

market order through the MAX System is qualified by Exchange Rule 37(b)(11), Article XX, which states that "notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order."

The Commission believes that the proposed rule change will bring about certainty in the application of the Exchange's BEST System guarantee. Although the Exchange currently interprets the scope of the BEST System guarantee as being restricted by the price and size parameters, the absence of such criteria in the text of the BEST Rule may cause confusion among those entitled to use the BEST System.<sup>8</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-97-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39405; File No. SR-MBSCC-97-5]

#### Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

December 5, 1997.

On August 1, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-97-5) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 26,

eligible for execution under the Exchange's BEST Rule and certain other orders. *see* Exchange Rule 37(b).

<sup>8</sup> Exchange Rule 37(a) states that the BEST System is available to exchange member firms and members of participating exchanges.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

Pursuant to MBSCC's current rules, participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. The proposed rule change clarifies that participants also are liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants ("nonparticipants") and that nonparticipants are not deemed to possess any rights or benefits of participants.

As a result, MBSCC will treat all of a participant's accounts<sup>3</sup> and obligations as belonging to such participant regardless of the identity of the underlying party. Thus, a participant's participant fund<sup>4</sup> deposits will be available for all of the participant's transactions regardless of the source.

#### II Discussion

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change adds certainty as to the treatment of the positions submitted on behalf of nonparticipants upon default of a participant. Thus, the proposal should enhance MBSCC's ability to protect itself and its participants against loss. Therefore, the Commission believes that MBSCC's proposal is consistent with its obligations to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act

<sup>2</sup> Securities Exchange Act Release No. 39103 (September 22, 1997), 62 FR 50646.

<sup>3</sup> According to MBSCC's rules, the term "account" generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing trades.

<sup>4</sup> According to MBSCC's rules, the term "participant fund" means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBSCC-97-5) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39408; File No. SR-Philadep-97-05]

#### Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Unclaimed Dividends and Distributions

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval.

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

Under the proposed rule change, Philadep will amend its rules governing unclaimed dividends and distributions.<sup>2</sup> The amendments reflect undertakings recently agreed to by Philadep in connection with settling an administrative proceeding with the Commission.<sup>3</sup>

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The text of the proposed amendments was submitted with Philadep's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of Philadep.

<sup>3</sup> Securities Exchange Act Release No. 38918 (August 11, 1997) (order instituting proceedings pursuant to Section 19(h) and 21C of the Act, making findings, and imposing remedial sanctions) [Administrative Proceeding File No. 3-9360] ("Order").