

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as amended, (File No. SR-CBOE-2001-29), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44967; File No. SR-CHX-2001-02]

### Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Processing of Depository Eligible Transactions by Clearing Agencies Exempt From Registration and by Qualified Vendors

October 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 18, 2001, the Chicago Stock Exchange ("CHX") filed with the Securities and Exchange Commission ("Commission") and on August 31, October 10, and October 18, 2001, amended a proposed rule change as described in Items I and II below, which items have been prepared primarily by the CHX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The CHX is amending its rules governing the entities qualified to process electronic confirmations and affirmations of depository eligible transactions. Specifically, the CHX proposes to amend portions of Article XV, Rule 5 and related published interpretations and policies to provide that no members shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless the facilities of a registered clearing agency, a clearing agency that is exempt from registration, or a qualified vendor shall

be utilized for the electronic confirmation and affirmation of all depository eligible transactions.

#### 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 CHX 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 CHX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

The CHX is amending portions of Article XV, Rule 5 and related published interpretations and policies pertaining to the types of entities that may process confirmations and affirmations of depository eligible transactions. Under current CHX rules, CHX members may only accept an order from a customer pursuant to an agreement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer if that customer or its agent utilizes the facilities of a "securities depository" for comparison, acknowledgement, and book entry settlement of depository eligible transactions.<sup>3</sup> CHX rules define a "securities depository" as a clearing agency registered with the Commission pursuant to section 17A(b)(2) of the Act.

The Depository Trust Company ("DTC") is a clearing agency registered with the Commission. DTC has combined its TradeSuite family of institutional trade processing services with the institutional trade processing services offered by Thomson Financial ESG<sup>4</sup> in a proposed joint venture, Omgeo, between The Depository Trust & Clearing Corporation ("DTCC"),<sup>5</sup> Thomson Financial Inc.,<sup>6</sup> and Interavia,

A.G. ("Interavia").<sup>7</sup> Omgeo provides through its wholly owned subsidiary, Global Joint Venture Matching Services-US, LLC ("GJVMS"), post-trade, presettlement related services, including execution notification, allocation, confirmation, central matching service, operational and standing databases (*i.e.*, trade enrichment), and communication facilities among trading parties and their settlement agents.

GJVMS has been granted an exemption from registration as a clearing agency under section 17A of the Exchange Act and thus would not constitute a "securities depository" under current CHX rules.<sup>8</sup> Currently, GJVMS is the only U.S. provider of confirmation and affirmation services.

In order to permit CHX members and order sending firms to utilize the services of GJVMS, other exempt clearing agencies, or qualified vendors, several CHX rules must be amended.<sup>9</sup> The CHX believes that use of an exempt entity or qualified vendor would not pose any threat to the integrity of processing depository eligible transactions given the significant technological and other requirements that such an exempt clearing agency or qualified vendor would need to satisfy under the proposed rule.

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>7</sup> Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

<sup>8</sup> Securities Exchange Act Release Nos. 44188 (April 17, 2001) [File No. 600-32] (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600-32] (notice of filing of application for exemption from clearing agency registration).

<sup>9</sup> "Qualified vendor" is defined by Art. XV, Rule 5 to mean a vendor of electronic confirmation and affirmation services that meets a series of specific requirements set forth in the rule.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by the CHX.

<sup>3</sup> CHX Rules, Article XV, Rule 5.

<sup>4</sup> Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary.

<sup>5</sup> DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation ("NSCC").

<sup>6</sup> Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company.

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

No written comments were either solicited or received.

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

After careful consideration, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act.<sup>10</sup> Section 6(b)(5) of the Act requires that the rules of a national securities exchange promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal is consistent with section 6(b)(5) because it will permit CHX members and order sending firms to utilize the services of GJVMS and other exempt clearing agencies to process depository eligible transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day after publication of notice will allow CHX members and order sending firms to be able to use the confirmation and affirmation services of GJVMS. Because GJVMS has received an exemption from registration as a clearing agency, it does not constitute a "securities depository" under current CHX rules. Therefore, the CHX rules must be amended to allow CHX members and order sending firms to utilize the services of GJVMS, which is the only U.S. provider of confirmation and affirmation services. In addition, this rule change will make the CHX rule consistent with New York Stock Exchange Rule 387, National Association of Securities Dealers Rule 11860, and Municipal Securities Rulemaking Board Rule G-15.

### 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 the CHX. All submissions should refer to File No. SR-CHX-2001-02 and should be submitted by November 19, 2001.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-CHX-2001-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44968; File No. SR-NSCC-2001-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Buy-In Rules and Procedures

October 22, 2001.

On April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-2001-07) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On April 30, 2001, NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 29, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 44736 (August 22, 2001), 66 FR 45715.

## I. Description

NSCC is modifying its buy-in rules and procedures to further automate and improve the processing of buy-ins of CNS positions.<sup>3</sup> The revised procedures provide that a Buy-In Notice may be filed by an originator on successive days provided the succeeding Buy-In Notice does not specify a quantity of securities covered by the prior Buy-In Notice and the quantity of securities representing the sum of all Buy-In Notices does not exceed the member's total long position.<sup>4</sup>

The Retransmittal Notice is being revised to include the identity of the originator on the Retransmittal Notice so that the member owing securities can contact the originator to arrange delivery.<sup>5</sup> Regardless of any agreements that may have been entered into between a member owing securities and an originator, unless the originator notifies NSCC in a timely manner that its Buy-In Order should not be executed, members who receive Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of an originator's Buy-In Order.<sup>6</sup>

The revisions also require members to electronically transmit Buy-In Notices and Buy-In Orders through an automated format determined by NSCC thereby eliminating the practice of hand and facsimile deliveries. Similarly, NSCC will transmit through an automated format Retransmittal Notices to members.<sup>7</sup>

Members will be advised of the specific implementation date of the Buy-In changes prior to implementation.

## II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>8</sup> The Commission believes that NSCC's rule change is consistent with this section because it will facilitate the prompt and accurate clearance and settlement of buy-in transactions by further automating and improving the processing of buy-ins.

<sup>3</sup> Changes are being made to: NSCC Rule 11, Sections 7(b) and (c); NSCC Procedure VII, section J; and NSCC Procedure X, section A. Also, proposed changes to NSCC Procedure VII, section E3 to conform its language to the language proposed in NSCC Procedure VII, section J.

<sup>4</sup> NSCC Procedure VII, section J.

<sup>5</sup> NSCC Rule 11, section 7(b).

<sup>6</sup> NSCC Procedure X, section A1.

<sup>7</sup> NSCC Rule 11, sections 7(b) and (c).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78f(b)(5).