

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).

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

The proposed rule change would provide OCC with the authority to adjust margin requirements with respect to cross-margined accounts in the event of an asynchronized application of circuit breakers by the securities and futures exchanges.

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 believes there are no assurances that the application of trading halts or "circuit breakers" will be coordinated among the securities markets and the stock index futures markets. According to OCC, the securities markets could reopen after a significant market decline while trading in stock index futures remained halted. As a result, OCC believes that the closing prices used by the futures markets to determine variation margin on index futures and the closing prices of futures options may lose their theoretical relationship to the closing prices of related index option contracts. Under such circumstances OCC's margin calculation for cross-margined accounts may either overestimate or underestimate the actual risk of the cross-margined positions.

Under the proposed rule change, OCC will have plenary authority to take whatever actions that it deems appropriate to adjust margins with respect to cross-margined accounts when futures and options markets have become delinked as a result of an asynchronized application of circuit breakers in the futures and securities options markets.

OCC has submitted comments regarding asynchronized application of circuit breakers to the Commission with

respect to the amendments to New York Stock Exchange ("NYSE") Rule 80B.³ In its comment letter, OCC noted that the amended Rule 80B would permit the securities markets to reopen after a trading halt and continue to trade in the range of twenty to thirty percent down while the rules of the Chicago Mercantile Exchange ("CME") would not permit index futures contracts to trade below twenty percent down. Moreover, OCC noted that CME variation settlements would be based on the limit price, potentially resulting in inconsistent closing prices in the two markets.

As a result of the potentially disparate application of the circuit breaker rules, OCC believes that it is necessary to have the authority to address as best it can the distortions in risk calculations and settlement values that could result with respect to cross-margined accounts. OCC believes that it has been able to identify certain actions it might take in the exercise of its authority. However, OCC also believes that it is presently unable to ascertain each and every type of action that it might need to take in the event of an asynchronized application of circuit breakers.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act⁴ in that it is designed to address the potential problems caused by a lack of coordination among markets in the application of circuit breakers. OCC believes that the authority to address distortions in risk calculation and settlement values when there is an asynchronized application of circuit breakers should promote the protection of investors and the safety of the national system for the 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 material impact on competition.

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

Written comments were not and are not intended to be solicited with respect

³ Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (order approving NYSE's proposed rule change). OCC's comment letter is attached to OCC's filing of this proposed rule change which is available for inspection and copying at the Commission's Public Reference Room and through OCC.

⁴ 15 U.S.C. 78q-1.

to the proposed rule change, and none have been received.

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 OCC 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. 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 OCC. All submissions should refer to File No. SR-OCC-98-06 and should be submitted by November 27, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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⁵ 17 CFR 200.30-3(a)(12).

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