

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 the self-regulatory organization consents, the Commission will:

- (a) By order approve the 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBSCC-99-05 and should be submitted by September 3, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41714; File No. SR-MBSCC-99-02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Relating to MBSCC's Risk Management Rules and Procedures

August 6, 1999.

On April 15, 1999, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-99-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of proposal was published in the **Federal Register** on June 21, 1999.² No comment letters were received. For the reasons discussed below, the Commission is approving the rule change.

I. Description

The rule change makes several modifications to MBSCC's risk management rules. Specifically, the rule change: (i) Implements a net-out report, (ii) modifies financial reporting by participants, (iii) modifies certain special provisions applicable to nondomestic participants, (iv) adds a provision for additional assurances, and (v) clarifies MBSCC's role as agent in a liquidation.

The specific objectives of the rule change and the corresponding modifications to MBSCC's rules are described below.

1. Net-Out Report

The rule change modifies Article II, Rule 4 of MBSCC's rules to add a provision for a daily net-out report that will list all of a participant's open net-out obligations. Article I, Rule 1 of MBSCC's rules is also being modified to add a definition of the term "net-out report."

2. Financing Reporting

The rule change modifies Article III, Rule 1, Section 10 of MBSCC's rules to replace the general requirement for quarterly unaudited financial statements with a requirement that a participant must file unaudited financial statements as frequently as required by the participant's appropriate regulator. If a participant is not regulated or is a nondomestic participant, the participant must file monthly unaudited financial statements.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 41516 (June 10, 1999), 64 FR 33125.

3. Non-Domestic Participants

The rule change modifies Article III, Rule 1, Section 13 of MBSCC's rules to codify the existing practice of requiring non-U.S. participants to: (i) Execute and deliver to MBSCC a master agreement, (ii) provide MBSCC with an opinion of counsel, and (iii) confirm the master agreement and opinion of counsel as MBSCC's may require. The master agreement and the opinion of counsel generally address the enforceability of MBSCC's rules. Article I, Rule 1 of MBSCC's rules is also being modified to add definitions of the terms "master agreement" and "opinion of counsel."

4. Additional Assurances

The rule change modifies Article III, Rule 1 of MBSCC's rules by adding a new Section 16. The new section provides that any participant that contemplates it no longer will be in compliance with MBSCC's rules and procedures or will no longer be able to perform its contracts or satisfy its obligations to MBSCC or MBSCC participants must immediately notify MBSCC. If MBSCC has reasonable grounds to believe that a participant no longer will be in compliance with MBSCC's rules and procedures or no longer will be able to perform its contracts or satisfy its obligations to MBSCC or MBSCC participants, MBSCC may require additional information from such participant relating to its ability to comply with the rules and procedures, perform its contracts, and satisfy its obligations to MBSCC or MBSCC participants. MBSCC may also increase a participant's minimum required deposits to the participants fund if MBSCC has reasonable grounds to believe such conditions may exist. The new section also states that it does not restrict MBSCC from exercising its right at any time to cease to act for the participant pursuant to MBSCC's rules.

The new section providing for additional assurances is designed to enable MBSCC to better determine a participant's potential inability to meet its obligations and to increase the likelihood that a participant's collateral will be sufficient to satisfy its obligations.

5. MBSCC as Agent

The proposed rule change modifies Article III, Rule 3, Section 5(f) to make explicit that any distribution of funds relating to a participant for which MBSCC has ceased to act is made by MBSCC as agent. MBSCC's role as an agent in the distribution of funds is currently implied in MBSCC's rules

⁶ 17 CFR 200.30-3(a)(12).

because MBSCC does not guarantee its participant's obligations.

II. Discussion

Section 17A(b)(3)(F)³ of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that each of MBSCC's rule changes is consistent with its obligations under the Act. The net-out report should provide participants with timely information regarding their open net-out obligations to enable them to better monitor potential risk exposure with original contra sides. This information is important because MBSCC's rules generally provide that if a defaulting participant's fund contribution is insufficient to cover the losses of the defaulting participant's non original contra sides, the deficiency is assessed against the defaulting participant's original contra sides. Therefore, the original contra sides remain liable for potential assessments even if as a result of MBSCC's netting process they net-out of transactions. This should help reduce the potential that the default of one participant will cause other participants to default on their obligations at MBSCC because of unexpected risk exposure.

Requiring participants to provide MBSCC with financial information as frequently as required by the participant's appropriate regulator and requiring participants to notify MBSCC in situations where the participant contemplates that it will be unable to meet its obligations will provide MBSCC with more timely information on the financial condition of certain participants.

The additional master agreement, opinion of counsel, and periodic confirmation requirements applicable to non-U.S. participants should better enable MBSCC to evaluate and to lesson or eliminate any negative effects that jurisdictional issues could have on MBSCC's exercise of its rights and remedies against a non-U.S. participant.

Requiring a participant to give notice of potential problems in meeting MBSCC's rules or in satisfying its obligations to MBSCC and other participants and MBSCC's right to require additional assurances and participants fund contributions as needed should better enable MBSCC to determine participants' continuing ability to meet their obligations and to have sufficient collateral on hand.

Because MBSCC does not guaranty its participants' transactions, clarifying that MBSCC is acting as an agent when it ceases to act for a participant should eliminate any potential confusion and potential liability with respect to MBSCC's role.

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-99-02) be, and hereby is, approved.

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. 34-41716; SR-NSCC-99-05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Acceptance of Letters of Credit

August 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 20, 1999, the National Securities Clearing Corporation ("NSCC") 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 NSCC. 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 replace NSCC's current letter of credit form with a letter of credit form developed by the Uniform Clearing Group.²

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² NSCC attached a copy of the uniform letter of credit as Exhibit A to the filing.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4, Section 1 of NSCC's Rules and Procedures permits NSCC to accept letters of credit in addition to cash and government securities as collateral for its clearing fund.⁴ The proposed rule change will require that letters of credit delivered to NSCC on or after September 1, 1999, be in the form of the uniform letter of credit ("ULC") developed by the United Clearing Group ("UCG").

The UCG is an organization comprised of all the major securities and futures clearing corporations and depositories in the U.S.⁵ The UCG developed the ULC to (i) foster uniformity among the various U.S. securities and futures clearing organization with respect to the acceptable terms of letters of credit that are deposited as margin and (ii) reduce operational burdens for industry participants and their letters of credit issuers. In developing the ULC, the UCG consulted with several letter of credit issuing banks and the National Standby Letter of Credit Committee of the International Financial Services Association (formerly known as the U.S. Council on International Banking).

The ULC consists of a cover page plus the uniform terms. All variable terms of the ULC, such as the name of the clearing member, the beneficiary clearing corporation, the issuing bank, the amount of the credit, and the

³ The Commission has modified the text of the summaries prepared by NSCC.

⁴ See also Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341.

⁵ The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, NSCC, The Options Clearing Corporation, MBS Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

³ 15 U.S.C. 78q-1(b)(3)(F).