for the CBOE to bar Terminal use for off-floor market making.

The Commission also emphasizes that it expects the CBOE to interpret the term ''market making'' in accordance with its traditional definition as defined under the Act, *i.e.*, holding one's self out as being willing to buy and sell a particular security on a regular or continuous basis.[20] The definition of market making should not capture parties who enter orders on one side of the market; nor would it capture parties who enter two-sided limit orders on occasion. A party would not be deemed to be engaging in market making unless it regularly or continuously holds itself out as willing to buy *and* sell the security.[21]

By approving this proposed rule change, the Commission is not stating that it is impermissible for an options exchange to permit users of Terminals or other similar devices to make two-sided markets. Indeed, the CBOE may determine to reconsider its decision not to permit users of Terminals to engage in market making at some future time. Nevertheless, while it is not illegal to permit off-floor market making, the Commission believes that it is within the CBOE's prerogative as an exchange to prohibit it. In approving the market making restriction in the SPX-Terminal Approval Order the Commission noted that the CBOE was particularly concerned that off-floor market making effectively would establish a market making structure devoid of affirmative market making obligations that could result in less deep and liquid markets during periods of market stress, when off-floor Terminal market makers would not be required to continue making markets. The Commission believes that these concerns are reasonable. The Commission's approval of the proposed rule change reflects the Commission's belief that the CBOE may act incrementally in approving the use of Terminals for transactions in SPX, and now OEX options, given that the CBOE is still learning about the possible impact of Terminals upon its market.[22]

In summary, while the CBOE's restrictions on the use of Terminals raise regulatory issues, the Commission believes that, within the context of the OEX options trading crowd, the market making restriction is an acceptable exercise of the Exchange's rulemaking authority. While the Commission recognizes that there may be different ways to address the regulatory issues presented by off-floor market making through the use of Terminals, the Act does not dictate that any particular approach be taken. The Commission believes that the manner in which the Exchange has chosen to address the regulatory issues presented by off-floor market making reflects the considered judgment of the CBOE regarding the attributes of Exchange membership and the organization of its trading floor, and is a fair exercise of its powers as a national securities exchange.

For the reasons stated above, and the findings set forth in the SPX-Terminal Approval Order,[23] the Commission believes that the Exchange's proposal to extend the policy regarding the use of Terminals to the OEX options trading crowd is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–97–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13277 Filed 5–20–97; 8:45 am]

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[20] *See, e.g.,* 15 U.S.C. 78c(a)(38); Securities Exchange Act Release No. 36719A (Sept. 6, 1996), 61 FR 48290, 48316 (Sept. 12, 1996).

[21] Securities Exchange Act Release No. 36719A (Sept. 6, 1996), 61 FR 48290, 48316 (Sept. 12, 1996). The Commission notes that a broker using a Terminal may receive numerous orders from multiple customers, some of which are on the bid side and others on the offer side of an SPX series. This is consistent with a brokerage function, not a market making function. If, however, a particular customer of a broker regularly or continuously places two-sided limit orders, then the CBOE might, under certain circumstances, reach a different conclusion as to the nature of the function being performed by the broker and the customer.

[22] The Commission recognizes that markets for certain equity options can be less deep and liquid than the OEX market. However, the rule change approved today concerns the use of Terminals only in the OEX crowd. The Commission will consider the merits of permitting the use of Terminals to represent two-sided limit orders that effectively create regular two-sided markets in less liquid options crowds when it is presented with that issue.

[23] *See* SPX-Terminal Approval Order, *supra* note 5.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38633; File No. SR–CBOE–94–53]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Determination of the Exchange's Office of the Chairman Under Exchange Rule 4.10(b)(3)

May 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 8, 1997, and May 13, 1997, respectively, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment Nos. 2 and 3 to its previously filed proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[2] The Commission is publishing this notice to solicit comments on the policy of the Exchange's Office of the Chairman from interested persons.

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

The CBOE is proposing to amend SR–CBOE–94–53 and the text of the Regulatory Circular which was attached as Exhibit A to the amendments. The Regulatory Circular is directed to options market-maker clearing firms and describes certain financial requirements the Exchange's Office of the Chairman has determined to apply to these Exchange members pursuant to Exchange Rule 4.10(b)(3). The text of the Regulatory Circular is available at the Office of the Secretary, CBOE and at the Commission.

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

In its filings with the Commission, CBOE included statements concerning the purpose of and basis for the policy of the Exchange's Office of the Chairman. The text of these statements may be examined at the places specified in Item IV below. The CBOE has

[1] 15 U.S.C. 78s(b)(1).

[2] The proposed rule change was noticed for comment in Securities Exchange Act Release No. 35282 (February 2, 1995), 60 FR 6577. Amendment No. 1 to the proposed rule change was noticed for comment in Securities Exchange Act Release No. 36458 (November 6, 1995), 60 FR 57255.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements as they pertain to the proposed amendments.

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

The purpose of these amendments to SR–CBOE–94–53 is to amend the Regulatory Circular to conform it to the recent amendments to Commission Rule 15c3–1.[3] The Regulatory Circular will require all Exchange members that clear options market-maker transactions on a proprietary of market-maker customer basis to calculate options market-maker haircuts in accordance with the recent SEC amendments. These amendments do not become effective for all broker-dealers until September 1, 1997. Acting pursuant to its authority under CBOE Rule 4.10(b)(3),[4] however, the Office of the Chairman has determined to impose those requirements upon Exchange members that clear the transactions of options market-makers before the September date. The Office of the Chairman has determined that the current method of calculating options market-maker haircuts under current Commission Rule 15c3–1(c)(2)(x) is less effective in that many hedged positions receive haircuts which are excessive while the haircuts for uncovered positions do not adequately reflect their potential risk.

To date, all but one Exchange member which clears the transactions of independent options market-makers are calculating haircuts pursuant to the methodology described in this filing. We understand that the remaining member is operationally prepared to calculate haircuts under these parameters.

There are a few changes that were made to the text of the Regulatory Circular itself. First, the circular will become effective thirty days from the date the SEC approves SR–CBOE–94–53. The Exchange believes that thirty days should be adequate time for Exchange members to make any final preparations for calculating haircuts under the new parameters, which are somewhat different from the parameters set forth under the Commission's no-action letter,[5] and which have been the basis for the firms' calculations. The previous version of the Regulatory Circular did not specify a time under which the new haircut treatment would become effective.

Second, the Regulatory Circular is being revised to give firms the option of calculating haircuts under the terms of the 1994 No-Action Letter until such time as the Commission's amendments adopted in the Net Capital Release[6] become effective. The current version of the Regulatory Circular would have required firms to calculate risk-based haircuts under the Rule 15c3–1 amendment version approved by the Commission. This change is being made to accommodate those firms that may have difficulty instituting the changes approved in the Net Capital Release from an operational standpoint before September 1, 1997, but which are already able to calculate haircuts under the 1994 No-Action Letter. Because the two versions of risk-based haircuts are similar, the Exchange does not believe there is a problem in allowing firms to calculate haircuts under either method.

Third, consistent with the recently approved rule changes to SEC Rule 15c3–1, the Regulatory Circular will allow the use of a third party vendor's system if that system is approved by an examining authority designated pursuant to Section 17(d) of the Act, *i.e.*, a Designated Examining Authority (''DEA''). The previous version of the Regulatory Circular and of Rule 15c3–1 would have required the third party system to be approved by the Commission.

Fourth, the Regulatory Circular will add a new product group category for high-cap broad-based indexes. The product group category will be referred to as U.S. market group ''B'' and will include the S&P Barra Growth Index and the S&P Barra Value Index. The product group that was referred to as ''U.S. market group'' will now be ''U.S. market group A.''

Fifth, the Regulatory Circular will also add a new product group category for non-high-cap broad-based indexes. The new category will be the Mexican market product group and will include the Mexican Index of Prices and Quotations (''IPC'').

Sixth, the Exchange is proposing to add a sentence to the Regulatory Circular that would authorize broker-dealers to include in the product group categories any index options which are not specified in the circular to the extent the Commission has authorized such inclusion by means of a no-action letter, rule interpretation, or rule amendment.

Finally, the Regulatory Circular is proposed to be amended by eliminating the generic references to the offsets permitted between types of instruments in determining the profits and losses for each portfolio type. Instead, the Regulatory Circular will now make reference to a chart that will be attached to the circular. This chart will depict the various portfolio offsets and will specify the particular indexes included in each product group. The CBOE believes that the chart should make it easier to determine the appropriate offsets.

The Exchange believes the filing, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it will promote maintenance of fair and orderly markets and will contribute to the protection of investors and the public interest.

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

The CBOE does not believe that the filing as amended will impose any burden on competition.

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 filing as amended.

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

Within 35 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 90 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 filing, or

(b) Institute proceedings to determine whether the proposed rule filing should be disapproved.

[3] *See* Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (''Net Capital Release'').

[4] CBOE Rule 4.10(b)(3) provides that the Office of the Chairman may impose additional financial and/or operational requirements on a member that clears market-maker trades when the Office of the Chairman determines that the member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange market-maker transactions. Paragraph (b)(7) of Rule 4.10 provides that the Exchange shall file notice with the Commission in accordance with the provisions of Section 19(d)(1) of the Act of all final decisions to impose extraordinary requirements pursuant to Subsection (b)(3) of Rule 4.10. In addition, the CBOE has elected to file the Regulatory Circular as a proposed rule change under Section 19(b)(1) of said Act and Rule 19b–4 thereunder.

[5] *See* letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Mary L. Bender, First Vice President, CBOE, and Timothy Hinkes, Vice President, the Options Clearing Corporation (''OCC''), dated March 15, 1994 (''1994 No-Action Letter'').

[6] *Supra* note 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the filing of the Exchange's policy imposing additional financial requirements upon Exchange members which clear the trades of options market-makers that are filed with the Commission, and all written communications relating to this matter 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–94–53 and should be submitted by June 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13278 Filed 5–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38636; File No. SR–GSCC–97–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Comparison of Transactions Between Insolvent and Solvent Members

May 14, 1997.

On March 11, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to modify GSCC's rules regarding comparison of transactions between insolvent and solvent members. Notice of the proposed rule change together with the substance of the proposal was published in the **Federal Register**.[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Under the ordinary application of its rules, a transaction is not eligible for netting and guaranteed settlement by GSCC until and unless it is compared. Except for purchases made through the U.S. government's auction of Treasury securities, GSCC's rules provide that a comparison can only be generated upon the matching of data provided by two members. GSCC believes that this poses a potential problem from a risk management perspective in a situation where a netting member becomes insolvent and does not submit trades entered into prior to its insolvency. Pursuant to this proposed rule change, GSCC is able to issue a comparison of a transaction based solely on data submitted by one solvent netting member, which may be an interdealer broker, under the following circumstances: (1) The data submitted by the solvent member indicates that the counterparty to the transaction is either an insolvent member or an executing firm that uses the insolvent member as its submitting member; (2) the solvent member has submitted in a timely manner all of its activity with the insolvent member or executing firm; (3) if GSCC had announced to its members that it would cease to act for the insolvent member as of a specified date and time and thus not accept any further trades submitted against such member, the transaction was executed before such specified date and time; (4) the transaction is not an ''off-the-market'' transaction as defined in GSCC's rules;[4] and (5) GSCC has made a determination that the transaction was entered into by the solvent member or by an executing firm that uses the solvent member as its submitting member in good faith and not primarily in order to take advantage of the insolvent member's financial condition.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Commission believes the proposed rule change is consistent with these requirements because the proposal will provide GSCC with the authority to compare and net a trade where only one side has submitted the trade in an insolvency situation. By allowing such trades to enter GSCC's comparison and netting systems, the proposal extends the benefits of GSCC's risk management system to solvent members that entered into trades with the insolvent member in good faith and thereby helps to protect investors. Furthermore, by allowing more trades to be settled through GSCC's clearance system instead of ex-clearing, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change SR–GSCC–97–02 be and hereby is approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13228 Filed 5–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38618; File No. SR–NASD–97–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Redesignation of a Rule Number

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

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[7] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38472 (April 2, 1997), 62 FR 17259.

[4] GSCC has filed a proposed rule change (File No. SR–GSCC–97–01) that will add a definition of ''off-the-market'' transactions to its rules. Essentially, an off-the-market transaction is a trade that has a price that differs significantly from the prevailing market price. Securities Exchange Act Release No. 38601 (May 9, 1997).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)F).

[7] 17 CFR 200.30–3(a)(12).