the national clearance and settlement system).

In the Matching Release, the Commission stated that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, the Commission stated that an entity seeking an exemption from clearing agency registration for matching would be required to: (1) Provide the Commission with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (3) allow the Commission to inspect its facilities and records; and (4) make periodic disclosures to the Commission regarding its operations.

GJVMS's matching service would be the only clearing agency function that it would perform under an exemptive order. While the Commission believes that GJVMS's matching services could have a significant impact on the national clearance and settlement system, the Commission does not believe that GJVMS's matching services raise all of the concerns raised by an entity that performs a wider range of clearing agency functions. GJVMS represents in its Form CA–1 that as a condition of its exemption, it will comply with the conditions suggested by the Commission in the Matching Release. Therefore, the Commission believes that it may not be necessary to require GJVMS to satisfy all of the standards required of registrants under Section 17A.

The Commission anticipates that in addition to considering the public interest and the protection of investors, the primary factor in evaluating GJVMS's application will be whether GJVMS is so organized and has the capacity to be able to facilitate prompt and accurate matching services subject to the specific conditions that it has proposed.[21] In particular, GJVMS has represented that, among other things, it will provide the Commission with (1) an independent audit report that addresses all the areas discussed in the Commission's ARPs prior to beginning commercial operations and annually thereafter, (2) on-site inspection rights, and (3) a current balance sheet and income statement prior to beginning operations.

The Commission expects that any exemption from clearing agency registration for GJVMS would contain all of the conditions that GJVMS has proposed in its Form CA–1. The Commission requests comment on whether these conditions are sufficient to promote the purposes of Section 17A and to allow the Commission to adequately monitor the effects of GJVMS's proposed activities on the national system for the clearance and settlement of securities transactions. In addition, the Commission invites commenters to address whether granting GJVMS an exemption from clearing agency registration would impose any burden on competition that is not necessary or appropriate in furtherance of Section 17A of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by December 18, 2000. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant GJVMS's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Reference should be made to File No. [600–32]. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29447 Filed 11–16–00; 8:45 am]

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[21] *See* Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)(A).

[22] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43521; File No. SR–CBOE–00–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation

November 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On October 10, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to adopt a rule change consisting of an interpretation of Article Fifth of the CBOE Certificate of Incorporation, as interpreted in the agreement between the CBOE and the Chicago Board of Trade (''CBOT'') dated September 1, 1992 (the ''1992 Agreement''), which is incorporated in CBOE Rule 3.16(b), concerning the effect of the proposed restructuring of the CBOE or other action that may be taken by the CBOT to change its trading rules or procedures on the right of the 1,402 full members of the CBOT to become members of CBOE without having to purchase a CBOE membership (the ''exercise right''). The CBOE's proposed rule change also embodies a plan to enable CBOE to continue to provide fair and orderly markets in the securities traded on the Exchange in the event the exercise right is extinguished as a result of action taken by the CBOT. Below is the text of the proposed rule change. New language is *italicized*.

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Assistant Corporate Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (October 10, 2000). Amendment No. 1 supersedes the original filing in its entirety.

Special Provisions Regarding Memberships

Rule 3.16(a)–(b) No change.

Interpretation and Policies

.01 Pursuant to and in accordance with the Exercise Right embodied in Paragraph (b) of Article Fifth of the Exchange's Certificate of Incorporation, every present and future member of the CBOT, ''so long as he remains a member'' of CBOT, may be an exerciser member of the Exchange. As the Exercise Right has been interpreted in paragraph (b) of this Rule and in the 1992 Agreement referred to therein, only Eligible CBOT Full Members and Eligible CBOT Full Member Delegates have the right to become exerciser members of the Exchange. The 1992 Agreement defines an ''Eligible CBOT Full Member'' to mean ''an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships (''CBOT Full Memberships'') and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The term ''Eligible CBOT Full Member Delegate'' is defined in the 1992 Agreement to mean ''the individual to whom a CBOT Full Membership is delegated (leased) and who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The 1992 Agreement also provides that ''in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member.'' CBOT, which since its inception has been a not-for-profit membership corporation, is proposing to demutualize or otherwise restructure so as to become a for-profit stock corporation. As a part of that restructuring, CBOT has transferred its electronic trading system to a new subsidiary. While not part of the current restructuring, CBOT may in the future distribute shares in the new subsidiary to CBOT members (stockholders), and it may issue additional shares in the new subsidiary as a part of a public or private financing. In addition, either as part of its restructuring or in a change to its trading rules and procedures that it may implement apart from the restructuring, CBOT proposes to give direct trading access to the electronic trading system to persons who are not now members of CBOT, and to trade all CBOT products on the electronic trading system, including its agricultural contracts and other products heretofore traded only by CBOT Full Members on the CBOT open-outcry trading floor.

Once CBOT becomes a stock corporation, it will no longer have members. Nevertheless, so long as CBOT does no more than convert from a membership corporation to a stock corporation without changing its trading rules and procedures so as to extend the right to trade CBOT products, electronically or otherwise, to persons who are not CBOT full members or the stockholder equivalent of such members, CBOE interprets its rules to treat persons who become stockholders of CBOT in the restructuring as a result of their ownership of one of the 1,402 full CBOT memberships (or their delegates) as if they were full members for purposes of the Exercise Right. This means that so long as those stockholders retain all of the stock and other interests that may be distributed to them in respect of their full CBOT memberships and continue to hold all of the trading rights and privileges in respect of CBOT that they held in their former status as full members of CBOT, then those stockholders or their delegates who satisfy the requirements of an eligible CBOT Full Member Delegate will be entitled to the Exercise Right.

However, CBOE interprets the Exercise Right to terminate immediately for all 1,402 CBOT full members or the stockholder-equivalent of such members (of their delegates) if, whether as a part of a demutualization or other restructuring of CBOT or otherwise, CBOT changes its trading rules and procedures so as to extend the right to trade all CBOT products, electronically or otherwise, to persons who are not CBOT Full Members or the stockholder-equivalents of such members (or their delegates) or so that, if the Exercise Right were to continue to be available, CBOT Full Members or the stockholder-equivalents of such members (or their delegates) would be able to trade all CBOT products directly on CBOT at the same time as they are trading on the Exchange as exerciser-members.

In the event the Exercise Right is terminated pursuant to the preceding paragraph, the Exchange will promptly act to develop and propose a plan that will respond to CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades, and at the same time will be fair to the 1,402 former members of CBOT who will have lost their exercise rights. The plan to be developed by CBOE for this purpose will be subject to the approval of the Exchange membership, and to the approval of the Securities and Exchange Commission.

During an interim period while this plan is being developed, the Exchange shall interpret its rules to stay the impact of the extinguishment of the Exercise Right on the trading access of those CBOT full members (or their delegates) who were exerciser members of the Exchange in good standing as of the close of business on August 28, 2000 (''grandfathered exercisers''), and shall permit such persons to continue to be able to trade on the Exchange for the duration of the interim period notwithstanding the extinguishment of the exercise right. This interim period will extend for at least six months from the date the Exchange gives notice to its members that exercise right has been extinguished as a result of the restructuring of CBOT or changes to CBOT's trading rules or procedures as described above, and for any additional period until the Exchange's permanent plan to respond to the termination of the Exercise Right has been approved and implemented. However, once the Exercise Right is terminated under this interpretation, CBOT members or stockholders (or their delegates) who were not exerciser members of the Exchange in good standing on August 28, 2000, shall not be permitted to exercise or have access to the Exchange's trading floor during the interim period. In order to continue to have trading access to the Exchange during this interim period, grandfathered exercisers will be required to maintain their status as members or stockholders of CBOT in good standing in accordance with the rules of CBOT (or as the delegates of such members or stockholders). Among other things, this means that delegates will need to remain in compliance with the terms of their CBOT lease arrangements.

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

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to provide an interpretation of the rules of the CBOE concerning the effect of the CBOT's proposed restructuring and of other changes that the CBOT proposes to make to the trading rights and privileges of its members on the exercise right. The proposed rule change also includes a plan to enable the CBOE to continue to provide fair and orderly markets if the exercise right is extinguished because of the consummation of certain steps of the proposed restructuring of the CBOT or the consummation of the other changes to the CBOT's trading procedures.

Background of the Exercise Right

Paragraph (b) of the Article Fifth of the CBOE's Certificate of Incorporation (hereafter, ''Article Fifth(b)'') provides in part that ''every present and future member of [CBOT] who applies for membership in the [Exchange] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [Exchange] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [Exchange], its members or elsewhere.'' Paragraph 2(a) of the 1992 Agreement provides that only an individual who is an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate'' is a member of the CBOT within the meaning of Article Fifth(b). Paragraph 1(a) of the 1992 Agreement defines an ''Eligible CBOT Full member'' to mean ''an individual who at the time is the holder of one of the One Thousand Four Hundred Two (1,402) existing CBOT full memberships (''CBOT Full Memberships'') *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' The term ''Eligible CBOT Full Member Delegate'' is defined in Paragraph 1(b) of the 1992 Agreement to mean ''the individual to whom a CBOT Full membership is delegated (leased) *and* who is in possession of all trading rights and privileges appurtenant to such CBOT Full Membership.'' (Emphasis supplied in both definitions.) Paragraph 2(b) of the 1992 Agreement also provides that ''in the event the CBOT splits or otherwise divides CBOT Full Memberships into two or more parts, all such parts, and the trading rights and privileges appurtenant thereto, shall be deemed to be part of the trading rights and privileges appurtenant to such CBOT Full Membership and must be in possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member.''

These provisions reflect an underlying intent that CBOT members must choose at any given time to use their CBOT membership to trade either on the CBOT or (by exercise) on the CBOE, but not on both exchanges at the same time. This fundamental principle has driven the way in which the exercise right has been interpreted as the CBOT's trading procedures have evolved over the years. When the exercise right was first included in the CBOE's Certificate of Incorporation as a right belonging to CBOT members, the concept of exchange membership, on the CBOT as on all exchanges, embraced the indivisible coupling of trading access and ownership. All of CBOT's owners had the right to trade there, and the only persons who had the right to trade on the CBOT were its owners. The traditional integration of access and ownership embodies in the concept of membership was subsequently attenuated, when ''seat-leasing'' was permitted on the CBOT in the late 1970s and when the CBOT proposed to allow its members to split the trading rights of its members by issuing evening trading permits. In each of these cases, Article Fifth(b) was interpreted so as to preserve the original intent of the exercise right. In the case of seat leasing, the CBOE interpreted its rules to provide that only the delegate (lessee) of a CBOT membership who held all of the trading rights appurtenant to full membership would be able to exercise, and that the owner of the CBOT membership, by giving up his trading rights to a delegate, has lost the right to exercise. In response to evening trading permits and other split-ups of the trading rights of CBOT members, the CBOT and the CBOE agreed in Paragraph 2(b) of the 1992 Agreement that, in the event of any such a split-up or division of CBOT Full Memberships into two or more parts, ''all such parts, *and* the trading rights and privileges appurtenant thereto, * * * must be in the possession of an individual as either an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate in order for that individual to be eligible to be an Exerciser Member [of CBOE].'' [Emphasis supplied].

The common thread in each of these situations is that full CBOT members must choose at any given time whether to use their CBOT memberships to trade CBOE products and, while they are doing so, not to trade CBOT products. In other words, the exercise right consistently has been interpreted as imposing a practical cost on its use, because a CBOT member must be willing to give up trading access to CBOT products during any time that member is trading on the CBOE as an exerciser member. It always has been a fundamental assumption of the exercise right that this constraint, together with the related difficulties in managing the risk of trading while moving back and forth between the CBOT and the CBOE floors, would limit the number of exerciser members. In fact, over the past twenty years the number of full CBOT members (or delegates) who have been exerciser members of CBOE has fluctuated between approximately 450 and 700 individuals. In other words, at least 50% of the CBOT full members (or delegates) eligible to exercise at any given time have chosen not to do so, and instead have chosen to trade (or to lease the right to trade) as members of CBOT only. A principal purpose of the 1992 Agreement was to prevent any division either of the trading rights and privileges appurtenant to a CBOT full membership or of any division of the CBOT full membership itself from nullifying the practical cost associated with the use of the exercise right.

CBOT's Restructuring Proposal and Changes to Electronic Trading Procedures

Recently, the CBOT has proposed to its members a major restructuring of the CBOT that, if implemented, the CBOE believes will conflict with the terms and the purpose of the exercise right. The CBOT described its proposed restructuring in a ''Restructuring Report'' distributed to the CBOT membership on May 16, 2000,[4] and in ballot materials distributed to CBOT members on June 1, 2000, in connection with a membership vote on the first step of the restructuring, and the CBOT described a modified proposal in a letter to its members dated September 21, 2000.

As described in these materials, the CBOT's restructuring consists of a number of separate but related steps. The first step, which has already been accomplished, was to change the state of incorporation of the CBOT from Illinois to Delaware, while continuing to preserve the status of the CBOT as a not-for-profit membership corporation.[5]

[4] *See* CBOT Restructuring Report (May 16, 2000).

[5] The CBOE has stated that it will not take any action to limit the exercise right if the CBOT

Continued

The next step of the proposed restructuring, which also appears to have taken place, was the creation of a new, for-profit stock subsidiary of the CBOT, to which the CBOT has transferred its electronic trading system and related rights and obligations. These rights and obligations previously were held by a partnership (the Ceres Partnership), of which the CBOT was the sole general partner. The new electronic trading subsidiary owns and operates an electronic trading system for the trading of those CBOT products previously traded on the electronic trading system of the Ceres Partnership. This subsidiary proposes ultimately to trade all CBOT products.[6] In particular, the CBOT Restructuring Report states not only that ''CBOT members will be afforded full trading rights and privileges to trade at the electronic trading company,'' but also that nonmembers of the CBOT, wherever located, ''will not be required to own seats or any other type of membership interests in order to utilize directly the electronic trading platform.'' [7]

In other words, CBOT members no longer would enjoy exclusive access to trade CBOT products. Through this reformulated electronic trading platform, nonmembers would have equivalent access to trade CBOT products that previously could be traded only by and through members. The reformulated electronic trading facility apparently also would afford CBOT members (or their delegates) the ability to trade CBOT products at the same time as they are trading on the CBOE pursuant to the exercise right.

According to CBOT's materials, the next step of the CBOT's restructuring will be to change the form of organization of CBOT from a not-for-profit membership corporation to a for-profit stock corporation. When this has been accomplished, persons who had been members of the membership corporation will become stockholders of the stock corporation, in exchange for their membership interests in the CBOT. In the proposed restructuring that was described in June 2000, the CBOT stated that shares in the electronic trading subsidiary would be distributed to the former members of CBOT, either concurrently with the change of CBOT from a membership to a stock corporation or shortly thereafter. This action was to be followed by a public offering of additional shares in the electronic trading company. As more recently described in a September 21, 2000 letter from the Chairman of the Board to CBOT members, it now is proposed by CBOT that the electronic trading company would remain a wholly-owned subsidiary of CBOT after CBOT changes from a membership to a stock corporation. However, the CBOT still would continue to evaluate its ownership structure and consider whether to separately offer shares in the two companies or otherwise to separate their ownership in the future. Regardless of whether the electronic trading company remains a wholly-owned subsidiary of CBOT or its shares are distributed to persons other than CBOT, it appears from the CBOT materials, as part of the restructuring or concurrently with its implementation, the CBOT proposed to utilize the electronic trading company to provide comprehensive electronic access to trade CBOT products to individuals who are not CBOT members.[8]

These next steps of the restructuring, whether they consist only of the change to a for-profit stock corporation or also include the distribution of shares in the electronic trading subsidiary, are subject to one or more votes of the CBOT membership. According to the CBOT materials, these steps also are subject to applicable regulatory approvals from the Commodity Futures Trading Commission and the Commission. As of June 1, 2000, the CBOT anticipated implementing all of the steps of the restructuring prior to the end of the current year. Although the statements made by CBOT officials in announcing the revised restructuring in September did not mention any specific dates for implementing the next step of the restructuring, it was represented that the change in strategy would accelerate the process of demutualizing CBOT.

After announcing its revised restructuring plan, the CBOT also announced, in a letter dated September 20, 2000, from the Chairman of CBOT to the CBOT members, that its Board of Directors had approved a major change in the way in which all of CBOT's agricultural contracts would be traded, subject to the change being approved by a vote of the CBOT members. This change would result in all of CBOT's agricultural contracts, which heretofore have been traded only by CBOT full members by open-outcry on the CBOT trading floor, being traded during all of the CBOT's hours of operation on the electronic trading system, side-by-side with trading in the CBOT's open-outcry market. Although the details of this change have not yet been communicated, the September 20 letter stated that it was being proposed to ''satisfy member and customer demand for increased access to these products.''

The Effect of CBOT's Proposed Changes on the Exercise Right

If and when the CBOT implements the restructuring proposal described above and the proposed grant of electronic access to trade its products, including its agricultural contracts, the following changes will have been effected: (1) the CBOT no longer will be a membership corporation, but instead will be a stock corporation, with its former members as its stakeholders; (2) the CBOT's electronic trading system, formerly a member-access only system owned and operated by a partnership of which the CBOT was the general partner, will be an open-access system owned and operated by a for-profit subsidiary of the CBOT, although the CBOT thereafter may distribute the shares of that subsidiary to CBOT members or other persons; (3) all CBOT products will be traded side-by-side on the existing open-outcry trading floor (as long as that market continues to operate) and on the open-access electronic trading system; and (4) members of the CBOT no longer will enjoy exclusive access to trade directly all products traded on the CBOT because persons who are not members will now be able to trade directly all CBOT products through the CBOT's electronic system. Even if the CBOT implements only the modification to the way in which agricultural contracts are traded, without restructuring as a for-profit stock corporation, the right to trade these contracts, which formerly was limited to CBOT full members on the CBOT trading floor, will then be shared with all persons who have access to the new electronic trading facility.

The proposed restructuring of the CBOT and the proposed modification of the way in which agricultural products are traded will extinguish the exercise right, whether implemented together or separately. First, as already noted, after the CBOT restructures as a for-profit stock corporation, the CBOT no longer will have members, because the CBOT will no longer be a membership corporation. Accordingly, with specific reference to Article Fifth(b) of the CBOE Certificate of Incorporation, no person

implements no more than this step of the restructuring. *See* Letter dated June 29, 2000, from Thomas A. Bond, Vice-Chairman of CBOE, to David Brennan, Chairman of CBOT, enclosing CBOE Information Circular IC00–64.

[6] *See* CBOT Restructuring Report (May 16, 2000), at p. 12.

[7] *See* CBOT Restructuring Report (May 16, 2000), at pp. 12 and 14.

[8] As discussed below, the CBOT recently also proposed, independent of any restructuring proposal, to provide complete electronic access to trade its agricultural contracts by allowing them to be traded for the first time on the CBOT's electronic trading facility.

any longer will be within the category of ''present and future members'' of the CBOT who, for ''so long as he remains a member'' is entitled to avail himself of the exercise right. Moreover, by destroying its membership structure, the CBOT will have made it impossible for its former members to hold ''all trading rights and privileges appurtenant to such CBOT Full Membership,'' a requirement that Paragraphs 1(a) and 2(b) established as a fundamental prerequisite to the continued existence of the exercise right.

Second, once the CBOT's electronic trading facility may be accessed directly by nonmembers of the CBOT for the trading of CBOT products that previously could be traded only by CBOT members, CBOT members (or their delegates) will have lost a key ''privilege'' of membership within the meaning of the 1992 Agreement—namely, the privilege of being able to trade CBOT products to the exclusion of nonmembers. A ''privilege'' is defined as a ''particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens'' or a ''peculiar right, advantage * * * [or] power.'' [9] Under this definition, the exclusive access of CBOT members to trade CBOT products is a ''privilege,'' in that it is a ''particular or peculiar benefit or advantage'' that members enjoy and that is ''beyond the common advantages'' of nonmembers. The CBOT members therefore will have lost an important ''privilege'' of membership once the electronic trading facility is made available to nonmembers for the trading of CBOT products. Because CBOT members no longer will possess all of the ''rights and privileges appurtenant'' to their memberships, CBOT members will cease to meet the definitions of either an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate,'' the only categories of persons who are entitled to become a member of CBOE pursuant to the exercise right.

Notwithstanding that the change from a membership to a stock corporation would provide a sound basis for considering the exercise right to be extinguished, the CBOE does not interpret the exercise right as having been extinguished if the CBOT only takes this single reorganizational step. While the taking of this step and the consequent elimination of members of CBOT is inconsistent with the terms of Article Fifth(b) and the 1992 Agreement, the CBOE does not interpret Article Fifth(b) and the 1992 Agreement so that this step, by itself, will cause the termination of the exercise right, so long as the CBOT takes no further action to erode what has been the trading rights and privileges of its former members. Instead, if the CBOT does no more than to change from a Delaware not-for-profit membership corporation to a Delaware for-profit stock corporation and if the 1,402 CBOT full members thereby become stockholders of CBOT, the CBOE proposes to treat such persons in precisely the same way that full CBOT members are currently treated. This means that those 1,402 stockholders of CBOT would remain entitled to the exercise right if they retain all of the stock in CBOT and all other interests that may be distributed to them in respect of their full CBOT memberships and if they continue to hold all of the trading rights and privileges that they previously held as full CBOT members. Similarly, the CBOE proposes that delegates of all of the trading rights and privileges appurtenant to full CBOT membership (but not the delegating stockholder) would also continue to be entitled to the exercise right.

However, whether occurring when or after the CBOT becomes a stock corporation, and once the right to trade all CBOT products is made available to persons who are not CBOT members (or stockholders), the CBOE interprets the exercise right as being extinguished, because the CBOT would no longer have members and because the CBOT stockholders would no longer possess all of the trading rights and privileges appurtenant to membership. Moreover, even if the CBOT does not restructure as a stock corporation, the exercise right would be extinguished once CBOT members lose this privilege of exclusive access to trade CBOT products.[10]

As set forth above, these interpretations follow from, and are consistent with, not only the language of Article Fifth(b) as interpreted in the 1992 Agreement, but also the way in which the exercise right is intended to operate. In particular, the underlying purpose and intent of the exercise right has been that CBOT members need to choose at any given time to use their CBOT membership to trade either on the CBOT or (by the exercise right) on the CBOE, and may not trade on both exchanges at the same time. Because the exercise right has been interpreted to require CBOT members to make this choice, there has been a practical cost associated with the exercise right and therefore a natural constraint on the number of people who exercise.

However, the CBOT proposes a restructuring and a change in its trading rules or procedures as a result of which, CBOT membership no longer would be needed to trade CBOT products directly. If the exercise right were to survive such changes, CBOT members (or stockholders) would no longer have to choose at any given time between trading CBOT products as members or stockholders of that exchange or trading CBOE products as exerciser members of the CBOE. Instead, if the exercise right were not extinguished in the face of these changes, it is probable that all 1,402 of the present full members of CBOT, or their lessees, would chose to exercise to trade on the CBOE, since they could do so while retaining trading access to all CBOT products by means of the electronic trading facility.

Not only would this scenario be inconsistent with the language and purpose of Article Fifth(b) and the 1992 Agreement, it would inflict serious harm on the CBOE. First, it would undermine CBOE's ability to maintain a fair and orderly market. Instead of there being approximately 1,600 members trading on CBOE (the current 700 exercisers plus the approximately 900 persons who own a CBOE membership directly, or their lessees), there would likely be 2,300 persons having direct access to CBOE. This would strain CBOE's facilities to the breaking point, as it would lead to far more persons having direct access to the CBOE trading floor than the floor and its facilities are capable of accommodating. This development therefore would be inconsistent with the maintenance of fair and orderly markets on CBOE. Second, the addition of 700 additional CBOE members would allow the exercise right to dilute the value of CBOE memberships substantially in a way that has never been contemplated or allowed since the time the exercise right was first established.

Thus it is clear both as a matter of interpreting the language of Article Fifth(b) and the 1992 Agreement and of implementing the purposes intended to be served thereby, and in order to maintain the CBOE as a fair and orderly securities market, the exercise right should be extinguished once the CBOT restructures or otherwise changes its trading rules or procedures so as to deprive its full members of the exclusive trading access to its products,

[9] *See Black's Law Dictionary* at 1197 (6th Ed. 1990).

[10] Regardless of the effect of these developments on the exercise right, the CBOE believes that the exercise right would be extinguished with respect to those CBOT members who fail to continue to possess all of the interests in the CBOT that may have been distributed in respect to their CBOT memberships, including interests in CBOT's electronic trading facility, as required by Section 2(b) of the 1992 Agreement regarding the division of CBOT membership into separate parts.

which has been one of the rights and privileges appurtenant to membership.[11]

Transitional Proposal

Just as adding 700 more persons to the floor of the CBOE would tax its physical space and resources beyond the breaking point, so too would the overnight elimination of some 700 exerciser members from the CBOE trading floor run the risk of disrupting its market. This result would follow because there suddenly would be 700 fewer persons on the floor acting either as market makers to provide liquidity and continuity for the CBOE market, or as brokers to represent customer orders. To prevent this risk of disruption to its market, CBOE believes that notwithstanding the extinguishment of the exercise right upon the implementation of changes described above, the CBOE must be able to allow CBOT members or their lessees who are already exerciser members of the CBOE to continue to have trading access to the CBOE for an interim period. The CBOE proposes to stay for an interim period the impact of the extinguishment of the exercise right on the trading access of those members of CBOT (or their delegates) who were exerciser members of the CBOE on a designated cut-off date, by permitting such persons to continue to be able to trade on the CBOE during this interim period.[12] For this purpose, the CBOE proposes the close of business on August 28, 2000, as the cut-off date for determining who would have the right to continue to have trading access to the CBOE during the interim period. CBOT members (or their delegates) who were exerciser members of CBOE in good standing on that date (''grandfathered exercisers'') would continue to be able to trade as members of the CBOE for the duration of the interim period, notwithstanding the implementation of any step of the CBOT restructuring or other change to its trading rules or procedures that has the effect of extinguishing the exercise right as described above. However, persons who were not effective exercisers on that cut-off date would not be permitted to exercise or have access to the CBOE trading floor during the interim period. In order to continue to have trading access to CBOE during this period, grandfathered exercisers would be required to maintain their status as full members of the CBOT or as holders of all of the stock distributed to them in respect of full CBOT memberships (or as the delegates of such members or stockholders) in accordance with the rules of CBOT. Among other things, this means that delegates would need to remain in compliance with the terms of their CBOT lease arrangements.

During the interim period when grandfathered exercisers would be allowed to have trading access on CBOE even after the exercise right has been extinguished, the CBOE would propose a permanent response to the situation presented by the extinguishment of the exercise right. This permanent response would address the CBOE's ongoing need to be able to provide fair and orderly markets in the securities it trades and would be fair to the 1,402 former members of the CBOT who will have lost their exercise rights. This interim period would extend for six months from the date the CBOE gives notice that the exercise right has been extinguished in accordance with the interpretation of Article Fifth(b) and the 1992 Agreement as described above, and for such additional period as may be needed to develop and implement a permanent response to the extinguishment of the exercise right. The permanent response would be subject to the approval of the CBOE members under Section 2.1 of the CBOE's Constitution, and to the approval of the Commission under Section 19(b)(1) of the Act.[13]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Act in general,[14] and in particular, with Section 6(b)(5) of the Act,[15] in that it is a reasonable interpretation of existing rules of the Exchange that is designed to promote just and equitable principles of trade, to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change 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

The CBOE has neither solicited nor received written comments on the proposed rule change.

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 99 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the CBOE 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 fix 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

[11] Before or after the CBOT implements those steps of its restructuring or those changes to its trading rules or procedures that cause the exercise right to be extinguished in accordance with the rules interpretation reflected in this filing, the CBOE believes that it is possible that CBOT will take (or, unknown to the CBOE, may already have taken) other actions that raise independent questions concerning the continued existence of the exercise right that are not addressed in this filing. These steps may or may not be part of the restructuring, or the CBOT may further revise its proposed restructuring in ways that this filing does not address. If any such event makes it necessary for the CBOE to further interpret its rules applicable to the exercise right, CBOE proposes to do so pursuant to one or more separate filings (or amendments to this filing) under Section 19(b)(1) of the Act. 15 U.S.C. 78s(b)(1).

[12] In this respect, the decision to stay the effectiveness of what would otherwise result in a termination of trading access is analogous to the right of the CBOE under CBOE Rule 3.19 (formerly CBOE Rule 3.17) (''Obligation of Terminating Members''). This rule authorizes the CBOE, under circumstances when a membership would otherwise automatically terminate on account of a failure to satisfy certain requirements of membership, to permit the member ''to retain the member's status for such period of time as the Exchange deems reasonably necessary'' to provide time to cure the failure.

[13] 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

SR–CBOE–00–44 and should be submitted by December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29449 Filed 11–16–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43541; File No. SR–DTC–00–10]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Combination of the Depository Trust Company's TradeSuite Institutional Trade Processing Services With Thomson-Financial ESG's Institutional Trade Processing Services

November 9, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 22, 2000, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change being filed by DTC is DTC's proposal to combine its TradeSuite family of institutional trade-related services (''TradeSuite Business'') with the institutional trade processing services offered by Thomson Financial ESG (''ESG Business'')[2] in a proposed joint venture, the Global Joint Venture (''GJV''), between The Depository Trust & Clearing Corporation (''DTCC'')[3], Thomson Information Services Inc. (''TISI'')[4], and Interavia, A.G. (''IAG'').[5] The proposal is as follows:

- After receipt of all necessary regulatory approvals, DTC will transfer existing assets of the TradeSuite Business, TISI will transfer existing U.S. assets of the ESG Business, and IAG will transfer existing non-U.S. assets of the ESG Business to the GJV between DTCC, TISI, and IAG.
- Certain support functions and other services will be provided to the GJV by DTCC, DTC, and TISI pursuant to service contracts.
- The GJV will provide post-trade, presettlement related services, including execution notification, allocation, electronic trade confirmation (''ETC''), central matching, operational and standing databases (*i.e.*, trade enrichment), and communications between trading parties and their settlement agents.
- The GJV's governance arrangements will be designed to assure that the ''U.S. regulated aspects'' of the GJV's activities,[6] including the pricing structure for the fees to be charged to users of such services, will be subject to the control of users.
- The GJV will be operated on a for-profit basis. Fifty percent of any profits not retained by the GJV will be distributed to DTCC.[7]
- The GJV will provide its ETC service and its central matching service through its wholly owned subsidiary, the GJV Matching Services—US, LLC, which has applied for an exemption from registration as a clearing agency.[8]

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[9]

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

The expansion of the global economy, the tremendous growth in transaction levels in both domestic and cross-border markets, and the emergence of electronic trading vehicles has resulted in dramatic increases in securities trading volumes. This growth in volume is beginning to constrain the capacity of financial institutions to process trades efficiently so that they settle on time. Operations professionals in both domestic and foreign securities markets have concluded that the current sequential and fragmented electronic trade confirmation/affirmation model must be made more efficient and that broader industry connectivity to electronic systems must be encouraged so that these systems will be used for the large number of cross-border transactions that still rely upon the telephone and telefax for the communication of trade and settlement information.[10]

According to DTC, the combination of the TradeSuite[11] and ESG Business[12] and the linking of their current services and customers could produce immediate benefits. For example, DTC estimates that 12% of institutional trades processed in TradeSuite are affirmed on trade date and that only 87% are affirmed by noon of T+2. By introducing allocations processed in the ESG Business' OASYS system to the TradeSuite Business' TradeMatch, a much larger percentage of trades can be affirmed earlier in the settlement cycle.

[16] 17 CFR 200.30–3(a)(12).

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

[2] Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

[3] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation (''NSCC'').

[4] TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

[5] IAG is a Swiss corporate affiliate of TISI.

[6] The term ''U.S. regulated aspects'' of the GJV's activities refers to any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a ''qualified vendor'' as defined in New York Stock Exchange Rule 387(a)(5), in National Association of Securities Dealers Rule 11860(a)(5), and in similar rules of other self-regulatory organizations. Such activities, therefore, would include the GJV's proposed ETC and centralized matching services for institutional transactions settling in the U.S., including cross-border transactions between a U.S. broker-dealer and an institution located abroad.

[7] Profits distributed to DTCC that are not retained by DTCC will be available for rebate to the participants of DTCC's wholly-owned subsidiaries, DTC and NSCC subject to such determination by DTCC's Board of Directors.

[8] The Commission has stated that matching is a clearing agency function that requires an entity that performs matching to register as a clearing agency or obtain an exemption from registration as a clearing agency. However, an entity that only provides a matching services does not have to be subject to the full range of clearing agency regulation. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. In 1999, the Commission granted Thomson an an exemption from clearing agency registration to provide matching services. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. GJV Matching Services-US, LLC has applied for exemption from clearing agency registration from the Commission. Securities Exchange Act Release No. 43540 (November 9, 2000), [File No. 600–32].

[9] The Commission has modified the text of the summaries prepared by DTC.

[10] *See, e.g.,* Securities Industry Association Institutional Transaction Processing Committee White Paper (December 1, 1999).

[11] Generally, the TradeSuite Business consists of the following products: TradeMessage, TradeMatch, TradeSettle and TradeHub.

[12] Generally, the ESG Business consists of the following products: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.