

the NASD and New Amex Boards. This provision will serve to help New Amex comply with the requirements of the Act. Finally, Amendment No. 2 strengthens the proposed rule change by addressing the Commission's jurisdiction over Amex Committee members. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to SR-Amex-98-32, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-98-32 and should be submitted by November 27, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶¹ that the proposed rule changes (SR-Amex-98-32; SR-NASD-98-56; SR-NASD-98-67) are approved, as amended.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40623; File No. SR-GSCC-98-02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Implementation of the GCF Repo Service

October 30, 1998.

On April 10, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-98-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on June 9, 1998.² The Commission received six comment letters from five commenters in response to the proposed rule change.³ For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the proposed rule change, GSCC will implement a new service called the GCF Repo service. The GCF Repo service will allow GSCC's dealer members to trade general collateral repos involving U.S. Government securities throughout the day without requiring intraday, trade for trade settlement on a delivery versus payment ("DVP") basis.

A. General Description of the GCF Repo Service

The GCF Repo service will enable netting members of GSCC that are not interdealer brokers ("dealers") to trade general collateral repos, based on rate and term, with interdealer broker netting members of GSCC ("brokers") on a blind basis throughout each day. Brokers will be required to submit GCF Repo trade data to GSCC within five minutes of trade execution through a new terminal function. Brokers will not be able to submit GCF Repo trades in batch. Upon receipt of the trade data, GSCC immediately will report transaction details to dealers through a terminal facility, and the GCF Repos will receive GSCC's settlement guarantee. Standardized, generic CUSIP numbers established exclusively for the GCF Repo service will be used to specify the acceptable type of

underlying eligible collateral, which will include Treasuries, Agencies, and mortgage-backed securities.⁴

The daily cutoff for submission of trades through the GCF Repo service will be five minutes after a predetermined trading deadline, which initially will be 3:30 p.m. GSCC will reject all trades submitted for same day processing that are received after the cutoff. Dealers initially will have until 3:45 p.m. to affirm or disaffirm trade data submitted against them by a broker. If a dealer takes no action either to affirm or to disaffirm trade data, the trade automatically will be deemed to be affirmed. GSCC will then conduct an afternoon net exclusively for GCF Repo service activity and will establish a single net receive or deliver obligation for each dealer in each generic CUSIP.

Each dealer with a net deliver obligation will allocate acceptable securities (determined by the generic CUSIP) and will deliver those securities on a DVP basis to a GSCC account within the dealer's clearing bank using a modified triparty arrangement. GSCC will then instruct the clearing bank to deliver those securities to dealers that have net receive obligations. All GCF Repo service activity will settle between dealers and GSCC within the dealers' clearing banks.

GSCC initially will implement the GCF Repo service within each of its participating clearing banks separately.⁵ As a result, a participating dealer will be able to trade GCF Repos only with other dealers that use the same clearing bank.⁶

B. Participant Eligibility

To be eligible for the GCF Repo service, brokers and dealers will be required to meet the qualifications for

⁴ The specific collateral will not be known at the time of the trade. As a result, brokers will submit all GCF Repo trades to GSCC using generic general collateral CUSIPs that denote the underlying category of security. GSCC expects that the initial types of generic CUSIPs that will be used for GCF Repo activity will denote the following categories of securities: all Treasury securities, Treasury securities with a remaining maturity of ten years and under, all Fedwire-eligible Agency securities, and all Fedwire-eligible mortgage-backed securities.

⁵ Currently, GSCC's clearing banks are the Bank of New York and the Chase Manhattan Bank. Under the proposed rule change, any clearing bank that meets GSCC's operational requirements will be able to provide GCF Repo settlement services to GSCC netting members.

⁶ GSCC has informed the Commission that it eventually would like to expand the GCF Repo service to allow dealers to engage in GCF Repo trading with dealers that use different clearing banks. As a result, GSCC currently is engaged in discussions with staff of the Federal Reserve Bank of New York regarding the means by which to accomplish "after-hours" interbank securities allocations. A resolution of the issues involved may require, among other things, opening of the securities Fedwire after its normal close.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 40057 (June 2, 1998), 63 FR 31539.

³ *Infra* note 12.

⁶¹ 15 U.S.C. 78s(b)(2).

repo netting membership as provided in GSCC's rules. In addition, dealers will be required to designate the brokers that are authorized to submit GCF Repo trades on their behalf. GSCC members that wish to become eligible to use the GCF Repo service also will be required to test with GSCC and to demonstrate that they are able to submit data to and to receive output from GSCC using the communications links and in the formats, timeframes, and deadlines established for the service.

C. Securities Eligibility

The securities eligible for the GSF Repo service are U.S. Treasury securities (other than inflation-indexed securities or STRIPs), agency securities that are not mortgage-backed, and book-entry mortgage-backed securities that are Fedwire-eligible.

D. Broker Submission

Under the rule change, all GCF Repos will be executed by dealers as money-fill transactions⁷ through eligible GSCC brokers on a blind-brokered basis. Brokers will be required to submit GCF Repo trades within five minutes of trade execution. Each GCF Repo trade will have a single dealer on the repo side that is matched to a single dealer on the reverse side. To facilitate broker submission, GSCC will implement a new terminal facility that will provide the following services:

1. Large Trade Submission

Brokers will be able to submit GCF Repo trades to GSCC having principal values of up to \$2 billion. The current maximum transaction size is \$50 million.⁸ The GCF Repo service will have a \$1 million minimum transaction size and a \$1 million multiple requirement.

2. Submission of Trade Data

Brokers will be able to submit data simultaneously for both the repo and reverse sides of the trade using a single screen. GSCC automatically will populate certain fields of the GCF Repo service's screen design (such as trade date and start date) with default values. Brokers will have to enter any information that differs from the default values. The system also will automatically calculate the end money for the repo based on start amount, term, and rate. In addition, GSCC will require

that every broker participating in the GCF Repo service provide its terminal on GSCC's premises so that GSCC operations staff can monitor whether the broker is satisfactorily fulfilling its trade submission responsibilities.

E. Trade Recordings and Dealer Notification

GSCC will immediately record, as compared, all GCF Repos upon receipt of trade data from the brokers. This type of "locked-in" trade recording, called broker-assisted processing, will replace the traditional matched comparison process. As a result, both the repo and reverse sides of the transaction will be processed solely based upon broker input without requiring the submission and matching of corresponding trade details from the dealer members.

Upon receipt of trade data from the brokers, GSCC will immediately provide dealers with GCF Repo transaction details by way of a dynamic, real time, online display. The five most recent trades will be displayed in a window at the bottom of these screens while current position information will be displayed at the top of the screens. Position information will be available at both the individual CUSIP level and the cumulative, overall level.

F. Dealer Affirmation

The rule change requires dealers to review GCF Repo trades and to either affirm or disaffirm them by a predetermined deadline, which initially will be 3:45 p.m. Affirming a trade will indicate that the dealer recognizes the trade and agrees to its terms. If a dealer disaffirms a trade, its GCF Repo position will be adjusted automatically, and a notification will be sent to the broker for prompt resolution. During the affirmation process, dealers will be able to provide their own internal reference number. Entry of a reference number will result in the automatic affirmation of the trade.

Any trade that has not been affirmed or disaffirmed by the close of business will be affirmed automatically by the system.⁹ GSCC will assess penalties for late dealer affirmations.

G. Netting and Position Reporting

GSCC will net all GCF Repo trades on a real time basis intraday for each dealer into a single net settlement position for each generic general collateral CUSIP submitted. This position will represent the aggregate net dollar amount "borrowed" by the repo dealer or "loaned" by the reverse dealer.

Each day, netting will consist of adding all of the carryover activity (*i.e.*, term repos that are already in effect and forward starting repos that have already been submitted and for which the start date is the current day)¹⁰ in GCF Repos together with the current day's activity. As a result, positions associated with term repos will be renetted each day with the dealer's current activity. GSCC will provide netting results to the clearing banks and its dealer members. Clearing banks participating in the GCF Repo service will be responsible for notifying their members regarding the allocation of collateral and the transfer of funds.

GSCC will carry every GCF Repo trade in its system and will be responsible for maintaining a database of all financial data for the repos that are traded. This will include tracking all relevant terms of each transaction and insuring that the appropriate final settlement amounts are paid at the conclusion of each repo.

Real time, online output will be provided to brokers, dealers, and the clearing banks over GSCC terminals to provide all transaction and position information necessary for the intraday processing of GCF Repo activity. Brokers and dealers will be able to view real time position information, both at the individual CUSIP and overall position levels, on their terminals throughout the day. The bottom of each position screen also will display the five most recent transactions processed against that participant. Each clearing bank will be able to monitor the positions of its clearing members using its terminal.

H. Securities Allocation

Each dealer that is a net lender of securities through the GCF Repo service will be responsible for allocating the appropriate collateral (as defined by the generic general collateral CUSIP) to its clearing banks using whatever mechanism it mutually agrees upon with the bank. All such collateral movements will be made on a DVP basis to and from a GSCC account. As a practical matter, dealers will have to give priority to the allocation of GCF Repo service collateral so that reallocation to the ultimate customer may occur promptly. GSCC will impose a penalty on collateral allocations that are made after 4:30 p.m. Allocations not made by 7:00 p.m. will be considered fails.

Dealers that receive securities as the result of reverse GCF Repos will be required to reallocate them to a location

⁷ A money-fill repo transaction is a repo transaction in which the amount of securities sold and repurchased is determined by the market value of the securities rather than on the par value.

⁸ This limit on transaction size results from the \$50 million limit on book-entry securities transfers over Fedwire.

⁹ GSCC will send a message to participants fifteen minutes prior to running the automated process that will affirm all pending trades.

¹⁰ In a forward starting repo, the term of the repo begins on a day after the trade date.

that is available for reversal before the opening of the securities wire on the next day. Examples of these locations are overnight triparty repos, hold-in-custody repos, and bank loans.

I. Next-Day Return of Collateral

All GCF Repo positions will be reversed on the morning of the next business day prior to the opening of the securities Fedwire. This next day reversal will occur for all GCF transactions regardless of the term of the transaction. The repos themselves will be fully collateralized intraday by cash.

J. Risk Management

GCF Repo transactions and resulting settlement obligations will be subject to all of GSCC's existing risk management processes. GSCC will assess its members' overall, cumulative exposure as a result of their combined DVP buy/sell and repo activity and their GCF Repos service activity.¹¹

K. Trade Modification/Cancellation

The rules for GCF Repo trade modification are: (1) any data input field on an unaffirmed trade may be modified unilaterally by the broker at any time during the processing day and (2) dealers may not modify any data on GCF Repos. Rather, dealers must cancel (or request cancellation of) the trade. The modification of an unaffirmed trade will result in the immediate replacement of the original trade and all affected processing screens will be immediately updated accordingly.

Under the rule change, the two basic rules for canceling GCF Repos are: (1) an unaffirmed trade may be unilaterally canceled by either the broker or the dealer at any time during the processing day and (2) a trade that has been affirmed, either by a dealer or by the system as part of end-of-day processing, will require bilateral cancellation. This means that a broker may cancel a trade unilaterally at any time during the day if it has not been affirmed by either the dealer or by the system. A unilateral cancellation of a GCF Repo trade by the broker will result in the cancellation of both sides of the trade. Trade cancellation by the broker will result in the cash and collateral positions being reversed by the amount of the canceled trade and taken out of account balances.

A dealer may cancel a GCF Repo trade unilaterally at any time during the day if it has not been affirmed either by the dealer or by the system. Trade cancellation will result in the dealer's

cash and collateral position balances being adjusted by the amount of the canceled trade and in the automatic replacement of the dealer by the broker in the transaction. The broker will carry the position and incur all associated responsibilities unless and until the broker submits a correcting entry (*i.e.*, an entry where the broker enters a new single-sided transaction with another dealer to eliminate the broker's position). Cancellation of a trade by the dealer results in the cancellation of that dealer's side only. The other dealer's side of the trade will remain intact.

Cancellation of trades that have been affirmed by the dealer or by the system will be required to be bilateral (*i.e.*, if the dealer requests a cancellation, the broker must approve it and vice-versa). The submission by a broker or dealer of a request for cancellation of an affirmed trade will result in the generation of a trade cancellation request to the original broker or dealer. Upon approval of the cancel request, the dealer will automatically be replaced by the broker in the transaction. The broker will carry the position and incur all associated responsibilities unless and until the broker submits a correcting entry (*i.e.*, an entry where the broker enters a new single-sided transaction with another dealer to eliminate the broker's position). A dealer or broker request for cancellation of an affirmed trade that is not acted upon by the counterparty will require manual intervention (*i.e.*, contacting the counterparty) by GSCC operations to determine whether or not the trade should be canceled.

L. Output and Reports

GSCC will establish a separate reporting stream to produce a full range of machine-readable output ("MRO") and print image end-of-day reports for the GCF Repo service, which will be substantially similar to the output currently provided to participants in conjunction with their regular cash and repo trading activity. In implementing the GCF Repo service, GSCC will attempt to limit the number and magnitude of changes made to existing MRO formats in order to minimize the development effort required by participating members.

II. Comment Letters

The Commission received six comment letters from five commenters in response to GSCC's filing.¹²

¹² Letters from Thomas R. Donovan, President and Chief Executive Officer, Chicago Board of Trade ("CBOT") (June 30, 1998); Jean Webb, Secretary, U.S. Commodity Futures Trading Commission ("CFTC") (June 30, 1998); T. Eric Kilcollin, President and Chief Executive Officer, Chicago

A. Comment Letters Submitted by CBOT, CME and the CFTC

CBOT, CME, and the CFTC addressed the possibility that GCF Repo service might be subject to the CFTC's jurisdiction.

1. Letter From CBOT

CBOT stated that the GCF Repo service might be subject to the exclusive jurisdiction of the CFTC. CBOT further stated that if any of the repos that would be cleared through the GCF Repo service are futures then the CFTC has exclusive jurisdiction over the service even if the repos also are securities. CBOT requested that the Commission defer final action on the proposed rule change until the CFTC had an opportunity to consider those issues.

2. Letter From CME

CME stated that the forward starting repos that GSCC proposed to clear through the GCF Repo service might be futures subject to the CFTC's jurisdiction. CME stated further that the forward starting repos described in the proposed rule change might not qualify for the forward contract exemption from the Commodity Exchange Act ("CEA"). As a result, CME concluded that the trading of forward starting repos might violate Section 4(a) of the CEA.

CME went on to consider whether the forward starting repo transactions are exempt from the CEA either through Section 2(a)(1)(A)(ii) of the CEA, known as the "Treasury Amendment,"¹³ or through the CFTC's Part 35 swaps exemption.¹⁴ CME stated that forward starting repos contemplated by the proposed rule change are transactions in repurchase agreements and are not "enumerated in the Treasury Amendment" and that government securities are not the subject of the forward starting repos. In addition, CME stated that the Treasury Amendment does not apply to the forward starting repos because the inter-dealer brokers

Mercantile Exchange ("CME") (June 30, 1998); Daniel O. Minerva, Chair, and Paul G. Schuefele, Vice Chair, Funding Division, The Bond Market Association (July 24, 1998); Sal Ricca, President and Chief Operating Officer, GSCC (July 31, 1998); and I. Michael Greenberger, Director, Division of Trading & Markets, CFTC (September 21, 1998).

¹³ The Treasury Amendment states that:

Nothing in the [CEA] shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.

7 U.S.C. 2(ii).

¹⁴ The Part 35 exemption exempts certain swap transactions from the provisions of the CEA. 17 CFR 35.2.

¹¹ For a more detailed description of how GSCC will apply its risk management procedures to the GCF Repo service, refer to Securities Exchange Act Release No. 40057 (June 2, 1998), 63 FR 31539.

executing the transactions constitute a board of trade.

In addition, CME presented three reasons why it believes that the CFTC's Part 35 swaps exemption does not apply to the forward starting repos that would be cleared through the GCF Repo service: first, the transactions that would be cleared through the GCF Repo service are subject to multilateral clearing arrangements; second, the forward starting repos transactions that would be cleared through the GCF Repo service are standardized and fungible; and third, the proposed rule change "contemplates trading through multilateral execution facilities maintained by blind-brokers."

CME requested that the Commission defer action on the proposed rule change until the CFTC had an opportunity to consider those issues.

3. Letters From the CFTC

The Commission received two comment letters from the CFTC. In the first letter, the CFTC stated that it was analyzing the repos that would be cleared through the GCF Repo service and requested that the Commission defer final action on the proposed rule change until the CFTC had time to complete its review of the proposal. The second letter stated that staff of the CFTC's Division of Trading & Markets "has completed a review of the GCF Repo Service and has determined that we have no further comment on this service or the transactions contemplated thereby."

B. Letters From the Bond Market Association and GSCC

The Bond Market Association ("BMA") and GSCC responded to CBOT's and CME's letters and to the CFTC's first letter. GSCC and the BMA stated that forward start repos are not futures. GSCC and the BMA stated further that a forward starting repo is the same as a standard repo except that the obligations created by a forward starting repo begin on a day after the day that the transaction is executed.

In addition, GSCC and the BMA stated that the forward starting repos that would be cleared through the GCF Repo service are covered by the Treasury Amendment. GSCC stated that forward starting repos are transactions in government securities because they obligate the parties to purchase and sell specified government securities on specified dates. The BMA stated that market participants understand that the Treasury Amendment applies to transactions in and in any way involving government securities (as long as the transactions do not involve the

sale of such securities for future delivery conducted on an organized exchange). Moreover, GSCC and the BMA stated that the facilities of interdealer brokers should not be considered boards of trade because they are not formally organized exchanges.

III. Discussion

Under Section 19(b) of the Act,¹⁵ the Commission is required to approve a proposed rule change of a clearing agency if it finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder. In reviewing GSCC's proposal under this standard, the Commission has looked primarily to Section 17A(b)(3) of the Act.¹⁶ This section requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

The market in repo transactions involving government securities, including general collateral repos, is already well established. The proposed rule change would expand the types of repo transactions that can be processed through GSCC. As a result, the Commission believes that the proposed rule change is consistent with GSCC's obligations under Section 17A(b)(3) because it should provide a more efficient method for the clearance and settlement of general collateral repo transactions in government securities. Specifically, the Commission believes that the use of the GCF Repo service should reduce exposure to counterparty default, increase payment netting, and apply advance clearing and risk management practices to the market in general collateral repos. Accordingly, the Commission believes that the rule change should enable GSCC to help facilitate the prompt and accurate clearance and settlement of general collateral repos involving U.S. Government securities and to remove impediments to and help perfect the mechanism of the national clearance and settlement system for securities transactions.

The comment letters that the Commission received from CBOT and CME raised a question as to whether some of the repos that will be processed through the GCF Repo service are futures subject to the CFTC's jurisdiction. The BMA and GSCC asserted that forward starting repos are

distinct from futures, and even if futures they would be exempt from CFTC jurisdiction. CBOT and CME urged the Commission to defer action until the CFTC had an opportunity to address the question. The CFTC requested that the Commission defer final action until the CFTC had an opportunity to review whether the proposal "raise[d] legal issues under the Commodity Exchange Act." The CFTC's Division of Trading & Markets has advised the Commission that it has no further comment on the GCF Repo service or the transactions that will be processed through it.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-98-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40624; File No. SR-OCC-98-06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Market Coordination in the Application of Circuit Breakers

October 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 9, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 23, 1998 and October 27, 1998, amended 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.

¹⁵ 15 U.S.C. 7s.

¹⁶ 15 U.S.C. 7q-1(b)(3).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).