permanent approval of the Pilot Program.

III. Discussion

After careful review, 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 exchange.[8] Specifically, the Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[9]

The Commission believes for the same reasons discussed in the Pilot Approval Order, in addition to the lack of any problems identified during the pilot period as discussed below, that the pilot should be approved on a permanent basis.[10] The Commission notes that the Pilot Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program so that the Commission could use this information to evaluate any consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis.[11] The CBOE submitted the required report to the Commission on December 21, 2000.[12]

The report represents that during the review period, CBOE did not discover any instances where an account maintained an unusually large unhedged position. The data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged, although to different degrees. CBOE represented that it did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program.[13]

In addition to no identifiable problems during the pilot program, the Commission also believes that the factors for approval of the pilot program continue to be met. For example, in approving the pilot, the Commission stated, among other things, that the enormous capitalization of and deep, liquid markets for the underlying securities contained in the OEX, SPX and DJX significantly reduces concerns regarding market manipulation or disruption in the underlying market. In this regard, we note that the indexes continue to have enormous capitalizations. Indeed, the current capitalizations' of the indexes are currently higher than the capitalizations we relied on in originally approving the pilot.[14]

The Commission also continues to believe that the financial requirements imposed by CBOE and the Commission help to address concerns that a CBOE member or is customer may try to maintain an inordinately large unhedged position in the indexes. As noted in the Pilot Approval Order, the CBOE has the authority to impose additional margin and/or assess capital charges and should be able to monitor accounts to determine when such action is warranted.[15]

Finally, in addition to the other basis for approval of the pilot as discussed in the Pilot Approval Order, the Commission relied heavily on the enhanced surveillance[16] and reporting safeguards that would allow CBOE to detect and deter trading abuses arising from the elimination of position and exercise limits in options and Flex options on the subject indexes.[17] The Commission continues to believe that these enhanced procedures are critical in our determination to permanently approve the pilot. While the pilot did not note any aberrations or concerns about large unhedged positions, the Commission continues to believe that these procedures will enable the CBOE to adequately assess and respond to market concerns at an early stage. In this regard the Commission continues to expect CBOE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2001–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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

[9] 15 U.S.C. 78f(b)(5).

[10] The bases for approving the pilot as discussed in the Pilot Approval Order are incorporated herein to this permanent approval order.

[11] In the prior Approval Order, the Commission stated, ''CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.''

[12] Letter from Patricia L. Cerny, Director, Office of Trading Practices, CBOE, to Elizabeth King, Division of Market Regulation, Commission, dated December 21, 2000.

[13] In its latest filing extending the pilot program, CBOE again represented that it had not discovered any aberrations caused by large unhedged positions during the pilot program. *See supra* note 7.

[14] The Pilot Approval Order stated that, as of August 1998, the market capitalizations for the SPX, OEX, and DJX were $8.5 trillion, $3.8 trillion and $2.2 trillion, respectively. As of October 2001, these figures had increased to $9.81 trillion, $5.7 trillion and $3.23 trillion, respectively.

[15] As originally noted in the Pilot Approval Order, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency. More specifically, Exchange Act Rule 15c3–1 requires a capital change equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[16] It is inappropriate to discuss the details of CBOE's enhanced surveillance program because the disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[17] CBOE's reporting requirements subject SPX, OEX and FLEX options on those indexes to a 100,000 contract hedge reporting requirement, and DJX, which is one-tenth the size of a full value index contract, and FLEX options on the DJX, are subject to a 1 million contract hedge reporting threshold. Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position.

[18] 15 U.S.C. 78f(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44995; File No. SR–GSCC–2001–06]

Self Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Placement of Highly Leveraged Members on Surveillance Status

October 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on May 14, 2001, the Government Securities Clearing Corporation (''GSCC'') 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 GSCC. The Commission is published 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

GSCC proposes to add new definitions and procedures to its rules that relate to how GSCC will monitor its members' clearing fund status. In addition, GSCC proposes to add a rule that would permit GSCC to exchange information with other clearing organizations concerning a member that is on any surveillance status.

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

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, 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

Rule 4, section 3 of GSCC's rules states that a member whose clearing fund deposit obligation represents a significant portion of its net worth or net capital will be placed on a ''class 1 (advisory list) surveillance status'' and thus be subjected to a more thorough monitoring of its financial condition and activities. Until recently, GSCC has not routinely monitored its members' use of leverage. Now, due to factors such as the increasingly high level of members' clearing fund deposit requirements and the growing number of executing firms[3] for whose trades members are responsible, the amount of clearing fund deposit required of certain GSCC netting members can represent a significant proportion of their excess capital. Consequently, GSCC believes that it has become appropriate for risk management purposes to more closely monitor members' relative use of leverage.

Specifically, GSCC believes that it is important to compare the ratio of each member's clearing fund requirement to that member's level of excess regulatory capital[4] and to advise its membership of specific actions that it plans to take pursuant to Rule 4 with respect to any member that has a ratio in excess of certain defined parameters.[5]

To accomplish this, GSCC's approach under this proposed rule change would be analogous to the early warning concept applied by the Commission with respect to its net capital rule.[6] Examining authorities utilize parameters established within the net capital rule to provide an early warning of any broker-dealer that may be at risk of not having sufficient liquid capital to meet current obligations.[7] Deposits to GSCC's clearing fund are included in broker-dealers' net capital balances since such deposits are allowable assets.[8] Despite its liquidity, these amounts are deposited with and retained by GSCC to support GSCC-related trading and, therefore, are not available for other use. Therefore, GSCC believes that it is meaningful to measure the portion of a member's excess capital that is deposited to the clearing fund against its overall excess capital.

If a significant portion of the excess net capital of a netting member is committed to GSCC's clearing fund, it may be more likely than other members to have difficulty in meeting obligations in general and may therefore deemed to pose a greater likelihood of default with respect to its obligations to GSCC in particular.

To compensate for this potentially higher-than-ordinary risk of default, GSCC will place a member with a clearing fund requirement to excess net capital ratio of greater than .050 on Class 1 Surveillance Status.[9] Rule 4 permits GSCC to more thoroughly monitor such a highly leveraged member's financial condition and activities and to require the member to make more frequent financial disclosures. GSCC will require a highly leveraged member to provide GSCC with a satisfactory explanation of its leverage and it may seek to obtain information with respect to such member's margin requirements at other clearing organizations to better enable GSCC to assess whether the member will be able to meet its obligations to GSCC.

GSCC believes that the proposed rules change is consistent with the requirements of section 17A of the Act[10] and the rules and regulations thereunder because they serve to clarify rights that GSCC currently possesses with respect to highly leveraged participants.

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

GSCC does not believe that the proposed rules change will impact or impose a burden on competition.

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

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] An executing firm is a non-GSCC member that contracts with a GSCC member to submit trades on its behalf to GSCC.

[4] In this context, the term ''excess regulatory capital'' is used to include excess net capital, excess liquid capital, or excess adjusted net capital, all of which are measures of an organization's net worth after adjusting for the liquidity of its balance sheet.

[5] Inter-dealer brokers (''IDBs'') and bank members are excluded from this analysis because IDBs, which have fixed clearing fund requirements and limited capital, are subject to different types of risk management considerations and because banks do not perform net capital computations.

[6] 17 CFR 240.15c3–1. The net capital rule is designed to ensure the liquidity of broker-dealers by requiring that they maintain minimum levels of liquid assets to support the volume and risk of the business in which they are engaged.

[7] In order to derive net capital under the net capital rule, a firm's net worth is reduced to give effect to the elements of market, credit, or operational risk inherent in the business in which the firm is engaged. Net capital is the broker-dealer's net worth adjusted for illiquid (''nonallowable'') assets, certain operational capital charges, and potential adverse fluctuations in the value of securities inventory (known as ''haircuts''). The purpose of the net capital computation is to determine that the broker-dealer's net liquid assets (minimum capital base) are adequate in the event of sudden adverse business conditions. Excess net capital is the amount by which the member's net capital exceeds its minimum capital requirement.

[8] Letter from Richard L. Gregg, Commissioner of the Bureau of the Public Debt of the Department of the Treasury, to Jeffrey F. Ingber, General Counsel of the Government Securities Clearing Corporation (August 30, 1989) (permitting registered government securities brokers or dealers to treat clearing fund collateral as allowable assets for capital calculation purposes).

[9] For purposes of this analysis, the separate clearing fund requirements of members with multiple accounts will be combined into a single aggregate number.

[10] 15 U.S.C. 78q–1.

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

Written comments relating to the proposed rules changes have not yet been solicited or received. Members will be notified of the rule change filing and an Important Notice will solicit comments. GSCC will notify the Commission of any written comments received by GSCC.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(1)[12] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such 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. 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 Room in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–06 and should be submitted by November 23, 2001.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44993; File No. SR–NYSE–2001–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Floor Conduct and Safety Guidelines and Exchange Rule 35 To Allow Specialists' Trading Assistants To Assist Specialist in Capturing Trades and Quotes During Active Market Conditions

October 26, 2001.

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 October 15, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 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 proposes to amend the Exchange's Floor Conduct and Safety Guidelines (the ''Guidelines'') with respect to policies and procedures on clerical employees entering a trading crowd. The Exchange believes that the Guidelines are a ''stated policy, practice or interpretation'' concerned with the administration of the Exchange. In addition, the exchange proposes a corresponding amendment to Exchange Rule 35.20 to cross-reference the proposed amendment to the Guidelines.

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

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 purpose of the Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and do not jeopardize the safety or welfare of others. The Exchange believes the proposed rule change would enable the Exchange to keep its Guidelines consistent with current and new Exchange policy and procedures.

Entering or Crossing Trading Floor

The Guidelines prohibit Floor clerical employees entering a Trading Crowd[3] for any purpose, other than the resolution of Question Trade[4] or open items, from ten minutes prior to the opening until five minutes after the close. This is popularly known as the prohibition against crossing the ''blue line.''

The Exchange believes that with the elimination of Exchange reports,[5] there may be a need, under active market conditions, for specialist' trading assistants to stand in front of the post to assist in capturing trades and quotes.

[3] A trading crowd is defined as a group of Exchange members with a defined area of function tending to congregate around a trading post pending execution of orders. These are specialists, floor traders, odd-lot dealers, and other brokers as well as smaller groups with specialized functions (Barron's Dictionary of financial and Investment Terms).

[4] Indicates a trade in which, during the comparison process, one participant is discovered to be incorrectly identified. *See* Glossary, New York Stock Exchange Web page, *www.nyse.com* (visited October 23, 2001). *See also* NYSE Rule 134.

[5] According to the NYSE, it was the duty of Exchange reporters to report trades to the tape. As of August 2, 2001, this position has been eliminated by the Exchange. Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Christopher Solgan, Law Clerk, and Lisa Jones, Staff Attorney, Division of Market Regulation, Commission (October 25, 2001).