

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41004; File No. SR-MBSCC-93-03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Increasing the Number of Directors

January 29, 1999.

On November 5, 1998, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MBSCC-98-03) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on November 30, 1998.² For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Article 3, Section 3.1 of MBSCC's By-laws to increase the number of directors on its board from thirteen to fifteen.³ Currently, MBSCC has thirteen directors divided into three classes. Classes I and II each consist of four directors, and Class III consists of five directors. Under the rule change, each class will now consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents the National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the rule change, the two additional directors will represent MBSCC's participants.

II. Discussion

Section 17A(b)(3)(C)⁴ provides that the rules of a clearing agency must provide for the fair representation of its shareholders or members and participants in the selection of directors. The Commission believes that the increase in the size of MBSCC's board

is consistent with the Act's fair representation requirements because the addition of two directors will increase the opportunity for participants to be represented on MBSCC's board and should allow the board to more accurately reflect its membership.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change 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. MBSCC-98-03) be and hereby is approved.

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. 34-40992; File No. SR-NASD-98-94]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adjudication of Clearly Erroneous Transactions

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 by NASD Regulation. 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

NASD Regulation is proposing to amend NASD Rule 11890 ("Rule") to

conform the time frame for requesting a clearly erroneous adjudication for pre-opening transactions to the 30-minute time frame that applies to trades that occur after 10:00 a.m. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

11890. Clearly Erroneous Transactions

- (a) No Change
- (b) Procedures for Reviewing Transactions

(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) For transactions occurring *at or after 9:30 a.m., Eastern Time*, but prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) For transactions occurring [on] *prior to 9:30 a.m., Eastern Time and those occurring at or after 10:00 a.m., Eastern Time*, complaints must be submitted within thirty minutes.

* * * * *

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 Rule sets forth the process through which The Nasdaq Stock Market, Inc. ("Nasdaq") may review certain transactions and declare them null and void or otherwise modify their terms. In early 1998, the Commission approved changes to the rule to make this process more efficient and fair ("Amendments").³ Among other things, the rule was amended to shorten the

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities and Exchange Act Release No. 34-40702 (November 23, 1998) 63 FR 65831.

³ Article 3, Section 3.1 governs the number, election, and term of office of directors.

⁴ 15 U.S.C. 78q-1(b)(3)(C).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333 (January 28, 1998) (approving SR-NASD-96-51).

time period to submit erroneous transaction complaints—from any time during the trading day to within 30 minutes of the erroneous transaction. This was done to reduce the potential for firms to wait until the end of the day to decide whether an erroneous trade became unprofitable, and to ensure that firms give the counterparty adequate notice in close proximity to the time of execution.

Because of the high volume of trading commencing at the 9:30 a.m. opening, however, the NASD intended to provide additional time to submit adjudication requests for trades occurring between 9:30 a.m. and 10:00 a.m. Specifically, the NASD intended that members have until 10:30 a.m. to request an adjudication for trades occurring between the 9:30 a.m. open and 10:00 a.m. The rule, however, currently only references trades that occur between 10:00 a.m., and is silent as to trades that occur before the 9:30 a.m. opening. Consequently, a literal reading of the Rule accords additional time to pre-9:30 a.m. transactions as well as those that occur between 9:30 and 10:00.

The NASD staff identified this issue at the time the Commission approved the Amendments, but agreed, in consultation with Commission staff, to wait and observe the operation of the amended Rule. After administering the Rule for eight months under the new time parameters, the NASD has confirmed its original belief that this additional time is not necessary with respect to pre-opening transactions, and reiterates its view that it is in fact inconsistent with the original intent of the Amendments.

In particular, the NASD notes that of 27 requests for adjudication pre-opening trades received to date since the Amendments, more than half were submitted by members within 30 minutes (in several instances within ten minutes) even though they had as long as 90 minutes to do so in some cases. More importantly, virtually all of these requests (23 of 27) were made after the market opened and thus after the requesting party had an opportunity to observe the direction of the market. While the NASD still believes that it is appropriate to provide additional time to request an adjudication for erroneous trades that occur following the opening, the NASD does not believe members should be provided with this additional time for pre-opening transactions. Such additional time is inconsistent with the intent of the Amendment, and leaves the potential for the same abuses and risks that the Amendments sought to address.

Accordingly, this proposed rule change merely conforms the pre-opening time frame to the same 30-minute standard that applies to trades occurring on or after 10:00 a.m.

2. Statutory Basis

NASD Regulation believes the proposed rule change, by helping to ensure that clearly erroneous transactions are quickly corrected or nullified and properly reported to the public, is consistent with the Act and in particular with Sections 15A(b)(6)⁴ and 11A(a)(1)(C)⁵ of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(6) also provides that the rules of the association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors.

In the proposed rule change, NASD Regulation provides greater specificity in the procedures for resolving pre-opening clearly erroneous transactions. NASD Regulation believes that the proposed amendments to the NASD's procedures to review these transactions should benefit market participants by promoting fair and efficient resolution of disputes involving clearly erroneous transactions. In addition, the proposed rule change addresses concerns raised by the Commission in its August 8, 1996, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market regarding the fairness of the clearly erroneous review process. NASD Regulation believes that the proposed rule change will make the process for resolving clearly erroneous transaction complaints more fair and more efficient. In this regard, the proposal is consistent with Section 15A(b)(6) of the Act because it helps to ensure that the Rule does not permit unfair discrimination between customers, issuers, brokers, or dealers.

Further, it is important for the proper functioning of the securities markets that investors be able to rely on reported transactions as accurately reflecting the current state of the market and actual

executions. When clearly erroneous transactions are publicly reported, it is important that, whenever possible, Nasdaq correct these errors and the inaccurate information that was disseminated in the market about these transactions as quickly as possible.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

NASD Regulation did not solicit or receive written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Secretaries 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 Room in Washington, DC. Copies of such filing will also be available for

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 15 U.S.C. 78k-1(a)(1)(C).

inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-94 and should be submitted by February 26, 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. 34-40994; File No. SR-PCX-98-63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System and Stop Orders

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 24, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange is proposing to amend Rules 5.8(j) and 5.32(a) to clarify the responsibilities of PCX members regarding the handling of stop orders relative to executions resulting from the PCX Application of the OptiMark System.

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

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 Exchange 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 Exchange 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 Exchange proposes to amend Rules 5.8(j) and 5.32(a) to clarify the responsibilities of PCX members regarding the handling of stop orders relative to executions resulting from the PCX Application of the OptiMark System. The proposed amendments clarify that all round-lot stop orders in dually-traded securities that are afforded primary market protection ("PMP") will not be elected and executed based on transactions that emanate from the OptiMark System. The Exchange believes that the proposed rule change will clarify the treatment of stop orders under PCX's rules, thereby promoting a more effective and orderly market operation.

The Exchange proposes changes to Rules 5.8(j) and 5.32(a) for the following reasons:

First, stop orders are not eligible for entry as profiles in the OptiMark System. Consequently, a specialist or floor broker cannot interact with the trade results that are generated from a single call cycle in order to comply with the execution requirements for stop orders (prints resulting from an OptiMark call cycle occur in an uninterrupted batch).

Second, a stop order is contingent on its election and execution occurring in a continuous sequence of trades in an auction market. OptiMark is a call market in which executions occur on a periodic basis and, as a result, it is not conducive to the election and execution of such orders.

Third, since an OptiMark match cycle generates trades at a range of prices, the election of a stop order by including OptiMark prints may result in a customer receiving an unfavorable execution, particularly if the traditional primary market (New York Stock Exchange ("NYSE") or American Stock Exchange ("AMEX")) would not reach the election price.

Fourth, given PCX technology in the current trading environment, the Specialists are unable to distinguish between OptiMark and non-OptiMark prints that occur on the PCX.

Finally, the proposal is consistent with the interpretation of PCX Rule 5.8(j) in that stop orders have, in

practice, been elected and executed based on transactions emanated from the primary markets (NYSE and AMEX).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)² of the Act in general and further objectives of Section 6(b)(5)³ in particular, because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.⁴

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange 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 constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and subparagraph (e)(1) of Rule 19b-4 thereunder.⁶

At any time within 60 days of the filing of the proposed 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; including whether the proposed rule change is consistent with the Act.

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78f(b)(5).

⁴ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(e)(1).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).