

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

1. Purpose

The Exchange proposes to amend Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The current rule provides that agency limit orders (that are not marketable when entered into the Exchange's MAX automatic execution system) will automatically be filled at the limit price when there is a price penetration of the limit price in the primary market for the subject security. Under the proposed amended rule, automatic execution of such limit orders will no longer be mandated. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security. The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this proposed amendment reasonably anticipates the impact that the decimal pricing environment will have on the national market system, where the number of small orders executed at multiple price levels may increase the number of inadvertent trade throughs that could otherwise lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability in the decimal pricing environment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believes the proposed rule is consistent with Section 6(b)(5) of the Act³ in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that 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

No written comments were either solicited or received.

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

Within 35 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 90 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 the CHX 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-00-28 and should be submitted by December 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43505; File No. SR-MBSCC-00-01]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Letters of Credit

November 1, 2000.

On April 11, 2000, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-00-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On June 13, 2000, MBSCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 26, 2000.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Discussion

The rule change adds subsection (b) to Article IV, Rule 2, Section 9 of MBSCC's rules to prohibit MBSCC from accepting a letter of credit from a participant that is issued by that participant or by an affiliate of that participant.³ This rule change codifies MBSCC's historical practice of requiring that a letter of credit deposited by a participant to the

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42961 (June 20, 2000), 65 FR 39456.

³ Article IV, Rule 2, Section 9 of MBSCC's rules, which governs deposits of letters of credit by MBSCC's participants to the participants fund for margin purposes, provides, among other things, that MBSCC may approve as the issuer of a letter of credit any domestic or foreign bank or trust company meeting the requirements set forth in procedures adopted by MBSCC.

The rule change also amends Article I, Rule 1 of MBSCC's Rules to add a definition of "affiliate." Affiliate is defined as follows: "The term an 'Affiliate' of, or a person 'Affiliated' with, a specified person, means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For purposes of this definition, the term 'control' (including the terms 'controls,' 'controlled by,' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

³ 15 U.S.C. 78f(b)(5).

participants fund be issued by an approved letter of credit other than the participant or an affiliate of the participant.⁴

II. Discussion

Section 17A(b)(3)(F)⁵ of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As set forth below, the Commission believes that MBSCC's rule change is consistent with this obligation.

Letters of credit are used at MBSCC and at other clearing agencies as collateral to meet clearing fund obligations. MBSCC's clearing fund is intended to provide liquidity and protection to MBSCC and its members in the event a MBSCC member defaults on its obligation. If a member were allowed to issue a letter of credit to itself (or an affiliate of the member to the member), the letter of credit would probably not be honored in a default situation.

Because the rule change will prohibit a participant from providing a letter of credit for itself or from an affiliated entity, the rule change helps ensure that MBSCC can draw upon a letter of credit used as clearing fund collateral if MBSCC ever had the need to do so. This should assist MBSCC in safeguarding securities and funds in its possession 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 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-00-01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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⁴ The proposed rule change also makes a technical modification to Article III, Rule 5 of MBSCC's Rules to correct the reference contained within such rule from "Rule 4" to "Rule 5."

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43533; File No. SR-NASD-00-63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 4611 Relating to Registration As a Nasdaq Market Maker in a Security

November 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc., ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq is proposing to amend NASD Rule 4611 to allow an application for registration as a market maker in a security to become effective on the same day the application is filed. Nasdaq is also proposing a corresponding technical change to Rule 4720 regarding SOES Participation Registration. Below is the text of the proposed rule change; proposed deletions are in brackets and proposed additions are underlined.

4611. Registration as a Nasdaq Market Maker

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[(c) A Nasdaq market maker may become registered in a newly authorized issued by contacting Nasdaq Market Operations. If registration is requested within five (5) business days after the issue is authorized, registration shall become effective at the time the registration request is entered.]

[(d)] (c) A Nasdaq market maker may become registered in an issue [already

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

included in Nasdaq] by entering a registration request via a Nasdaq terminal or other Nasdaq approved electronic interface with Nasdaq's system or by contacting Nasdaq Market Operations. If [registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and] the requirements of paragraph (b) above are satisfied, registration shall become effective on the day [after] the registration request is entered. [Provided, however, that same day registration is permissible for:

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, who seeks registration in the other merger or acquisition issue; and

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.]

[(e)] (d) A Nasdaq market maker's registration in an issue shall be terminated by the Association if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

[(f)](e) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq National Market security shall also at all times be registered as a market maker in the Small Order Execution System (SOES) with respect to that security and be subject to the SOES Rules as set forth in the Rule 4700 Series.

[(g)](f) In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/CQS symbol directory.

4720. SOES Participant Registration

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(b) Pursuant to Rule 4611[(f)], participation as a SOES Market Maker is required for any Nasdaq market maker registered to make a market in an NNM security.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed