

scheme, including the proposed rule change requirements of Section 19(b).⁴³ Fair competition will be maintained in the market to provide enhanced software products to broker-dealers. Under these circumstances, the Commission believes at this point that competitive forces can be relied upon to produce software products at fair prices that meet the needs of broker-dealers. In sum, the Commission believes that FSI will neither be unnecessarily hampered in its competition to provide software services to broker-dealers nor given an unfair competitive advantage because of its ownership by Nasdaq.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 36(a)(1) of the Exchange Act,⁴⁴ that the NASD's application for a conditional exemption (Form Type 34-36 MR; File No. 79-9) is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-10394 Filed 4-25-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44209; File No. 265-22]

Advisory Committee on Market Information

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Advisory Committee on Market Information.

SUMMARY: The fifth meeting of the Securities and Exchange Commission Advisory Committee on Market Information ("Committee") will be held on May 14, 2001, in the William O. Douglas Room, at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265-22. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

FOR FURTHER INFORMATION CONTACT: Anitra Cassas, Special Counsel, Division of Market Regulation, at 202-942-0089; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, and the regulations thereunder, the Designated Federal Official of the Committee, David S. Shillman, has ordered publication of this notice that the Committee will conduct a meeting on May 14, 2001, in the William O. Douglas Room at the Commission's main offices, 450 Fifth Street, NW., Washington, DC beginning at 9 a.m. The meeting will be open to the public. This will be the fifth meeting of the Committee. The purpose of this meeting will be to discuss alternative models for the provision of market data, and other issues relating to the public availability of market information in the equities and options markets.

Dated: April 20, 2001.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44197; File No. SR-CBOE-00-49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change Relating to RAES Eligibility Requirements for SPX Options

April 18, 2001.

I. Introduction

On September 20, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to amend CBOE Rule 24.16, which governs the eligibility of Market-Makers to participate on the Exchange's Retail Automatic Execution System ("RAES") in options on the Standard & Poor's 500 Index ("SPX").

The proposed rule change was published for comment in the **Federal Register** on December 14, 2000.³ No comments were received on the proposal. This order approves the proposed rule change.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43677 (December 5, 2000), 65 FR 78230.

Rule 24.16

(a) Individual Members. Any individual Exchange member who has registered as a Market-Maker, who has signed the RAES Participation Agreement applicable to individuals, and who has completed the RAES instructional program is eligible to log onto RAES in SPX, so long as the requirements set forth in paragraph (iv) below are met:

* * * * *

(iv) RAES participation in SPX is limited to SPX Market-Makers. To qualify, a Market-Maker must: (A) be approved under Exchange rules as a Market-Maker with a letter of guarantee, *and* (b) maintain his principal business on the CBOE as a Market-Maker[, (C) execute at least fifty percent of his Market-Maker contracts for the preceding calendar month in SPX and (D) execute at least seventy-five percent of his Market-Maker trades for the preceding calendar month in SPX in person. In making these calculations, RAES trades will not be considered.]

* * * * *

(d) Member Organizations with Multiple Nominees

(i) A member organization with multiple Market-Maker/nominees on the floor may arrange to have the RAES trades of all its nominees assigned to a single Market-Maker account, provided that the firm's participating nominees have first executed the RAES Participation Agreement applicable to firms and the manager of the multiple nominee account has satisfactorily completed the RAES instructional program. Thereafter, each of the participating nominees will be able to trade through RAES only in the manner described below, and not as a member of a joint account or as an individual. Each eligible nominee must meet the SPX Market-Maker [obligations] *requirements* set forth in paragraph [(c)(i)(A)-(D)][(a)(iv) *above*]. *Members of a multiple nominee RAES account may only participate in that one account and may not participate directly or indirectly in any other RAES account, nor may a member organization participate directly or indirectly in SPX on RAES in more than one account.*

* * * * *

(e) Authority to Disapprove

(i) No person or entity may participate directly or indirectly in RAES, or share in the profits, directly or indirectly, with more than RAES group[. which may not exceed the maximum number of RAES participants set by the appropriate MPC from time to time. In no event may the appropriate MPC set a maximum number higher than 33⅓% of the average number of RAES participants for the prior quarter. The appropriate MPC will give groups one month's notice if a reduction in group size becomes necessary due to application of this size limit. The appropriate MPC reserves the authority to establish lower limits on the size of groups eligible to use RAES. Size limits may be imposed by the appropriate MPC at any time.]

⁴³ 15 U.S.C. 78s(b).

⁴⁴ 15 U.S.C. 78mm(a)(1).

- (ii) The appropriate MPC [also] may disallow any group from participating in RAES where it appears to the Committee that such group:
- (A) has "purchased" RAES rights from members of the group;
- (B) does not afford each group participant a reasonable participation in profits and losses (As a guideline: no RAES participant may receive a flat fee, and a minimum participation level of any group member would be 1/4 of a number that would represent an equal distribution to all group members, with responsibility for losses equivalent to share of profits);
- (C) is managed by a person who is not a member of the group; or
- (D) is managed by a person who has a financial interest in another group.

* * * * *

II. Description of the Proposal

Currently, Rule 24.16(a)(iv) sets forth four eligibility requirements that must be met by a Market-Maker before he or she can participate on RAES in SPX options. The CBOE proposal would eliminate two of the current four Market-Maker eligibility requirements. One of these requirements is that the Market-Maker must execute at least fifty percent of his or her Market-Maker contracts for the preceding calendar month in SPX. Another requirement is that the Market-Maker must execute in person at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in SPX. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.16 so that the RAES eligibility requirements of SPX Market-Makers are the same as those for Market-Makers trading in non-index options.⁴

The Exchange represents that recently, Market-Maker participation on RAES in index options has been low compared to historical levels. The Exchange believes that this is a problem that has been aggravated by the fact that the in-person and volume requirements in essence require the Exchange to have new Market-Makers desiring to participate on RAES wait for at least 30 days before logging onto RAES. The proposed rule change would permit a new Market-Maker to log onto RAES if the Market-Maker: (1) has signed the RAES Participation Agreement and

completed the RAES instructional program;⁵ (2) has been approved under Exchange rules as a Market-Maker with a letter of guarantee;⁶ and (3) is maintaining his or her principal business on the CBOE as a Market-Maker.⁷

The Exchange also proposes to eliminate the cap, set forth in Rule 24.16(e)(i), on the number of Market-Makers that may participate in a RAES group.⁸ Rule 24.16(e)(i) provides that a RAES group may not exceed the lesser of: (1) 33 1/3 percent; or (2) a smaller maximum number set by the appropriate Market Performance Committee. According to the CBOE, a recent decline in RAES participation in index options has, by operation of such Exchange rules as Rule 24.16(e)(i), resulted in reductions, as compared to historical levels, in the size of RAES groups. The reductions have taken place because, among other reasons, CBOE Rule 24.16(e)(i) currently ties maximum RAES group size to the level of RAES participation.⁹

III. Discussion

The CBOE proposal would amend Rule 24.16 to eliminate what the CBOE represents are several disincentives to Market-Maker participation in SPX trades. The Commission finds that removal of in-person volume quotas and elimination of the cap on the number of Market-Maker that may participate in SPX trades are appropriate measures to reduce disincentives. In addition, the Commission recognizes the importance of encouraging Market-Maker participation to ensure adequate liquidity, particularly where participation levels are low.

For these reasons the Commission finds that the proposed rule change is consistent with the Act¹⁰ and the rules and regulations promulgated thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent

with section 6(b)(5) of the Act,¹¹ which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposal (SR-CBOE-00-49) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-10392 Filed 4-25-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44206; File No. SR-GSCC-00-05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Enhancements to the GCF Repo Service and Clarifying Certain Risk Management Practices of the Service

April 20, 2001.

On June 5, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on July 13, 2000, amended a proposed rule change (File No. SR-GSCC-00-05) 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 December 4, 2000.² No comments letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

GSCC introduced its GCF Repo Service in November 1998.³ The GCF

⁵ CBOE Rule 24.16(a).

⁶ CBOE Rule 24.16(a)(iv)(A).

⁷ CBOE Rule 24.16(a)(iv)(B).

⁸ A RAES group is a group of market-makers who participate on RAES via either an Exchange-approved joint account or a member organization account with multiple market-maker nominees. E-mail from Jamie Galvin, Attorney, Legal Division, CBOE to Steven Johnston, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 10, 2001.

⁹ Conversation between Jamie Galvin, Attorney, Legal Division, CBOE, and Steven Johnston, Special Counsel, Division, Commission, February 28, 2001 (clarifying operation of current CBOE Rule 24.16(e)).

¹⁰ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 43626 (November 27, 2000), 65 FR 75750.

³ In 1998, the Commission approved a rule change that allowed GSCC to implement the GCF Repo Service on an intrabank basis. Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) [File No. SR-GSCC-98-02]. In 1999, the Commission approved a rule change that allowed GSCC to implement the interbank phase of the GCF Repo Service. That enhancement has enabled participating dealers to engage in GCF Repo trading with participating

⁴ The remaining two eligibility provisions for Market-Makers desiring to trade in SPX options would continue to require Market-Makers to be approved under Exchange rules and to maintain their principal places of business on the CBOE as Market-Makers. CBOE Rule 24.16(a)(iv)(A); CBOE Rule 24.16(a)(iv)(B).