been deleted.

The remainder of the proposed changes to the By-Laws are technical changes, primarily for the purpose of conforming those By-Laws to changes approved in SR-OCC-94-08.<sup>3</sup>

OCC believes the proposed rule change is consistent with the requirements of the Act, specifically with Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate settlement of transactions in index options, flexibility structured index options, and FX Index Options.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on 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

OCC has not sought or received comments on the proposed rule change.

<sup>2</sup> For a complete description of FX Index Options, refer to Securities Exchange Act Release No. 35149 (January 3, 1995), 60 FR 158, [File No. SR-OCC-94-08] (order approving proposed rule change).

<sup>3</sup> Supra Note 2.

OCC will notify the Commission of any written comments received by OCC.

### 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 OCC 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 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 in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-95-01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35470; File No. SR-PHILADEP-94-6]

### Self-Regulatory Organizations; the Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Extending the Pilot Program for the Fully Automated Securities Transfer Reconciliation Accounting Control System

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 14, 1994, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to extend its pilot program governing the Fully Automated Securities Transfer Reconciliation Accounting Control System ("FASTRACS") through December 29, 1995.

#### II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the 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. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

On July 19, 1994, the Commission approved a proposed rule change establishing a pilot program for FASTRACS for the transfer of certain securities between PHILADEP and certain transfer agents.<sup>2</sup> FASTRACS is

an automated program by which PHILADEP and the participating transfer agents use a master balance certificate to evidence the number of securities of a particular issue that are registered in PHILADEP's nominee name. The transfer agents have custody of the securities in the form of balance certificates registered in PHILADEP's nominee name. The balance certificates are adjusted daily to reflect PHILADEP's withdrawal and deposit activity.

According to PHILADEP, the pilot program has operated successfully in accordance with the operational and technical specifications; however, testing of the program is not complete.<sup>3</sup> PHILADEP therefore requests an extension of the FASTRACS pilot program on a temporary basis through December 29, 1995.

PHILADEP believes extending the program is consistent with Section 17A of the Act.<sup>4</sup> By providing an efficient mechanism for the transfer of securities positions to and from participating transfer agents, the programs should help foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and should facilitate the prompt and accurate clearance and settlement of securities transactions.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

### 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)

<sup>3</sup> Currently, PHILADEP has completed testing with two transfer agents who are now fully operational with FASTRACS. PHILADEP continues to conduct testing with a third transfer agent. Upon successful completion of testing with the third transfer agent, PHILADEP will file a proposed rule change under Section 19(b) of the Act to seek permanent approval of the FASTRACS program. Telephone conversation between Keith Kessel, Compliance Officer, PHILADEP and Margaret J. Robb, Attorney, Division of Market Regulation, Commission (December 22, 1994).

<sup>4</sup> 15 U.S.C. 78q-1 (1988).

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

<sup>2</sup> For a complete description of PHILADEP's FASTRACS, refer to Securities Exchange Act Release No. 34404 (July 19, 1994), 59 FR 38010 [File No. SR-PHILADEP-90-03] (order approving FASTRACS program on a temporary basis).

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1994).