

appropriate in furtherance of the purposes of the Act.

Section 6(b)(5) requires the rules of an exchange to be designed to remove impediments and to perfect the mechanism of a free and open market. This proposal seeks to remove those barriers to exchange membership imposed by both the cost of an equity interest on the Exchange and the current availability of seats for purchase. The proposal further removes impediments to the mechanism of a free and open market by providing members with more alternatives in how they will structure their membership affiliations. Further, Section 6(b)(8) states that the rules of an exchange may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The CHX proposal would remove a burden on competition in that broker-dealers who are unable to purchase a seat on the CHX may enter into a leasing agreement and thus enhance their ability to compete with other CHX broker-dealers.

The Commission also believes that the proposed rule change is consistent with previous no action positions taken by the Commission construing the requirements of Section 6(c)(1) (A) and (B) of the Act and the definition of "member" under Section 3(a)(3)(A) of the Act.⁹ We have interpreted those provisions to allow an exchange to permit a natural person to own an exchange membership, under circumstances like those required under the proposed CHX rule change, where that person has either inherited the membership or purchased it solely for the purpose of leasing that membership, where that person is not an associated person of the lessee, and where that person is not and has not been engaged in securities activities for which broker-dealer registration is required.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CHX-96-30) is approved.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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⁹ See letter from Jeffrey L. Steel, Special Counsel, Division of Market Regulation, SEC to Arne R. Rode, Associate General Counsel, Chicago Board Options Exchange, dated January 2, 1980.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38461; File No. SR-MBSCC-97-03]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Establishment of the Comparison Only System

April 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 18, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MBSCC-97-03) 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

The proposed rule change modifies MBSCC's rules to establish the Comparison Only System ("COS") and to create a new category of participant, a "limited purpose participant", eligible to use this system.

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.²

(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 modify MBSCC's rules to establish the COS and to create a new category of participant, a limited purpose participant, eligible to use this system.

As a result of interest expressed by the Federal National Mortgage

Association and other organizations, the proposed COS, which will be a limited system for principals to compare trade data, was developed by MBSCC. The mortgage-backed securities marketplace has unique characteristics that affect how trades are compared and how industry participants communicate with each other. For example, the average time between a mortgage-backed securities trade and settlement date is much longer than that in the government bond and equity markets, forty-five to ninety days compared to one and three days, respectively. The objective of MBSCC's proposed system is to improve market communications for the comparison of trade data by providing qualified entities with an automated alternative to manually initiating verbal confirmations and then exchanging hardcopy trade confirmations and/or contract letters.

Under current MBSCC rules, MBSCC processes securities through the Comparison and Clearing System ("CCS") for qualified participants. CCS provides a centralized process to compare and confirm trades electronically, risk management services to continually assess the current value of each underlying trade and to ensure that all participants meet their margin requirements, and a netting facility that provides a multilateral netting service which creates netted receive and deliver obligations.

The proposed COS is a more limited system than the CCS in that it will only provide a centralized process to compare and confirm trades electronically. COS will be a system restricted to those that trade in a principal capacity where specified trade data must exactly and promptly compare between like contra-sides. Because the COS is limited to comparison, participants will not be required to put up margin or meet specific net worth financial requirements.

COS will require a limited purpose participant to submit financial information to demonstrate its financial ability to meet its cash balance debit obligations to MBSCC, which are limited to the fees for using the COS and any late fees imposed. It is expected that these fees will be significantly lower than those imposed on participants in the CCS; therefore, no basic deposit fee will be required of COS participants. MBSCC will bill the limited purpose participant on a monthly basis. The bill will be payable to MBSCC via the federal funds wire.

Each limited purpose participant will be required to maintain specified data processing and communications

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by MBSCC.

equipment to be able to process transactions through the facilities of MBSCC and be able to receive reports, notices, and other communications relating to transactions prepared by MBSCC. Any current MBSCC participant trading a COS eligible security in a principal capacity will be able to participate in COS if the counterparty is a limited purpose participant or the security traded is not eligible in CCS.

Under COS, a trade will be negotiated by the parties. Trade terms will then be submitted electronically by the parties to MBSCC for comparison. The submitted trade terms will then be compared in MBSCC's AM or PM processing pass. For a trade to compare in COS, certain trade data will have to match exactly.³ If a trade compares, MBSCC will issue a purchase and sale report go each side of the trade. The purchase and sale report will serve as the sole binding confirmation of the trade. The trade will then be settled outside of the MBSCC system. Trade terms that do not compare will be reported as unmatched on a transaction summary report sent to the parties. Individually or jointly, the parties must then resolve or delete the unmatched trade by taking one or more of the following on-line actions: deletes, DK's (don't know), affirms, and new input. Unmatched trades will remain on a transaction summary report until resolved. MBSCC's current rule on CCS unmatched items will similarly be applied to COS unmatched items. Specifically, until the unmatched item is resolved or deleted, the participant(s) will be subject to the imposition of late fees by MBSCC. For purposes of computing the late fees, each missed processing pass after a two pass grace period will result in a separate assessment against the participant(s). If the unmatched trade is resolved, MBSCC will compare and confirm it with a purchase and sale report as described above.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(3)(F) of the Act⁴ 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 relating to the proposed rule change 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

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 MBSCC 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, N.W., Washington, D.C. 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC.

All submissions should refer to the file number SR-MBSCC-97-03 and should be submitted by April 28, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38456; File No. SR-NASD-92-7]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to Proposed Rule Change Relating to the OTC Bulletin Board Service

March 31, 1997.

I. Introduction

On March 12, 1992, the National Association of Securities dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposal to obtain permanent approval of the OTC Bulletin Board Service ("OTCBB Service," "OTCBB" or "Service"). The Commission noticed and solicited comments regarding the proposal in the **Federal Register**.² On October 6, 1994 and on November 8, 1994, the NASD filed Amendment Nos. 1 and 2 to the proposal. The Commission noticed and solicited comment regarding Amendments 1 and 2.³ On March 14, 1997, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 supersedes Amendment Nos. 1 and 2. On March 21, 1997, the NASD filed Amendment No. 4 to the proposal.⁴ This Order approves the proposed rule change as amended by Amendment Nos. 3 and 4 on an accelerated basis.

II. Background

On June 1, 1990, the NASD, through Nasdaq, initiated operation of the OTC

¹ 15 U.S.C. § 78s(b)(1).

² Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281.

³ Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808. The amendments would have narrowed the universe of securities eligible for quotation on the Service. Specifically, the NASD proposed to narrow the subset of foreign equity securities, including those represented by American Depositary Receipts, that would have been OTCBB-eligible to those securities registered with the Commission pursuant to Section 12 of the Act. This requirement would have become effective on July 5, 1994. Any foreign equity security quoted in the OTCBB as of the close of business on July 1, 1994 that was not registered pursuant to Section 12 of the Act could remain OTCBB-eligible provided that the issuer maintained an exemption from Section 12 registration pursuant to Rule 12g3-2(b) under the Act.

⁴ The NASD submitted a technical amendment on March 27, 1997, stating that the change to Paragraph 6540(b)(1)(c) would not be implemented until April 1, 1998. See Note 7 infra.

³ Specifically, the trade data will be buyer versus seller, buyer account, seller account, class code or CUSIP/pool number, price, trade type, trade date, settlement date, and par value.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 17 CFR 200.30-3(a)(12).