

securities or tender offer is discussed, without violating the provisions of Section 5 of the Securities Act, or the procedural requirements of the tender offer rules promulgated under the Williams Act. For Further Information, Please Contact: Luise M. Welby, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

(4) The Commission will consider whether to issue a release adopting rule and form changes designed to require registrants to report sales of equity securities that have not been registered under the Securities Act, including securities sold in reliance on Regulation S. For Further Information, Please Contact: Walter Van Dorn, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

The subject matter of the closed meeting scheduled for Wednesday, October 9, 1996, following the 10 a.m. open meeting, will be: Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, October 10, 1996, at 10 a.m., will be: Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 3, 1996.

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-25826 Filed 10-3-96; 3:53 pm]

BILLING CODE 8010-01-M

[Release No. 34-37744; File No. SR-Amex-96-27]

**Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Healthcare/Biotechnology Market Index Target-Term Securities ("MITTS")**

September 27, 1996.

**I. Introduction**

On July 15, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),<sup>3</sup> the return on which is based upon an equal-dollar weighted portfolio of 26 healthcare/biotechnology industry securities ("H/B Index" or "Index").<sup>4</sup> Notice of the proposal appeared in the Federal Register on July 24, 1996.<sup>5</sup> No comment letters were received on the proposed rule change. On September 6, 1996, the Amex filed Amendment No. 1 to the proposed rule change.<sup>6</sup> On September 17, 1996, the Amex filed Amendment No. 2 to the proposal.<sup>7</sup> This order

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

<sup>4</sup> Initially, the H/B Index was comprised of 29 stocks. In Amendment No. 1 the Exchange deleted three stocks from the Index. See Amendment No. 1, *infra* note 6. As of July 31, 1996 the Index was comprised of the stocks of the following 26 issuers: Amgen, Inc., Apria Healthcare Group, Inc., Baxter International, Inc., Beverly Enterprises, Biogen, Inc., Chiron Corporation, Columbia/HCA Healthcare Corporation, Emcare Holdings, Inc., Genzyme Corporation, Genesis Health Ventures, Inc., Health Management Associates, Inc., Healthsource, Inc., Healthsouth Corporation, Humana, Inc., Johnson & Johnson, Medpartner/Mullikin, Inc., Neuromedical Systems, Inc., Olsten Corporation, Ornd Healthcorp., Oxford Health Plans, Inc., Phycor, Inc., Quorum Health Group, Inc., Renal Treatment Centers, Inc., Tenet Healthcare Corporation, Total Renal Care Holdings, Inc., and United Healthcare Corporation. According to the Exchange as of September 13, 1996, the market capitalizations of these companies ranged from \$207 million to \$65.6 billion, and average monthly trading volumes over the preceding six month period ranged from 1.44 million to 52.21 million shares.

<sup>5</sup> See Securities Exchange Act Release No. 37447 (July 17, 1996), 61 FR 38485 (July 24, 1996).

<sup>6</sup> In Amendment No. 1 the Exchange revises the list of component securities in the H/B Index by deleting the stocks of Abbott Laboratories, Inc., Caremark International, Inc., and Horizon/CMS Healthcare Corporation. Amendment No. 1 also alters the original proposal to provide that adjustments to the share multiplier will not be made for rights offerings, distributions, recapitalizations, expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Additionally, Amendment No. 1 provides that H/B MITTS will be traded under the Exchange's equity rules, subject to equity margin requirements, and subject to Amex Rule 411, as described more fully herein. Amendment No. 1 also provides that the H/B Mitts are subject to continued listing provisions set forth in Sections 1001 through 1003 in the Exchange's *Company Guide*. The Exchange intends to submit a proposed rule change in the near future to provide continued listing standards that apply specifically to hybrid securities such as the H/B Mitts. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Livette Lopez, Assistant Director, Office of Market Supervision ("OSM"), Division of Market Regulation ("Division"), Commission, dated September 4, 1996 ("Amendment No. 1").

<sup>7</sup> In Amendment No. 2, the Amex changes the proposal to provide that the share multiplier of each

approves the proposed rule change, as amended.

**II. Description of the Proposal**

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>8</sup> The Amex proposes to list for trading under Section 107A of the *Company Guide*, MITTS based on the H/B Index ("H/B MITTS").<sup>9</sup> The H/B Index will be determined, calculated and maintained solely by the Amex.<sup>10</sup>

The MITTS will conform to the initial listing guidelines under Section 107A<sup>11</sup> and continued listing guidelines under Sections 1001-1003<sup>12</sup> of the *Company*

component also will remain constant in the event of a merger, consolidation, dissolution or liquidation of an issuer. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated September 13, 1996 ("Amendment No. 2").

<sup>8</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990) ("Hybrid Approval Order").

<sup>9</sup> The Commission has approved the listing and trading on the New York Stock Exchange of MITTS based upon portfolios of securities representing (1) telecommunications companies, (2) European companies, (3) health care companies, (4) U.S. real estate investment trusts, and (5) restructuring companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 34655 (September 12, 1994), 59 FR 47966 (September 19, 1994); 34691 (September 20, 1994), 59 FR 49264 (September 27, 1994); and 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994) ("MITTS Approval Orders"). The Commission has also approved the listing and trading on the Amex of hybrid securities similar to MITTS, based upon portfolios of securities representing various industries, including, among others, (1) telecommunications companies, (2) banking industry stocks, (3) real estate investment trusts, and, most recently, (4) the ten highest yielding stocks in the Dow Jones Industrial Average. See Securities Exchange Act Release Nos. 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34848 (October 17, 1994), 59 FR 53217 (October 21, 1994); 36130 (August 22, 1995), 60 FR 44917 (August 29, 1995); and 37533 (August 7, 1996) 61 FR 42075 (August 13, 1996).

<sup>10</sup> The Ending Portfolio Value, however, will be determined by Merrill, Lynch, Pierce, Fenner & Smith, Incorporated ("Calculation Agent"). See *infra* note 14.

<sup>11</sup> The initial listing standards for MITTS require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholders' equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earnings criteria stated in Section 101 of the *Company Guide*, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

<sup>12</sup> The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part

*Guide*. MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. H/B MITTS will entitle the owner at maturity to receive the principal amount, plus an amount based upon the percentage change between the "Benchmark Portfolio Value" and the "Ending Portfolio Value." <sup>13</sup> Because the cash amount investors will receive at settlement is based on the difference between the Ending Portfolio Value and the Benchmark Portfolio Value, beneficial owners of H/B Mitts will receive a cash amount only to the extent the Ending Portfolio Value exceeds the Starting Portfolio Value by 12% to 18%. The "Ending Portfolio Value" is the value of the H/B Index upon the expiration of the H/B MITTS approximately five years from the pricing date.<sup>14</sup> The Ending Portfolio Value will be used in calculating the amount owners will receive upon maturity.

H/B MITTS are cash-settled in U.S. dollars<sup>15</sup> and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the H/B Index securities.

Components of the H/B Index approved pursuant to this filing will

10 to the Exchange's *Company Guide*. Section 1002(b) of the *Company Guide* states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the H/B MITTS, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iii). Section 1003(b) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000. The Exchange is in the process of developing continued listing standards that apply specifically to hybrid securities such as the MITTS proposed herein. If the Exchange considers delisting the H/B MITTS prior to adopting its own guidelines, the Exchange would consider the NYSE's recently adopted continued listing standards when making its decision. These guidelines contain minimum criteria for public holders, aggregate market value, and publicly held shares. See Securities Exchange Act Release No. 37238 (May 22, 1996) (Order approving NYSE continued listing guidelines for hybrid securities). See also Amendment No. 1, *supra* note 6.

<sup>13</sup> The Benchmark Portfolio Value will be 12% to 18% (the actual percentage will be determined on the date the MITTS are priced by Merrill Lynch for initial sale to the public) greater than the "Starting Portfolio Value" which will be set at 100.

<sup>14</sup> The Ending Portfolio Value, as determined by the Calculation Agent, will equal the average (*i.e.* arithmetic mean) of the closing values of the portfolio on certain days, or if certain events occur, the closing value of the portfolio on a single day prior to the maturity of the securities.

<sup>15</sup> See Amendment No. 1, *supra* note 6.

meet the following criteria: (1) A minimum market value of at least 75% million, except that up to 10% of the component securities in the Index may have a market value of \$50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities.

As of September 13, 1996, the market capitalizations of the initial portfolio of securities representing the Index ranged from a high of \$65.6 billion to a low of \$207 million. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 52.21 million shares to a low of 1.44 million shares.

At the outset, each of the securities in the H/B Index will represent approximately an equal percentage of the Starting Portfolio Value of the Index. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents approximately an equal percentage of the value of the entire portfolio on the date of issuance (*i.e.* the Index will be "equal-dollar weighted.") The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, each of the 26 companies included in the Index initially will represent approximately 3.84 percent of the total portfolio at the time of issuance. The Index initially will be set to provide a Starting Portfolio Value of 100.00 at the close of trading on the day preceding its selection. The value of the Index at any time will equal the sum of the products of the current market price for each stock underlying the Index and the applicable share multiplier.

The multiplier of each component stock in the Index will remain fixed unless adjusted for certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to

its shareholders, stock split, reverse stock split, or reorganization.<sup>16</sup> In these limited circumstances, the multiplier of the affected security in the Index may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Index continuity.

If the issuer of a stock included in the Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Index. For example, if a company included in the Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Index so long as a market price for such security is available. If a market price is no longer available for an Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Index for so long as no market price exists for that security.

The Exchange will calculate the Index continuously and, similar to other stock index values published by the Exchange, the value of the Index will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities.

H/B MITTS may not be redeemed prior to maturity and are not callable by the issuer.<sup>17</sup> Holders of H/B MITTS will only be able to cash-out of their investment by selling the security on the Amex. Because H/B MITTS are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules will apply to the trading of H/B MITTS. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to

<sup>16</sup> See Amendment Nos. 1 and 2, *supra* notes 6 and 7.

<sup>17</sup> See Amendment No. 1, *supra* note 6.

trading H/B MITTS.<sup>18</sup> Second, the Amex has adopted a heightened suitability standard that will apply to recommendations in H/B MITTS. In particular, before a member or member organization recommends a transaction in H/B MITTS, such member must make a determination that H/B MITTS are suitable for such customer and the person making the recommendation should have a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.<sup>19</sup> Third, H/B MITTS will be subject to the equity margin rules of the Exchange.<sup>20</sup> Finally, in accordance with the Amex's Hybrid Approval Orders, the Exchange will, prior to trading H/B MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities, including the heightened suitability standard discussed above, when handling transactions in H/B MITTS and highlighting the special risks and characteristics of H/B MITTS.<sup>21</sup>

### III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).<sup>22</sup> Specifically, the Commission believes that providing for exchange-trading of H/B MITTS will offer a new and innovative means of participating in the market for healthcare/biotechnology securities. In particular, the Commission believes that H/B MITTS will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of the original investment. Accordingly, for

the same reasons as discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of H/B MITTS is consistent with the Act.<sup>23</sup>

As with other MITTS products, H/B MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of H/B MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the performance of a portfolio of securities, and investors will only participate in a limited amount of appreciation,<sup>24</sup> there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to H/B MITTS. In particular, by imposing the hybrid listing standards, heightened suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of H/B MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with H/B MITTS,<sup>25</sup> and the suitability standards which the Amex will apply to transactions in H/B MITTS.<sup>26</sup>

The Commission realizes that H/B MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide* which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as MITTS. In addition, the Exchange's hybrid listing standards further require that H/B MITTS have at least \$4 million in market value.<sup>27</sup> In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Index, will be publicly available.<sup>28</sup>

The Commission also has a systemic concern, however, that a broker-dealer,

such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the commission believes this concern is minimal given the size of the H/B MITTS issuance in relation to the net worth of Merrill Lynch.<sup>29</sup>

The Commission also believes that the listing and trading of H/B MITTS should not unduly impact the market for the underlying securities comprising the Index. First, the underlying securities comprising the Index are well-capitalized, highly liquid stocks. Second, because all of the components of the Index will be equally weighted, no single stock or group of stocks will likely dominate the Index. Finally, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Index will be disseminated at least once every 15 seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every 15 seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 revises the initial portfolio of securities comprising the Index by deleting three of the original proposed securities, includes various specifications regarding the H/B MITTS, and alters the original proposal to provide that adjustments to the share multiplier will not be made for rights offerings, distributions, recapitalizations, expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Additionally Amendment No. 1 states that H/B MITTS will be traded under the Exchange's equity rules, subject to equity margin requirements, and subject to Amex Rule 411, as described above. Amendment No. 1 also provides that the H/B MITTS are subject to continued listing provisions set forth in Sections 1001 through 1003 in the Exchange's

<sup>18</sup> See Amendment No. 1, *supra* note 6. Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

<sup>19</sup> Telephone Conversation between Sharon Lawson, Assistant Director, OMS, Division, Commission and Michael T. Bickford, Vice President, Amex, on September 27, 1996.

<sup>20</sup> See Amendment No. 1, *supra* note 6.

<sup>21</sup> The Commission expects such circular to, among other things, highlight the payment methodology upon settlement and, in particular, that investors will only participate in appreciation to the extent that the Index value appreciates above a certain amount. See *supra* note 13 and accompanying text.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> See MITTS Approval Orders, *supra* note 9.

<sup>24</sup> See *supra* note 13 and accompanying text.

<sup>25</sup> See *supra* note 21.

<sup>26</sup> See *supra* note 19 and accompanying text.

<sup>27</sup> See Amex Company Guide § 107A.

<sup>28</sup> The companies that comprise the Index are reporting companies under the Act.

<sup>29</sup> See MITTS Approval Orders, *supra* note 9.

*Company Guide.* The Commission believes that Amendment No. 1 clarifies and strengthens the Exchange's proposal by providing additional information, similar to that provided for other MITTS products previously approved by the Commission, and by stating the specific continued listing guidelines that will apply to H/B MITTS which should help to ensure a minimal level of depth and liquidity for continued trading of the product on the Amex. The Commission believes that Amendment No. 2 also clarifies the Exchange's proposal by providing that no adjustments to the share multiplier for a component stock will be made in the event of merger, consolidation, dissolution or liquidation of an issuer. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-27 and should be submitted by October 28, 1996.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (File No. SR-Amex-96-27), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>31</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-25623 Filed 10-4-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37752; File No. SR-MBSCC-96-04]

**Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change to Establish Term Limits for the Chairman of the Board of Directors**

September 30, 1996.

On June 24, 1996, MBS Learning Corporation; Order Approving a Proposed Rule Change to Establish Term Limits for the Chairman of the Board of Directors

On June 24, 1996, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-96-06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to establish term limits for the chairman of MBSCC's Board of Directors.<sup>1</sup> Notice of the proposal was published in the Federal Register On August 14, 1996.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The rule change amends Section 5.3 of MBSCC's by-laws, regarding the term of office, removal, and vacancies of officers, to limit the term of office for the Chairman of the Board to not more than four consecutive one-year terms.

**II. Discussion**

Section 17A(b)(3)(C)<sup>3</sup> of the Act requires that the rules of a clearing agency be designed to assure a fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The Commission believes that MBSCC's rule change is consistent with MBSCC's obligations under the Act because it should create greater diversity in the individuals who will serve as MBSCC's Chairman of the Board and thereby should promote the fair representation of participants in the administration of MBSCC's affairs.

**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.

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

<sup>2</sup> Securities Exchange Act Release No. 37541 (August 8, 1996), 61 FR 42298.

<sup>3</sup> 15 U.S.C. § 78q-1(b)(3)(C) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBSCC-96-04) be, and hereby is, approved.

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

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-25620 Filed 10-4-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37767; File No. SR-PSE-96-29]

**Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to a One-Year Extension of the Lead Market Maker System Pilot Program**

September 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change and an amendment thereto.

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

Commentary .01 to PSE Rule 6.82, "Lead Market Maker Pilot Program," states that the PSE's Lead Market Maker ("LMM") system pilot program will expire on September 30, 1996. The PSE proposes to amend Commentary .01 to extend the pilot program, so that it will be set to expire on September 30, 1997.<sup>3</sup>

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1996).

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

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> The PSE originally submitted a request for permanent approval of its Lead Market Maker ("LMM") System Pilot Program. On September 30, 1996, the PSE submitted Amendment No. 1 to the proposed rule change. See Letter from Michael Pierson, Senior Attorney, Regulatory Policy, Pacific Stock Exchange, to Janet Russell-Hunter, Special Counsel, Division of Market Regulation, SEC, dated September 30, 1996. In Amendment No. 1, the PSE withdrew the provision requesting permanent approval of the LMM pilot program and requested a one-year extension of the pilot program. The PSE

Continued

<sup>30</sup> 15 U.S.C. 78s(b)(2)

<sup>31</sup> 17 CFR 200.30-3(a)(12).