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 this submission, all subsequent amendments, all written statements with respects 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the File No. SR–GSCC–97–01 and should be submitted by June 6, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12893 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38595; File No. SR–MBSCC–96–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Liens on Participants' Property

May 9, 1997.

On November 20, 1996, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–96–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to explicitly state that MBSCC has a lien on all property placed in its possession by its participants. On January 3, 1997, and on January 14, 1997, MBSCC filed amendments to the proposed rule change. Notice of the proposal was published in the **Federal Register** on February 26, 1997.[2] On April 10, 1997, MBSCC again amended the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Unlike other clearing agencies, MBSCC's rules did not contain specific language stating that MBSCC has a lien on all property placed into its possession by its participants.[4]

However, MBSCC has stated that it always intended to have such a lien. The proposed rule change modifies MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in its possession by its participants.

The proposed rule change also revises MBSCC's rules to clarify that any cash received with respect to deposits to MBSCC's participants fund from and not yet distributed to a participant is available to MBSCC for satisfaction of participant liabilities.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with MBSCC's obligations under the Act because the proposed rule change adds language providing MBSCC with assurances that, in the event one of its participants fails to discharge its liabilities, MBSCC will have a lien on the participant's property in MBSCC's possession. Therefore, MBSCC can utilize the participant's cash or securities subject to the lien to cover the participant's unpaid obligations to MBSCC. As a result, MBSCC is in a better position to protect itself and its participants from a defaulting participant.

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–96–08) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12826 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38594; File No. SR–MCC–97–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Return of Sponsored Account Fund Deposits

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 27, 1997, Midwest Clearing Corporation, (''MCC'') 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 MCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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 adopt a form of indemnity agreement in accordance with Article XI, Rule 2, Section 11 of MCC's rules.

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

In its filing with the Commission, MCC 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. MCC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38314 (February 19, 1997), 62 FR 8809.

[3] The amendment was technical in nature and therefore did not require republication of the notice.

[4] For example, the rules of the National Securities Clearing Corporation (''NSCC'') and the International Securities Clearing Corporation (''ISCC'') provide NSCC and ISCC with liens on property placed in their possession by their participants. The language contained in the present proposed rule change is substantially similar to the language contained in NSCC's and ISCC's respective rules. NSCC Rule 18, Section 2(f) and ISCC Rule 18, Section 3.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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

On January 5, 1996, the Commission approved a proposed rule change filed by MCC relating to its withdrawal from the securities clearance and settlement business in conjunction with an agreement with the National Securities Clearing Corporation (''NSCC'').[3] Under the agreement, MCC became an NSCC member and agreed to sponsor at NSCC certain floor members and member organizations (''sponsored participants'') of MCC's parent corporation, the Chicago Stock Exchange (''CHX''). The purpose of sponsoring participants was to provide specialists, market makers, and floor brokers of CHX that are not members of a registered clearing agency (other than MCC) with access to the services of a registered clearing agency. As of January 21, 1997, MCC had 33 sponsored participants.

To reduce MCC's exposure to the sponsored participant's trading activity, Article XI, Rule 11 of MCC's rules require sponsored participants to contribute to a sponsored account fund. All contributions to the sponsored account fund must be in cash. If MCC ceases to act on behalf of a sponsored participant for any reason, Article XI, Rule 11(h) and Article IX, Rule 2, Section 11 of MCC's rules permit MCC to retain the sponsored participant's sponsored account fund deposit until the sponsored participant satisfies certain requirements.[4] A sponsored participant may choose the method by which to protect MCC from potential losses. One method is by entering into a form of indemnity agreement acceptable to MCC.

The purpose of the proposed rule change is to adopt an acceptable form of indemnity agreement.[5] Under the form of indemnity agreement, a sponsored participant agrees to indemnify and hold MCC and its officers, directors, and certain other personnel harmless from any loss (including attorneys' fees) caused by the sponsored participant. The sponsored participant also agrees to indemnify MCC, its officers, and certain other personnel for other losses that could be charged against the sponsored account fund generally to the same, or in certain cases, a lesser extent, than if the sponsored participant had not received its deposit back.

Pursuant to the form of indemnity agreement, the amount owing for these other losses (i) Will not exceed the amount the sponsored participant had on deposit at the time of the sponsored participant's withdrawal from MCC and (ii) will not be applicable if the underlying conduct giving rise to the loss occurred after the withdrawal. In addition, the indemnity will cease in its entirety after four years from the date the indemnity is signed.

While MCC believes that the form of indemnity agreement will be deemed satisfactory in many cases, MCC still reserves the right to require, in its discretion, additional indemnities and guarantees above and beyond the form of indemnity agreement or to decline to accept any indemnity agreement or guarantee in lieu of retaining sponsored account fund deposits. This may be necessary, for example, if the withdrawing sponsored participant is on the verge of bankruptcy or insolvency.

MCC believes that the proposed rule change is consistent with Section 17A(b)(3)(f)[6] of the Act in that it will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in MCC's custody or control or for which MCC is responsible.

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

MCC does not believe that the proposed rule change will impose any burden on competition.

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

MCC has neither solicited nor received written comments on the proposed rule change.

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)(i)[7] of the Act and pursuant to Rule 19b–4(e)(1)[8] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of MCC. 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 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should

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[2] The Commission has modified the text of the summaries prepared by MCC.

[3] For a description of the agreement, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR–MCC–95–04] (order approving proposed rule change).

[4] Article XI, Rule 11(h) states that the return of sponsored account fund deposits is governed by Article IX, Rule 2, Section 11. Generally, Article IX, Rule 2, Section 11 provides that whenever a sponsored participant ceases to be a participant, the amount of its contribution to the sponsored account fund must be returned to it ninety days after:

(i) All transactions open at the time it ceases to be a sponsored participant from which losses or payments chargeable to the sponsored participants fund might result have been closed,

(ii) All obligations, contingent or otherwise, that are chargeable or may become chargeable against its contributions pursuant to MCC's rules have been satisfied or, at the discretion of MCC, have been deducted, and

(iii) Either another sponsored participant has been substituted, with the approval of MCC, on all transactions and obligations of the sponsored participant, or the participant has presented to MCC such indemnities or guarantees as MCC deems satisfactory.

If the sponsored participant does not satisfy all the requirements set forth in paragraph (iii) above, MCC may retain for up to four years, the greater of:

(a) 25 percent of a sponsored participant's average sponsored account fund requirement over the twelve months immediately prior to the date the sponsored participant ceases to be such, or

(b) $100,000 (or the Participant's entire Participants Fund deposit if the actual deposit is less than $100,000).

[5] A copy of the form agreement is attached as Exhibit A to MCC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through MCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(1).

refer to File No. SR–MCC–97–01 and should be submitted by June 6, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12827 Filed 5–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38611; File No. SR–NASD–97–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to the NASD's Rule Governing the Eligibility of Members To Become Primary Market Makers in Issues Subject to a Secondary Offering

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and the National Association of Securities Dealers, Inc.'s (''NASD'' or ''Association'') Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, notice is hereby given that on April 24, 1997,[1] the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 proposes to amend NASD Rule 4612(g) to permit a member who is a manager or co-manager of a secondary offering to be eligible to become a Primary Nasdaq Market Maker (''PMM'') in that issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering. The proposed amendment to Rule 4612(g) would only apply to members that are a PMM in 80% or more of the securities in which they are registered. (Additions are italicized.)

* * * * *

NASD Rule 4612

(a)–(g) (1) No change.

(g)(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering become effective; *provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering;* or

(ii) The market maker has satisfied the qualification criteria for 40 calendar days.

(g)(2)(B)–(h) No change

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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 rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Presently, NASD Rule 4612(g)(2)(A) provides that unless a market maker is registered in a security prior to the time a secondary offering in that stock has been publicly announced or a registration statement has beef filed, it cannot become a Primary Market Maker (''PMM'') in the stock unless: (1) The secondary offering has become effective and the market maker has satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effective or (2) the market maker has satisfied the PMM standards for 40 calendar days (''Secondary Offering PMM Delay Rule'').[2] This aspect of the PMM standards, which is unaffected by the waiver, until October 1, 1997, of the four quantitative PMM standards contained in NASD Rule 4612 (a) and (b), was first adopted because the time period after secondary offerings have been announced is sensitive to short selling pressure. Specifically, in these situations, the stock of the issuer is currently being traded and the ''overhang'' on the market of the new stock coming into the market from the offering makes the security particularly susceptible to manipulative short selling. The result of such short selling can adversely impact the capitalization of the issuer, particularly smaller issuers, whose securities often have less liquid secondary markets. Thus, Nasdaq has been and continues to be concerned with dealers entering the market after secondary offerings have been announced in order to take advantage of the market maker exemption from the short sale rule.

There have been instances where managers and co-managers of secondary offerings that have not previously been registered in the issue have been precluded from becoming a PMM in the issue prior to the effective date of the secondary offering, however. Accordingly, because of the inherent commitment of managers and co-managers to the issues that they underwrite as well as the additional liquidity that these members can provide, Nasdaq believes it would be appropriate for managers and co-

[9] 17 CFR 200.30–3(a)(12).

[1] The NASD filed an amendment (''Amendment No. 1'') clarifying footnote 3 to say that a firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80% or more of the stocks in which it makes a market. *See* Letter from Thomas R. Gira, Associate General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated May 7, 1997.

[2] The PMM standards are used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule. Previously, a market maker was required to satisfy at least two of the following four quantitative standards to be a PMM: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock. *See* NASD Rule 4612 (a) and (b). Because of changes to market maker quotation and trading activity since implementation of the SEC's Order Handling Rules, the Commission approved an NASD proposal to waive the PMM standards until October 1, 1997, to afford Nasdaq an opportunity to develop new PMM standards. *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289.