SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following additional meeting during the week of March 4, 2002: An additional closed meeting was held on Tuesday, March 5, 2000 at 5:45 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting held on Tuesday, March 5, 2002 was: Regulatory matter concerning financial markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 11, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6215 Filed 3–11–02; 4:47 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45524; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; the Depository Trust Company, the Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

March 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company (''DTC''), The Options Clearing Corporation (''OCC''), National Securities Clearing Corporation (''NSCC''), Emerging Markets Clearing Corporation (''EMCC''), Government Securities Clearing Corporation (''GSCC''), and MBS Clearing Corporation (''MBSCC'') (collectively referred to as the ''clearing corporations''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2000–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. 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 purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into a multilateral cross-guaranty agreement (''Multilateral Agreement'').

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

In their filings with the Commission the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have 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

At the present time, there are limited cross-guaranty agreements (''bilateral agreements'') in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC); [3]

(2) MBSCC and Participants Trust Company; [4]

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (''ISCC''); [5]

(4) NSCC and OCC; [6] and

(5) EMCC and each of NSCC, GSCC, and ISCC.[7]

In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the common member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the common member in excess of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03](orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

[4] Participants Trust Company has been merged into DTC. Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01].

[5] ISCC has ceased operations and is no longer a registered clearing agency. Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11].

[6] Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12].

[7] Securities Exchange Act Release No. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–NSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

common member's liabilities, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess which the clearing agency with the excess may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the common member has a deficiency of assets to satisfy its liabilities.

Background

The proposed Multilateral Agreement is similar in purpose to the existing bilateral agreements but differs in form, scope, and operation because (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person (''ceases to act'') and if that person is a member or participant of two or more clearing agencies (''common member''), such clearing agency must give each other clearing agency a notice (''default notice'') that it has ceased to act for such common member (thereafter, ''defaulting member''). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (''participating clearing agency'') will have fifteen business days to deliver to each other participating clearing agency a statement (''information statement'') that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the ''available net resources'' of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources (''payor clearing agency'') has an obligation to make a payment (''guaranty obligation'') to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources (''payee clearing agency'') will have an entitlement to receive a payment (''guaranty entitlement'') from each participating clearing agency with positive available net resources, in an amount determined by a formula set forth in the Multilateral Agreement which: (i) Limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to each of the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency or (c) has become the subject of an insolvency proceeding or has become a ''failed member'' within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral

Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any clearing agency to secure the obligations and liabilities of such member or participant, first, to such clearing agency and, second, to other clearing agencies to the extent of any excess assets. The Multilateral Agreement, therefore, should reduce risk to the clearing agencies (and to the national system for the clearance and settlement of securities transactions) because a defaulting common member may have positions spread across the clearing agencies in such manner as to cause its available net resources at one or more clearing agencies to be positive even though its available net resources at one or more other clearing agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below.

If at any time within four years after any payment is made with respect to a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency a notice thereof (''adjustment notice''). Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a statement (''supplemental information statement'') which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the information on the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies (whether or not DTC is a participating clearing agency with respect to such default) and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments as a result of the recalculation of guaranty obligations and guaranty entitlements described above will debit their settlement accounts the amounts they are obligated to pay and will credit the settlement accounts of the participating clearing agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose. So, if as a result of a recalculation of guaranty obligations and guaranty entitlements, a participating clearing agency which was a payor clearing agency has an increased payment obligation or a participating clearing agency which was a payee clearing agency is now required to make a payment, the amount of that payment will be limited to the net assets of the defaulting member then in the possession of the participating clearing agency plus the net amount of any payments it previously received from other participating clearing agencies regarding the same claim.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement upon ten days' advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. DTC may terminate the Multilateral Agreement entirely on one year's advance written notice. However, any such withdrawal or resignation will not affect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC, EMCC, GSCC, MBSCC, and OCC will be terminating the bilateral agreements so that there will be no issues of conflict or priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement (''New DTC–NSCC Agreement''). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21,

1996,[8] between DTC and NSCC (''Old DTC–NSCC Agreement''). The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC, and the other parties to the Multilateral Agreement.

Pursuant to the Multilateral Agreement, a clearing agency party may be entitled to receive a guaranty payment from one or more other parties to the Multilateral Agreement with respect to the obligations of a defaulting member. However, if a clearing agency party receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each colloquially referred to as a ''clawback''):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as stated above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that an amount paid by a payor clearing agency to a payee clearing agency was not paid on account of an amount owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) if so ordered by a court, the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.,* a trustee or receiver).

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make such court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.,* the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payor clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.,* that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four to six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, because MBSCC does not currently mutualize risk among its participants and a payment of such amount from its own resources would have the economic effect of charging all participants for such costs, MBSCC must make appropriate arrangements to deal with a clawback if it ever occurs.

GSCC and MBSCC are proposing to amend their rules regarding clawbacks. The following is a summary of the amendments proposed by GSCC and the amendments proposed by MBSCC.

GSCC

GSCC is proposing to amend its rules to provide it with two options in dealing with a clawback:

Option 1

The proposed rule change would give GSCC the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. the members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. the obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. to deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent, and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an ''other loss'' pursuant to GSCC Rule 4, Section 8(g); and

d. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (b) or (c) above, by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of

[8] Securities Act Release Nos. 36867 (February 21, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 21, 1996), 61 FR 7288 [File SR–NSCC–96–03] (orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement).

GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

The proposed rule change will give GSCC the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. the members would be assessed pursuant to GSCC's loss sharing rule and

b. at the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is proposing to make comparable changes in the rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is proposing to amend its rules as follows:

a. upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. the original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. to deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. to deal with the fact that, at least theoretically, a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions.[9] Section 17A(b)(3)(F) of the Act 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.[10]

The clearing agencies believe that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations promulgated thereunder because they will: (i) Reduce the risk of loss to clearing agencies resulting from the failure or default of a common member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and the impact of such failure or default on clearing agencies and their other members or participants, (iii) foster cooperation and coordination among clearing agencies and other persons involved in the clearance and settlement of securities transactions, and (iv) assist clearing agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The clearing agencies do not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes 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 such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. 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 will also be available for inspection and copying at the principal offices of DTC, OCC, NSCC, EMCC, GSCC, and MBSCC. All submissions should refer to the File Nos. SR–DTC–

[9] 15 U.S.C. 78q–1(a)(2)(A).

[10] 15 U.S.C. 78q–1(b)(3)(A).

2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03 and should be submitted by April 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6162 Filed 3–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45519; File No. SR–NASD–2001–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

March 7, 2002.

On August 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, with the requirements of Section 15A(b)(6).[5]

In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The Commission believes that the adoption of uniform listing requirements for limited partnerships will assist Nasdaq in maintaining an efficient and open market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2001–48), is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45526; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

March 8, 2002.

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 February 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASDR''), and on February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). On March 7, 2002, NASDR submitted Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The SROs propose to amend their rules to address research analyst conflicts of interest. NASDR is proposing to amend the rules of the NASD to establish new NASD Rule 2711 (''Research Analysts and Research Reports'') to address research analyst conflicts of interest. The NYSE is proposing amendments to NYSE Rule 472 (''Communications with the Public''), which will place prohibitions and/or restrictions on the Investment Banking Department, Research Department, and Subject Company Relationships and Communications, and will impose additional disclosure requirements on members, member organizations, and associated persons preparing research reports and making public appearances.

The NYSE is also proposing amendments to NYSE Rule 351 (''Reporting Requirements''), which will require members and member organizations to submit to the Exchange, annually, a written attestation, that the member or member organization has established and implemented written procedures reasonably designed to comply with the provisions of NYSE Rule 472.

Below is the text of the proposed rule changes. Proposed new language is in italic; proposed deletions are in [brackets].

A. NASD Proposed Rule Text

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) ''Investment banking department'' means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(2) ''Investment banking services'' include, without limitation, acting as an

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[11] 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. 45137 (December 6, 2001), 66 FR 64490.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (March 7, 2002) (''Amendment No. 1''). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b–4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR is inserting language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 is approved by the SEC. Finally, NASDR is revising the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.