

Risk Factor is set at 7%. The Foreign Exchange Factor is based in part on the estimated foreign exchange volatility, which is an amount that is equal to the largest one day percentage change in the U.S. dollar/British pound foreign exchange rate over a minimum of 365 days.<sup>10</sup> The estimated foreign exchange volatility is set at 4%.<sup>11</sup> The Market Risk Factor and Foreign Exchange Factor for members on surveillance may be increased in the discretion of ISCC by 3%, 5%, and 7% for members on Advisory, Class A, and Class B surveillance, respectively.

## II. Discussion

Section 17A(b)(3)(F) of the Act<sup>12</sup> requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody of the clearing agency or for which it is responsible. The Commission believes that ISCC's proposal helps to assure the safeguarding of securities and funds in ISCC's custody or control or for which it is responsible because the proposal is designed to protect ISCC's settlement obligations under the LSE linkage should a participant default. The formula is based upon the risks to which ISCC is subject (*i.e.*, time market, and foreign exchange risks) and should assist ISCC in assuring the safety of the funds and securities being transferred through the LSE link. ISCC's requirement that members deposit the greater of (a) the largest clearing fund calculation over the last 365 day period or (b) the deposit that would be required based on the clearing fund calculation using trades due to settle over the next week should provide additional protection to compensate for the clearing fund calculations based upon previously settled trades rather than outstanding obligations.

ISCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because approval of ISCC's current clearing formula will expire on August 1, 1996.

<sup>10</sup> The Foreign Exchange Factor is the product of the Gross Debit Value and the estimated foreign exchange volatility less the product of the Gross Debit Value times the Market Risk Factor times the estimated foreign exchange volatility.

<sup>11</sup> During the period from 1989 to 1992, the maximum fluctuation in the U.S. dollar/British pound exchange rate was 4.445%. ISCC will continue to review annually the foreign exchange risk factor.

<sup>12</sup> 15 U.S.C. § 78q-1(b)(3)(F) (1988).

The Commission believes that the proposed rule change should continue to be approved on a temporary basis in order to determine the adequacy of the formula in practice. The temporary approval will give ISCC the opportunity to study this further.

## III. Conclusion

On the basis of the foregoing, the Commission finds that ISCC's proposal is consistent with the requirements of the Act and in particular with 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-ISC-96-03) be, and hereby is temporarily approved on an accelerated basis through August 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jonathan G. Katz,

Secretary.

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[Release No. 34-37512; File No. SR-MBSC-96-01]

### Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change To Modify Participants Fund Deposit Requirements

August 1, 1996.

On March 8, 1996, MBS Clearing Corporation ("MBSC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSC-96-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to modify its participants fund deposit requirements.<sup>1</sup> On March 25, and May 30, 1996, MBSC filed amendments to the proposed rule change.<sup>2</sup> Notice of the proposal was published in the Federal Register on June 14, 1996.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change revises the basic deposit component of the MBSC participants fund requirements to

<sup>13</sup> 17 CFR 200.30-3(a)(12)(1995).

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

<sup>2</sup> Letters from Anthony H. Davidson, MBSC, to Christine Sibille, Division of Market Regulation ("Division"), Commission (March 18, 1996) and to Mark Steffensen, Division, Commission (May 24, 1996).

<sup>3</sup> Securities Exchange Act Release No. 37294 (June 10, 1996), 61 FR 30268.

correlate more closely with participants' actual usage of MBSC services.<sup>4</sup> The basic deposit component is intended to ensure that participants' obligations to MBSC for fees will be satisfied if participants are unable to meet such obligations.<sup>5</sup> The rule change reduces the basic deposit requirement for participants from \$10,000 per account maintained at MBSC to a minimum of \$1,000 for each participant regardless of the number of accounts maintained.<sup>6</sup> If a participant's average monthly services bill, as determined by MBSC on a semiannual basis, exceeds \$1,000, the participant's basic deposit requirement will be the amount of such average monthly services bill up to a maximum amount of \$10,000 per account maintained by such participant.

## II. Discussion

Section 17A(b) (3) (F)<sup>7</sup> 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. The Commission believes that MBSC's proposed rule change is consistent with MBSC's obligations under the Act because the revised basic deposit requirements should adequately protect MBSC from losses resulting from a participant's failure to pay MBSC fees without placing an undue burden on participants. Moreover, revision of the basic deposit requirement should more closely

<sup>4</sup> The MBSC participants fund is composed of a basic deposit, a minimum market margin differential deposit ("3MD"), and a daily margin requirement referred to as a market margin differential deposit ("MMD"). The purpose of the 3MD is to provide additional assurances that each participant's fund contributions will be adequate to satisfy all open commitments recorded with MBSC. Currently, the deposit required to satisfy this component of the participants fund is \$250,000 per participant. The purpose of the MMD is to ensure that a participant's open obligations to MBSC will be satisfied in the event the participant is unable to meet such obligations. MMD is derived from a formula which assesses various factors including the type of position held and marked-to-market value fluctuations. The rule change will not affect the requirements of MBSC participants with regard to the MMD and 3MD components of the participants fund.

<sup>5</sup> Notwithstanding the purposes of the basic deposit, MMD, and 3MD components of the participants fund, MBSC is not limited in its application of participants fund proceeds. Rather, MBSC can utilize the total participants fund to satisfy a participant's obligations to MBSC irrespective of the nature of the obligation.

<sup>6</sup> MBSC determined that its participants on average maintain two accounts at MBSC. The monthly maintenance fee per account is \$350 or \$700 for two accounts. MBSC based the minimum deposit amount of \$1,000 upon these averages and other participant usage data.

<sup>7</sup> 15 U.S.C. § 78q-1(b)(3) (F) (1988).

correlate a participant's actual usage of and billing for MBSCC services with its correspondent deposit to the participants fund.

### 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-96-01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority,<sup>8</sup>

Jonathan G. Katz,  
Secretary.

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[Release No. 34-37513; File No. SR-NASD-96-24]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Extension of the Effectiveness for One Year of the Arbitration Procedures for Large and Complex Cases

August 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10,<sup>1</sup> 1996 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II and III below, which Items have been prepared by the NASD. 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.

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

The NASD is proposing to extend the effectiveness of the arbitration Procedures for Large and Complex Cases, Rule 10334 of the Code of Arbitration Procedure ("Code"),<sup>2</sup> to August 1, 1997. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletion are in brackets.

#### CODE OF ARBITRATION PROCEDURE

#### Procedure for Large and Complex Cases Rule 10334

\* \* \* \* \*

#### Temporary Effectiveness

(h) This Section shall remain in effect until August 1, 199[6]7 unless modified or extended prior thereto by the Board of Governors.

\* \* \* \* \*

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

In its filing with the Commission, the NASD 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. The NASD 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

##### (1) Purpose

The Procedures for Large and Complex Cases ("Procedures"), adopted effective May 2, 1995, for a one-year pilot period and codified at Rule 10334 of the Code, will expire on August 1, 1996.<sup>3</sup> Since Rule 10334 became effective until July 25, 1996, there have been 578 cases filed that were eligible for disposition as large and complex cases. Of those cases, there have been 178 Administrative Conference held under Rule 10334(b), and in 25 of those

cases the parties agreed to proceed under the Procedures.

In general the NASD's experience with the Procedures since they became effective has been positive. The anecdotal information that has been gathered indicates that the administrative conference provided for under the Procedures is an effective and productive case management tool that most parties appreciate. Parties like the opportunity to develop a hearing plan, including developing a discovery plan, even if they ultimately decline to proceed under the Procedures. In addition, the administrative conference affords the staff an opportunity to explore mediation with the parties.

In addition, many parties regard the mandatory preliminary hearing with the chairperson of the panel as a valuable case management tool.<sup>4</sup> It affords them an opportunity to seek resolution of discovery disputes and to resolve other issues prior to the hearing. Parties also appreciate the opportunity to select arbitrators through preference rankings.

The NASD has also noted that relatively few cases are arbitrated under the Procedures because eligible disputes are often not sufficiently complicated to justify utilizing the rules, especially because of the additional costs imposed on the parties for arbitrator compensation. In addition, parties perceive that many of the provisions available under the Procedures are also available elsewhere in the Code.

On the basis of the foregoing, the NASD believes that the Procedures have been successful in affording additional benefits in the form of useful procedures to parties to large and complex cases, but that additional experience is necessary to evaluate fully the efficacy of the Procedures. In addition, the NASD Arbitration Policy Task Force has recommended that the one-year pilot test of Rule 10334 be extended in order to permit the Arbitration Department to gather additional data. This additional data will permit the NASD to develop a meaningful comparison with the experience of the American Arbitration Association with its large and complex case procedures. Accordingly, rather than seek permanent effectiveness of Rule 10334, the NASD is proposing to extend the effectiveness of the rule until August 1, 1997. During that time the

<sup>4</sup> Subsection (d) of Rule 10334 provides that the Director of Arbitration shall appoint one member of the panel to preside over the preliminary hearing, but does not require that the arbitrator be the panel chair. The chair is elected by the NASDR Office of Dispute Resolution staff. NASDR routinely selects the chair of the panel to preside over preliminary hearings under subsection (d), although the rule permits the NASDR staff to select any member of the panel.

<sup>8</sup> 17 CFR 200.30-3(a)(12) 1995).

<sup>1</sup> The NASD filed Amendment No. 1 to the proposed rule change on July 26, 1996. Amendment No. 1 amended the proposed rule change to: state that the NASD Board of Governors approved the filing of the proposed rule change; supplement and clarify information contained in Item II. A.; request that the Commission find good cause to grant accelerated approval to the proposed rule change; and undertake to provide the Commission with information concerning the operation of Rule 10334. See Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. ("NASDR") to Ivette Lopez, Assistant Director, Division of Market Regulation, Commission (July 26, 1996).

<sup>2</sup> Formerly Section 46 of the Code of Arbitration Procedure.

<sup>3</sup> The rule was to have expired on May 2, 1996; however, the SEC agreed to extend the effectiveness of the rule until August 1, 1996. See Securities Exchange Act Release No. 34154 (April 30, 1996), 61 FR 20301 (May 6, 1996).