

will process resales of IPO shares by institutional customers without first determining the identity of the syndicate members that distributed the shares being resold. In addition, DTC will fill stock loans of shares in new issues with shares purchased in the secondary market prior to using shares received in the initial distributions.

I. Resales of IPO Shares by Institutions

DTC's IPO tracking system allows lead managers of new issues to monitor "flipping" of shares in new issues that are distributed through DTC by book-entry movement rather than by use of certificates.⁴ When a lead manager in an IPO notifies DTC of its decision to use the IPO tracking system, the system establishes a database of information about the customers who purchased the IPO shares ("IPO database"). Before DTC processes a resale of IPO shares, the delivering participant must provide to DTC information about its customer. DTC compares the customer information with the customer detail in the IPO database. DTC then reports to the lead manager the identity of the syndicate member whose customer has resold IPO shares.

When IPO shares are sold by a retail customer, the customer information is normally provided by the same participant that populated the IPO database (*i.e.*, the syndicate member). Therefore, the processing of a retail customer's resale of IPO shares is usually not delayed because of a failure to match the identity of the reselling customer with any of the customers included in the IPO database.

In contrast, when IPO shares are distributed to an institutional customer, the syndicate member that makes the distribution is rarely the same participant that acts as the institution's agent for settlement. According to DTC, many redeliveries of IPO shares for institutional customers during the period from three days prior to closing to three days after closing are delayed because the customer detail provided by the institution's agent does not match

any customer in the IPO database.⁵ For example, a failure to match can occur if the syndicate member enters incorrect customer account information (*e.g.*, information with missing digits or transposed characters) into the IPO database because that information will not match the customer account information entered by the reselling institution's agent. A failure to match may also occur when on the day an issue closes an institution's agent attempts to redeliver IPO shares that were not distributed to its participant account until late in the processing day. Ordinarily, the redelivery would be effected if the agent had a sufficient position in an issue. However, if an issue is being tracked by the system, the redelivery will fail because account information relating to the reselling institutional customer will not be resident in the IPO database.

Therefore, under the rule change DTC will process resales of tracked issues by institutional customers without first determining the identity of syndicate members that distributed the shares being resold. DTC has informed the Commission that the IPO tracking system will continue to try to determine the identity of the syndicate members whose institutional customer has resold IPO shares.

2. Stock Loans

Currently, when a participant that has received a distribution of shares in an issue that is being tracked makes a stock loan in that issue, the system attempts to fulfill the stock loan delivery by first using shares received during the initial distribution. DTC then reports these transactions to the lead manager. Under the rule change, DTC will attempt to satisfy the stock loan by first using the lending participant's "secondary market shares" (*i.e.*, shares that have previously been reported to the lead manager as having been "flipped" or shares purchased by the participant in the secondary market). As a result, stock loan transactions will not be reported to the lead manager to the extent that they are processed using secondary market shares.

II. Discussion

Section 17A(b)(3)(F) of the Act⁶ 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 DTC's obligations under Section 17A(b)(3)(F) because it should ensure more efficient processing of trades through the IPO tracking system. Specifically, the rule change should reduce the amount of failed trades in IPO shares that result from processing delays in the IPO tracking system. In addition, the rule change should reduce the amount of processing for loans of IPO shares.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's 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-DTC-98-16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40702; File No. SR-MBSCC-98-03]

Self-Regulatory Organizations, MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to an Increase in the Number of Directors

November 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 5, 1998, MBS Clearing Corporation ("MBSCC") 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 MBSCC. 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 proposed rule change involves an amendment to MBSCC's by-laws to

37208 (May 13, 1996) (order approving proposed rule change).

⁴ Flipping occurs when a syndicate's lead manager is supporting an IPO with a stabilization bid (*i.e.*, the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping below its initial offering price), and shares in the IPO that had been distributed to investors are resold by those investors in the secondary market to a syndicate member. The lead manager may wish to identify flipped transactions so that underwriting concessions (*i.e.*, the discount from the offering price received by syndicate members) can be recovered from the appropriate syndicate members.

⁵ Because shares in new issues can be traded on a when-issued basis, the IPO tracking system allows participants to enter redeliveries of IPO shares as early as three business days prior to the date the issue closes and is distributed through the depository.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

increase the number of directors on its board from thirteen to fifteen.

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

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

The proposed rule change will amend Article 3, Section 3.1 of MBSCC's by-laws to increase the number of directors 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 proposed rule change, each class will consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the proposed rule change, the two additional directors will represent MBSCC's participants. Accordingly, MBSCC believes that the proposed rule change will increase the opportunity for participants to be represented on MBSCC's board of directors.

MBSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, MBSCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,⁴ which requires that the rules of a clearing agency be designed to assure the fair representation of shareholders (or members) and participants in the selection of its directors and administration of its affairs.

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

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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 MBSCC comments, 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, Securities 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 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-98-03 and should be submitted by December 21, 1998.

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. 34-40694; File NO. SR-NASD-98-70]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Logon Identification Fee for Nasdaq's Mutual Fund Quotation System

November 19, 1998.

I. Introduction

On September 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² In its proposal, Nasdaq sought to establish a logon identification fee for its Mutual Fund Quotation Service ("MFQS"). Notice of the proposal was published in the **Federal Register** on October 19, 1998. ("Notice").³ No comments were received on the filing. This order approves the proposal.

II. Description of the Proposal

Nasdaq proposed to amend NASD Rule 7090 to charge a \$75 logon identification fee for subscribers of Nasdaq's MFQS. Currently, subscribers of the MFQS transmit pricing information and other data to Nasdaq through the service. Nasdaq then distributes the information to the news media and market data vendors. Until recently, Nasdaq could not use the MFQS to collect price information on closed-end funds because of technological limitations. However, using web based technology, Nasdaq re-designed and upgraded the MFQS. The upgraded system can now handle the pricing of closed-end funds. Further, the enhancements allow MFQS subscribers

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 40543 (Oct. 9, 1998), 63 FR 55907 (File No. SR-NASD-98-70).

² The Commission has modified the text of the summaries prepared by MBSCC.

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).