

market order through the MAX System is qualified by Exchange Rule 37(b)(11), Article XX, which states that "notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order."

The Commission believes that the proposed rule change will bring about certainty in the application of the Exchange's BEST System guarantee. Although the Exchange currently interprets the scope of the BEST System guarantee as being restricted by the price and size parameters, the absence of such criteria in the text of the BEST Rule may cause confusion among those entitled to use the BEST System.⁸

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CHX-97-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

[FR Doc. 97-32483 Filed 12-11-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39405; File No. SR-MBSCC-97-5]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

December 5, 1997.

On August 1, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MBSCC-97-5) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 26,

eligible for execution under the Exchange's BEST Rule and certain other orders. *see* Exchange Rule 37(b).

⁸ Exchange Rule 37(a) states that the BEST System is available to exchange member firms and members of participating exchanges.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

1997.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Pursuant to MBSCC's current rules, participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. The proposed rule change clarifies that participants also are liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants ("nonparticipants") and that nonparticipants are not deemed to possess any rights or benefits of participants.

As a result, MBSCC will treat all of a participant's accounts³ and obligations as belonging to such participant regardless of the identity of the underlying party. Thus, a participant's participant fund⁴ deposits will be available for all of the participant's transactions regardless of the source.

II Discussion

Section 17A(b)(3)(F) of the Act⁵ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change adds certainty as to the treatment of the positions submitted on behalf of nonparticipants upon default of a participant. Thus, the proposal should enhance MBSCC's ability to protect itself and its participants against loss. Therefore, the Commission believes that MBSCC's proposal is consistent with its obligations to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

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

² Securities Exchange Act Release No. 39103 (September 22, 1997), 62 FR 50646.

³ According to MBSCC's rules, the term "account" generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing trades.

⁴ According to MBSCC's rules, the term "participant fund" means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

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-97-5) be and hereby is approved.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 97-32485 Filed 12-11-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39408; File No. SR-Philadep-97-05]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Unclaimed Dividends and Distributions

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval.

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

Under the proposed rule change, Philadep will amend its rules governing unclaimed dividends and distributions.² The amendments reflect undertakings recently agreed to by Philadep in connection with settling an administrative proceeding with the Commission.³

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The text of the proposed amendments was submitted with Philadep's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of Philadep.

³ Securities Exchange Act Release No. 38918 (August 11, 1997) (order instituting proceedings pursuant to Section 19(h) and 21C of the Act, making findings, and imposing remedial sanctions) [Administrative Proceeding File No. 3-9360] ("Order").

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.⁴

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

In accordance with the Order, Philadep will amend Philadep Rule 29, entitled "Unclaimed Dividends and Other Distributions," and Philadep Rule 2, Section 1(e), which governs the retention of any unclaimed dividend or other distribution. The Order provides that within forty-five (45) days of the entry of the Order, Philadep shall file with the Commission:

A proposed rule change amending Rule 2, Section 1(e), Rule 29, Section 3 and the procedures thereunder, to provide that Philadep shall diligently research each unclaimed dividend or other distribution received after the Closing Date with a value greater than \$500. Any such unclaimed dividend or other distribution with a value of \$500 or less shall continue to be treated in accordance with Rule 29 (*i.e.*, Philadep can take it into income after five (5) years). All unclaimed dividends and other distributions subject to Rule 29 shall be held and invested in accordance with Philadep's Participants' Fund Rule 4. No unclaimed dividends or distributions received after the Closing Date in excess of \$500 shall be taken into income.

In their current form, both Philadep Rule 2, Section 1(e), and Philadep Rule 29, Section 3, provide that (i) any dividends or distributions outstanding and unclaimed after five years from the date of such dividend or distribution shall be taken into income by Philadep and (ii) the participant shall waive any claim to any such dividend or distribution except as Philadep otherwise may provide in accordance with its by-laws and rules. Rule 2 and Rule 29 will be amended to provide that Philadep may not retain any unclaimed dividends or distributions in excess of \$500 that are paid and received after the closing date.⁵ Also under the proposed

rule change, Philadep will amend Rule 29, Section 1, to provide that Philadep shall diligently research any unclaimed dividend or distribution with a value greater than \$500 that is received after the effective date of the amendments. No changes to Philadep's rules will be made with respect to unclaimed dividends or distributions received prior to the closing.

Finally, Philadep is amending Rule 29 by adding a new Section 3 that will require that all unclaimed dividends and distributions that are subject to Rule 29, but as yet not taken into income by Philadep in accordance with Rule 29, be held and invested pursuant to the same procedures as set forth in Philadep Participants' Fund Rule 4.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act⁶ and the rules and regulations thereunder because the amendments contemplated by the proposed rule change will better assure the safeguarding of securities and funds in the custody or control of Philadep or for which Philadep is responsible. Furthermore, Philadep believes the amendments are consistent with the undertakings set forth in the Order.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Section 17A(b)(3)(F) of the Act⁷ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will increase the likelihood that unclaimed dividends and distributions will be returned to their owners.

The Commission finds good cause for approving the proposed rule change

prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow Philadep to implement the undertakings set forth in the Order immediately which should benefit the owners of unclaimed dividends and distributions.

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 SCCP. All submissions should refer to File No. SR-Philadep-97-05 and should be submitted by January 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39404; File No. SR-Phlx-97-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Responsibility to Represent Orders to the Trading Crowd

December 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

⁴ The Commission has modified the text of the summaries prepared by Philadep.

⁵ The closing date tentatively has been scheduled for December 15, 1997, but may be rescheduled by

mutual consent of the parties. The actual closing date will be inserted into the amended rules.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).