

variation markets show that the pilot has operated as intended and should be approved permanently.

For all of the above reasons, the Commission believes that the CHX proposal is consistent with Section 6(b)(5) of the Act. Moreover, the Commission also believes that the proposal is consistent with the Rule 11b-1(a)(2)(ii) of the Act.<sup>23</sup> Rule 11b-1(a)(2)(ii) requires that a specialist engage in a course of dealings for his own account that assist in the maintenance, so far as practicable, of a fair and orderly market. As previously noted in the 1992 Approval Order, the Commission believes that the proposal is consistent with the objectives of this Rule because the implementation of the proposal should help the specialist to provide an opportunity for price improvement to the customer whose stop order is granted, without placing a burden on specialists by requiring that specialists execute other pre-existing bids or offers when such executions would not be otherwise required under Exchange rules.

The Commission also believes that the proposal is consistent with the prohibition in Section 11(b) against providing discretion to a specialist in the handling of an order.<sup>24</sup> Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.<sup>25</sup> The Commission has stated that, pursuant to Section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.<sup>26</sup>

As previously noted in the 1992 Approval Order, the Commission believes that it is appropriate to treat stopped orders, even those under the pilot procedures, as equivalent to limit orders. A limit order is an order to buy or sell a stated amount of security at a specified price, or better if obtainable. The Commission believes that stopped orders are equivalent to limit orders, in this instance, because the orders would be automatically elected after a transaction takes place on the primary market at the stopped price. The

Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets provide sufficiently stringent guidelines to ensure that the specialist will implement the proposed rule change in a manner consistent with his market making duties and Section 11(b).<sup>27</sup>

In permanently approving the Exchange's proposal, the Commission expects the Exchange to continue monitoring the practice of stopping stock in minimum variation markets and to take appropriate action in the event CHX identifies any instances of specialist non-compliance with the program's procedures.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-CHX-95-10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release 34-36398; File No. 600-23]

#### **Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of an Application for Full Clearing Agency Registration and an Application for Extension of Temporary Registration as a Clearing Agency**

October 20, 1995.

Notice is hereby given that on February 3, 1995, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") an application, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission grants GSCC permanent registration.<sup>2</sup> The Commission is

<sup>27</sup> Moreover, stopped orders as "limit orders" would not bypass pre-existing limit orders on the same side of the market. Under CHX's procedures, specialists may not execute a stopped order before the limit order interest on the Exchange (at the same price as the stopped order) is exhausted.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78q-1, 78s(a) (1988).

<sup>2</sup> Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Director, Division of Market Regulation ("Division"), Commission (February 3,

publishing this notice to solicit comments from interested persons on GSCC's application.

On May 24, 1988, the Commission approved, pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2-1(c) thereunder,<sup>3</sup> the application of GSCC for registration as a clearing agency for a period of three years.<sup>4</sup> The Commission subsequently has extended GSCC's registration until November 30, 1995.<sup>5</sup>

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, the multilateral netting of trades, the novation of netted trades, and daily marking-to-the-market. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

At the time of GSCC's initial temporary registration, the Commission granted GSCC exemptions from compliance with the participation standards in Sections 17A(b)(3)(B) and 17A(b)(4)(B) and with the fair representation requirements in Section 17A(b)(3)(C).<sup>6</sup> GSCC has requested that the Commission remove GSCC's exemption from the participation standards in Sections 17A(b)(3)(B) and 17A(b)(4)(B). As more fully set forth in the February Registration Letter, GSCC believes that it has adequately addressed the Commission's concerns regarding GSCC's membership eligibility standards by establishing new categories of membership.<sup>7</sup> In the May

1995 ("February Registration Letter"). GSCC supplemented the February Registration letter in its letter from Charles A. Moran, President, GSCC, to Brandon Becker, Director, Division, Commission (September 15, 1995) ("September Registration Letter").

<sup>3</sup> 17 CFR 240.17Ab2-1 (1994).

<sup>4</sup> Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

<sup>5</sup> Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; and 35787 (May 31, 1995), 60 FR 30324.

<sup>6</sup> The Commission determined that GSCC's rules did not enumerate the statutory categories of membership as required by Section 17A(b)(3)(B) or the financial standards for applicants and members as contemplated by Section 17A(b)(4)(B). 15 U.S.C. 78q-1(b)(3)(B), 78q-1(b)(4)(B) (1988). In addition, the Commission determined that while the composition of GSCC's Board of Directors reasonably reflected GSCC's anticipated initial membership, it would be appropriate to reevaluate whether GSCC's process for selecting its Board of Directors complied with the fair representation requirements in Section 17A(b)(3)(C) before granting full registration as a clearing agency. 15 U.S.C. 78q-1(b)(3)(C) (1988).

<sup>7</sup> Since the Commission's original order granting GSCC temporary registration, the Commission has

Continued

<sup>23</sup> 17 CFR 240.11b-1(a)(2)(ii).

<sup>24</sup> Section 11(b) permits a specialist to accept only market or limit orders.

<sup>25</sup> See H. Rep. No. 1383, 73d Cong. 2d Sess. 22, S. Rep. 792, 73d Cong. 2d Sess. 18 (1934).

<sup>26</sup> See Special Study, *supra* note 18.

31, 1995, order extending GSCC's temporary registration as a clearing agency,<sup>8</sup> the Commission noted that GSCC's new categories of membership had not been extensively used. As discussed below, GSCC is in the process of introducing services for trades in repurchase agreements involving government securities ("repos"). Because institutional entities are more significant participants in the repo market than in the cash market, GSCC expects much greater utilization of these and other nontraditional membership categories (e.g., those membership categories for entities other than dealers and banks) in the coming years. In the February Registration Letter, GSCC stated that it believes its current method of selecting its board of directors assures members fair representation.<sup>9</sup> The Commission is reviewing GSCC's request to remove the exemptions.

In addition to the accomplishments cited by GSCC in the February Registration Letter, GSCC asserts that it has made significant progress towards offering a comprehensive set of services to the Government securities marketplace through the implementation of its comparison service for repos<sup>10</sup> and through its proposed rule change that would grant GSCC the authority to implement netting, settlement, and guarantee services for the non-same-day-settling aspects of overnight and term repos.<sup>11</sup>

approved two proposed rule changes that increased the categories of those eligible for membership in GSCC's netting system. Securities Exchange Act Release Nos. 34935 (November 3, 1994), 59 FR 56100 (order approving establishment of new categories of netting system membership for futures commission merchants) and 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new categories of netting system membership for dealer and interdealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered insurance companies).

<sup>8</sup> *Supra* note 5.

<sup>9</sup> GSCC's current selection process for its board of directors permits any GSCC member to nominate candidates for election to the Board and to vote for candidates so nominated. In the February Registration Letter, GSCC stated that it recognizes future membership growth may require GSCC to adjust the selection process to ensure fair member representation on the Board.

<sup>10</sup> In the September Registration Letter, GSCC represents that since May 12, 1995, the repo comparison service has grown to include 43 participants with an average daily volume of 2,330 repos compared with an average value of \$74.1 billion. The average daily comparison rate for these repos is 93 percent. For a complete description of GSCC's comparison service for repos, refer to Securities Exchange Act Release No. 35557 (March 31, 1995), 60 FR 17598 (order approving the GSCC comparison service for repos).

<sup>11</sup> For a description of GSCC's proposal regarding the implementation of netting, settlement, and guarantee services for the non-same-day-settling aspects of overnight and term repos, refer to Securities Exchange Act Release No. 36252

Furthermore, GSCC represents that it and the Board of Trade Clearing Corporation have made progress toward establishing a cross-margining arrangement for the benefit of market participants that are active in both the cash and futures Government securities markets.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by November 16, 1995. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.<sup>12</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600-23. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

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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[Release No. 34-36396; File No. SR-NASD-95-47]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Member Subscriber Deposits for Nasdaq Level 2/3 Service and Equipment**

October 20, 1995.

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 October 11, 1995, 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 have been prepared by the NASD. The NASD has designated this proposal as establishing or changing a due, fee, or

(September 19, 1995), 60 FR 49649 [File No. SR-GSCC-95-02] (notice of filing of proposed rule change).

<sup>12</sup> 15 U.S.C. 78s(a)(1) (1988).

<sup>13</sup> 17 CFR 200.30-3(a)(16) (1994).

other charge under Section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) under the Act, the NASD is proposing to revise the subscriber deposit requirements contained in Part VIII, Paragraph G.1. and 2. of Schedule D to the NASD By-Laws. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

Schedule D

*Part VIII*

Schedule of NASD Charges for Services and Equipment

\* \* \* \* \*

**G. Subscriber Deposits**

New and existing subscribers to Level 2/3 or Nasdaq Workstation™ service shall be subject to the following deposit charges per unit:

**1. New subscriber**

a. estimated *telecommunications provider* [installation] charges [including cable, freight and telephone company charge;] *for network infrastructure, connection and testing;*

b. two (2) months *circuit* [service and equipment] charges; and

c. estimated *telecommunications provider* disconnect charges [including Harris disconnect and freight charges].

**2. Existing subscribers subject to subscriber deposits include those that have been placed on the termination list two or more times within a two year period; those that have paid for services with one or more NSF checks; and those that have had service disconnected for non-payment but have not had equipment removed:**

a. two (2) months *circuit* [service and equipment] charges; and

b. estimated *telecommunications provider* disconnect charges [including Harris disconnect and freight charges].

**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 NASD 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 NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the