

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

1. Purpose

The CBOE MNX™ is based on 1/10th the value of the Nasdaq-100 Index® (NDX). This filing proposes to reduce customer transaction fees in MNX options to more closely match the rates charged to public customers trading competitive products at other exchanges. Specifically, this filing proposes to reduce the customer transaction fee to a flat \$.15 per contract, rather than the previous rate of \$.40 per contract with premium at or above \$1, or \$.20 per contract with premium below \$1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,³ in general, and with section 6(b)(4) of the Act,⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

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

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

No Written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (f)(2) of Rule 19b-4⁶ thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 day 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.⁷

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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2002-28 and should be submitted by July 8, 2002.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46053; File No. SR-GSCC-00-12]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Insolvency and Clearing Fund Requirements

June 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 5, 2000, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission"), and on December 14, 2000, amended the proposed rule change as described in Items I, II, and III below, which items

have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would allow GSCC to amend its clearing fund and insolvency rules to better protect itself and its members from certain types of legal risk.

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 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

On January 30, 1996, the Securities and Exchange Commission ("Commission") issued an order ("Commission's Order") approving GSCC's proposed rule change permitting foreign entities to become members of GSCC's netting system.³ The rule change established application and continuing membership requirements for foreign entities, including the delivery to GSCC of an opinion of foreign counsel addressing the particular jurisdictional concerns raised by the admission of a foreign entity to netting system membership.⁴

Having gained experience from reviewing the legal opinions regarding foreign law that were provided in connection with the applications of the foreign banks that GSCC has admitted to its netting system to date, GSCC has determined to clarify its insolvency rule, Rule 22, in the manner described in subsection (i) below so that the insolvency rule more appropriately references the types of insolvency proceedings to which a foreign member

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

³ Securities Exchange Act Release No. 36788 (January 30, 1996), 61 FR 4500 (February 6, 1996).

⁴ GSCC also requires each prospective foreign member to provide an insolvency law opinion discussing applicable U.S. Federal and state laws.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ See 15 U.S.C. 78b(3)(C).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

might become subject. GSCC is also proposing to make conforming language changes to GSCC's rules dealing with applications for membership and continuing membership standards as they apply to foreign members.

Some of the legal opinions referred to in the previous paragraph have indicated that GSCC would be exposed to "legal risk" as a result of the application of the particular jurisdiction's law to a foreign member's insolvency or bankruptcy. The legal risk can take the form of prohibiting or delaying GSCC from: accessing some or all of the clearing fund deposit of the member; performing its netting, close-out, or liquidation of transactions; or the setting off of obligations as set forth in its clearing fund rule (Rule 4), its ceasing to act rule (Rule 21), or its insolvency rule (Rule 22), or the taking of any other action contemplated by these rules. GSCC is proposing to amend its rules to better protect itself and its members from these types of legal risk in the circumstances where GSCC reasonably determines based upon factors such as outside legal advice or a discussion with a relevant regulator that such legal risk exists. The proposed rule changes are described more fully in subsection (ii) below.

GSCC's experience in connection with the admission of U.S. branches of foreign banks has also indicated that certain issues that are described in these opinions could affect GSCC's rights in the event of the insolvency or bankruptcy of a domestic member. GSCC believes, given the importance of its being able to exercise its rights as set forth in its clearing fund rule, its ceasing to act rule, and its insolvency rule that the proposed rule changes discussed below in subsection (ii) should also apply to domestic members that present GSCC with legal risk. GSCC would reasonably determine that such legal risk exists based upon factors such as outside legal advice or a discussion with a relevant regulator.

GSCC is also proposing to add language to GSCC's clearing fund rule clarifying GSCC's right to rehypothecate the cash deposits of its clearing fund.

(i) *Changes to Insolvency Rule*

GSCC's insolvency rule contains a section that lists the various types of events or proceedings which would permit GSCC to treat a member as insolvent. The rule was written utilizing terms common in United States insolvency or bankruptcy proceedings. GSCC is proposing to amend its insolvency rule to add language so that the rule more appropriately references the types of insolvency proceedings to which a foreign member might become

subject. GSCC has broad discretion pursuant to its rules to impose additional terms and conditions on members that it deems to be necessary to protect itself and its members. GSCC's foreign membership agreements have already been expanded to incorporate the insolvency triggering events that GSCC now proposes to make part of its rules. The proposed changes will bring the rules into conformity with the foreign membership agreements and specifically give GSCC the right pursuant to its rules to declare a foreign member to be insolvent under the requisite circumstances.⁵

(ii) *Clearing Fund Requirements*

One of GSCC's most important risk management tools is its clearing fund, which is comprised of three components: (1) cash; (2) certain netting-eligible securities; and (3) eligible letters of credit. The purposes served by the clearing fund are to: (1) have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions; (2) maintain a total asset amount sufficient to satisfy potential losses to GSCC and its members resulting from the failure of more than one member (and the failure of such members' counterparties to pay their pro rata allocation of loss); and (3) ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

A clearing fund deposit, to serve its intended purpose, should be immediately accessible to GSCC in the event of the member's bankruptcy or insolvency. However, the application of certain domestic or foreign laws could delay or prevent GSCC from accessing the portion of the member's clearing fund deposit that is in the form of cash and securities. The portion of the clearing fund deposit that is in the form of letters of credit ("LCs") is generally not subject to the same risk because LCs are typically not considered to be part of the bankrupt/insolvent entity's estate.

The rules with respect to the calculation of a member's clearing fund deposit do not currently address the legal risk detailed above. In order to better protect itself and its members, GSCC is seeking the authority to require a domestic or foreign member that in management's reasonable view (which may be based upon factors such as outside legal advice or discussion with

a relevant regulator) presents heightened legal risk to GSCC to: (1) deposit additional collateral over what would normally be required under GSCC's clearing fund rule and/or (2) post some additional portion of its clearing fund deposit requirement in the form of an LC.⁶

(iii) *Clarification of Rehypothecation Right with Respect to Cash Deposits*

GSCC's clearing fund rule contains a provision that permits GSCC to rehypothecate, transfer, or assign its clearing fund collateral in the event that GSCC needs to secure a loan or to satisfy an obligation incurred by it, in each case incident to its clearance and settlement business. GSCC desires to clarify the reference in the provision to the portions of the clearing fund that may be rehypothecated, transferred, or assigned by GSCC. The provision refers to the securities and the LCs that members pledge or deposit to the clearing fund as well as the "deposits or other instruments in which the cash deposits" to the clearing fund may be invested. GSCC believes that this language could be read to not actually refer to the cash deposits themselves. GSCC believes that it is prudent to specifically add a reference to "cash deposits" to eliminate any doubt as to GSCC's ability to use the cash portion of the clearing fund in the manner set forth in the clearing fund rule.

The proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder applicable to GSCC because it will help protect GSCC and its members in the event of the insolvency of a foreign member.

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

GSCC does not believe that the proposed rule change will have an impact 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*

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

⁶ GSCC's clearing fund rule requires that LCs constitute no more than 70 percent of a member's clearing fund deposit. GSCC is seeking the authority to ask for a higher percentage in the form of an LC if circumstances warrant.

⁷ 15 U.S.C. 78q-1.

⁵ In addition, the proposed rule change makes conforming language changes to GSCC's Rule 2 (Members) and Rule 3 (Financial Responsibility and Operational Capability Standards) as they apply to foreign members.

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 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.

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 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 GSCC. All submissions should refer to File No. SR-GSCC-00-12 and should be submitted by July 8, 2002.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46058; File No. SR-OCC-2002-08]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Agreement To Provide Clearance and Settlement Services to the Island Futures Exchange, LLC With Respect to Security Futures

June 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 15, 2002, The Options Clearing Corporation ("OCC") 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 OCC. 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 proposed rule change consists of the Security Futures Agreement for Clearing and Settlement Services entered into between OCC and The Island Futures Exchange, LLC ("IFX").

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

In its filing with the Commission, OCC 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. OCC 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

OCC is preparing to clear security futures for a number of markets. One such market is IFX. As it represented in a previous rule filing, OCC intends to file with the Commission the agreements it enters into with these

markets when negotiated.³ This filing concerns the Security Futures Agreement for Clearing and Settlement services that OCC has entered into with IFX ("IFX Clearing Agreement").

The terms of the IFX Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Liffe Markets, LLC, formerly Nasdaq LIFFE, LLC, ("NqLX Clearing Agreement") which has been approved by the Commission.⁴ The terms of the IFX Clearing Agreement are substantially the same as the terms of the NqLX Clearing Agreement. The notable differences are as follows:

Section 5, "Comparison of Security Futures Transactions; Settlement Prices," has been modified to specify the parties' agreements with respect to setting a daily settlement price if OCC does not accept IFX's reported price. New paragraph (c) has been added to address OCC's right to determine a final settlement price under certain circumstances. Section 5 also makes explicit that the parties' agreements establishing such settlement prices must be consistent with OCC's by-laws and rules.⁵ New paragraph (c) is added to Section 16, "Indemnification," to cover intellectual property claims. New language in Section 19, "Breach of Agreement-Termination," provides additional grounds for termination. The parties' agreements on confidentiality of information have been incorporated in a letter agreement between the parties.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

³ See Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351 [File No. SR-OCC-2001-07] (order approving comprehensive set of rule changes pertaining to clearance and settlement of security futures transactions). OCC also has filed a proposed rule change with the Commission [File No. SR-OCC-2002-07] requesting approval of clearing agreements with OneChicago and the Chicago Mercantile Exchange.

⁴ *Id.*

⁵ Article XII, Sections 5 and 6; Rule 1301(d).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

⁸ 17 CFR 200.30-3(a)(12).