

("VitalStream"), a California-based digital broadcasting company, pursuant to which VitalStream would merge with and into a wholly-owned subsidiary of Applicant. Applicant states that it expects the proposed merger to close in the first or second quarter of 2002. Applicant further states that, in addition to seeking to merge with or acquire an operating business, it has attempted to sell the Private Company securities by convincing Private Company to repurchase the securities, discussing a sale with existing shareholders of Private Company, and contacting other persons who have shown an interest in Private Company. Applicant states that it is continuing to attempt to find a purchaser for its block of Private Company securities. In addition, Applicant states that since determining to pursue operating company status at the end of the first quarter of 2001, it has declined to make additional investments in Private Company and has not acquired any other investment securities. Applicant also states that it will hold its cash assets in federally insured money market or demand accounts. Finally, Applicant notes that on November 7, 2001, the Board formalized the decision to pursue operating company status by adopting a resolution that directs Applicant to abandon its efforts to become a BDC and take whatever steps are necessary to become an operating company.

6. Applicant contends that registration under the Act would involve an unnecessary burden and expense for Applicant and its shareholders and would serve no regulatory purpose. For the reasons discussed above, Applicant asserts that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

1. Applicant will not acquire additional investment securities, as defined in section 3(a)(2) of the Act, or engage in the trading of securities for short-term speculative purposes.

2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45166, File No. 4-208]

Joint Industry Plan; Order Approving Amendments To Add Chicago Board Options Exchange, Inc. as Participant to Joint-SRO Plan Under Rule 11Ac1-5

December 18, 2001.

I. Introduction

On July 11, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with section 11A of the Securities Exchange Act of 1934 ("Act")¹ and rule 11Aa3-2 thereunder,² a proposed amendment to the national market system plan establishing procedures under rule 11Ac1-5 ("Joint-SRO Plan" or "Plan").³ Under the proposed amendment, the CBOE would be added as a participant to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal through December 19, 2001 was published in the **Federal Register** on August 21, 2001.⁴ The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

II. Discussion

The Joint-SRO Plan establishes procedures for market centers to follow in making their monthly reports required pursuant to rule 11Ac1-5, available to the public in a uniform, readily accessible, and usable electronic format. The current participants to the Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

The amendment adds the CBOE as a participant to the Joint-SRO Plan. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (1) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new

participant's name in section II(a) of the Plan and the new participant's single-digit code in section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. The CBOE submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

After careful review, the Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment is consistent with the requirements of section 11A of the Act,⁵ and rule 11Aa3-2⁶ thereunder. The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to rule 11Ac1-5 available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include the CBOE as a participant in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow the CBOE to become a participant in the Joint-SRO Plan. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with section 11A of the Act.⁷

III. Conclusion

It is therefore ordered, pursuant to section 11A(a)(3)(B) of the Act⁸ and rule 11Aa3-2 thereunder,⁹ that the amendment to the Joint-SRO Plan to add the CBOE as a participant is approved and the CBOE is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ See Securities and Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814.

⁴ See Securities and Exchange Act Release No. 44703 (August 15, 2001), 66 FR 43924.

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 240.11Aa3-2.

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 200.30½(a)(16).

⁹ 17 CFR 240.11Aa3-2.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release 34-45164; File No. 600-23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

December 18, 2001.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency through June 30, 2002. On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act¹ and rule 17Ab2-1 promulgated thereunder,² the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.³ The Commission subsequently has extended GSCC's registration through December 31, 2001.⁴ On December 13, 2001, GSCC requested that the Commission extend GSCC's temporary registration until such time as the Commission is prepared to grant GSCC permanent registration.⁵

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent

registration as a clearing agency during the first quarter of next year.⁶

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.⁷ 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 application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0102. All submissions should refer to File No. 600-23 and should be submitted by January 17, 2002.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600-23) be and hereby is extended through June 30, 2002.

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. 34-45165; File No. SR-Amex-2001-102]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to an Increase in Floor, Membership and Options Trading Fees

December 18, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4² thereunder, notice is hereby given that on December 6, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the Exchange. Amendment No. 1 was filed on December 17, 2001.³ 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 has proposed to increase floor, membership and option trading fees under SR-Amex-2001-101,⁴ which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the act.⁵ The Exchange now seeks to impose these increased floor, membership, options trading, and comparison and floor brokerage fees, as set forth in Amex-2001-101 and described below, as of August 1, 2001. In addition, the Exchange proposes to impose the increased license fees and the elimination of the fee cap for options as October 1, 2001.

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 section 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 impose floor fees, member fees and options transactions, comparison and Floor brokerage fees as of August 1, 2001, and certain license fees and elimination of the options fee cap as of October 1, 2001. The Exchange filed these fee changes under SR-Amex-2001-101 and requested that they become immediately

¹⁰ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78q-1(b) and 78s(a).

² 17 CFR 240.17Ab2-1.

³ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

⁴ Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; and 44553 (July 13, 2001), 66 FR 37714.

⁵ Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, GSCC (December 11, 2001).

⁶ The Commission continues to consider two issues related to GSCC's permanent registration status: (1) GSCC's organizational structure after its integration with The Depository Trust & Clearing Corporation and (2) the appropriate standard of care for GSCC.

⁷ 15 U.S.C. 78s(a)(1).

⁸ 17 CFR 200.30-3(a)(16).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 14, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex provided greater detail as to the basis for the proposed rule change.

⁴ See Securities Exchange Act Release No. 45163 (December 18, 2001) for a description of these increased fees.

⁵ 15 U.S.C. 78s(b)(3)(a)(iii).