

the Plan commenced. The Commission originally approved the Plan on June 26, 1990.<sup>6</sup> Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.<sup>7</sup> The Plan has since been in operation on an extended pilot basis.<sup>8</sup>

### III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities." The Plan contains various provisions concerning its operation, including Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer; Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.<sup>9</sup>

### IV. Description of the Proposal

The Commission is proposing pursuant to Section 12(f) of the Act<sup>10</sup> to expand the number of eligible Nasdaq/NM securities that may be traded by a national securities exchange pursuant to the Plan to include all Nasdaq/NM securities. The current maximum number of eligible Nasdaq/NM securities that may be traded pursuant to the Plan is 1000 securities.<sup>11</sup>

### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

change that are filed with the Commission, and all written communications relating to the proposal 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 at the Commission's Public Reference Room.

All submissions should refer to File No. S7-24-89 and should be submitted by December 8, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43540; File No. 600-32]

### Self-Regulatory Organizations; Global Joint Venture Matching Services—US, LLC; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

November 9, 2000.

#### I. Introduction

On September 21, 2000, the Global Joint Venture Matching Services—US, LLC ("GJVMS") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1<sup>1</sup> for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")<sup>2</sup> and Rule 17Ab2-1 thereunder.<sup>3</sup> GJVMS is requesting an exemption from clearing agency registration in connection with its proposal to offer an electronic trade confirmation service and a matching service. The Commission is publishing this notice to solicit comments on the exemption request.

#### II. Background

##### A. Structure of the GJVMS

The GJVMS is a limited liability company which prior to the commencement of its operations will become a wholly-owned subsidiary of the Global Joint Venture. The Global Joint Venture is a proposed joint venture between The Depository Trust &

Clearing Corporation ("DTCC"),<sup>4</sup> Thomson Institutional Services Inc. ("TISI"),<sup>5</sup> and Interavia, A.G., a Swiss corporate affiliate of TISI. Within the Global Joint Venture, the institutional trade processing services currently offered by DTC will be combined with the institutional trade processing services currently offered by Thomson Financial ESG.<sup>6</sup> While the Global Joint Venture will have several lines of business, it will conduct its domestic electronic trade confirmation ("ETC") service and matching service wholly through the GJVMS.

Initially, the automated facilities and systems environment necessary to operate the ETC and matching services will be provided to the GJVMS by DTC pursuant to a services agreement between DTCC and the Global Joint Venture. Also pursuant to the services agreement, DTCC will provide to the Global Joint Venture legal and regulatory, audit, accounting, and human resources services, and the Global Joint Venture will make these services available to the GJVMS. It is anticipated that there will also be a services agreement between the Global Joint Venture and the GJVMS.

As explained in detail below, DTC and Thomson Financial ESG's institutional trade processing services are the two principal systems used by broker-dealers and institutional investors for post-trade, presettlement processing of trades. The merger of these two services would link the two largest providers of institutional post-trade, presettlement processing services, and as a result, would establish a core building block for straight-through processing ("STP")<sup>7</sup> and T+1.<sup>8</sup>

DTCC will transfer to the Global Joint Venture DTC's TradeSuite which consists of the following services: TradeMessage, TradeMatch, TradeSettle, and TradeHub.

<sup>4</sup> DTCC was created in 1999 as a holding company for The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). DTC and NSCC are registered with the Commission as clearing agencies.

<sup>5</sup> TISI is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary. Thomson Corporation is a global electronic information company.

<sup>6</sup> Thomson Financial ESG is a wholly owned subsidiary of Thomson Financial, a Thomson Corporation subsidiary.

<sup>7</sup> STP is the completion of presettlement and settlement processes based on trade data that each party to a transaction enters only once into an automated system.

<sup>8</sup> T+1 refers to an industry initiative to reduce the settlement cycle for securities transactions from three days (T+3) to one day (T+1). It is anticipated that the settlement cycle will be shortened from T+3 to T+1 during 2004.

<sup>9</sup> The full text of the Plan, as well as "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

<sup>10</sup> 15 U.S.C. 781(f).

<sup>11</sup> See *supra* note 4.

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

<sup>1</sup> Copies of GJVMS's Form CA-1 are available for inspection and copying at the Commission's Public Reference Room in File No. 600-32.

<sup>2</sup> 15 U.S.C. 78q-1.

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

1. TradeMessage provides for the automated exchange of post-trade messages between broker-dealers, custodians, and institutions, including messages such as block-trade notices of execution, allocation instructions, trade confirmations, and affirmations.

2. TradeMatch electronically compares investment managers' allocations with broker-dealers' trade confirmations.

3. TradeSettle supplies allocations, trade confirmations, and settlement messages with account and settlement data from DTC's Standing Instructions Database ("SID") and routes settlement instructions to custodian banks and broker-dealers' clearing agents. SID is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.

4. TradeHub is a real-time global message switch which routes messages between parties using different communications protocols, message formats, and firm and securities identifiers.

TISI will transfer to the Global Joint Venture the following services of Thomson Financial ESG: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

1. ALERT is a database of customer relationship information and settlement data that is shared by investment managers, broker-dealers, and custodians.

2. OASYS provides for the electronic communication and acceptance or rejection of allocation instructions between investment managers and broker-dealers.

3. OASYS Global provides for the electronic communication of allocation instructions and confirmations between investment managers and broker-dealers.

4. MarketMatch streamlines the matching of trade details with broker counterparties around the world, leading to lower processing costs, improved trade management, and shorter settlement times.

5. ITM Benchmarks is a suite of services that provide operational statistics relating to trade processing. These include statistics on average response times, the number of attempts it takes to make settlement, and the percentage of trades ready for settlement at particular points in time.

#### *B. Current Institutional Trade Settlement Processes*

The institutional trade process typically starts when an institution or its agent places an order to buy or sell securities with its broker-dealer. After

the broker-dealer executes the trade, the broker-dealer will advise the institution of the details of the executed trade. This is generally called a notice of execution. Once received, the institution advises the broker-dealer how the trade should be allocated among its various accounts.

When the broker-dealer completes allocating the shares among the institution's accounts, the broker-dealer submits trade data reflecting its distribution to each of the institution's accounts. DTC's TradeSuite service forwards the trade data in the form of a confirmation for each account to the institution, the broker-dealer, and other interested parties (*e.g.*, correspondent banks or trustees). The institution reviews the confirmation for accuracy (*i.e.*, compares the confirmation to its allocation instructions). For each confirmation that is accurate, the institution will send an information message to DTC. DTC will generate and send an affirmed confirmation to the broker-dealer and to the institution's settlement agent. At this point, the trade is sent into DTC's settlement system. (DTC's TradeSuite service is not a settlement system in that no money or securities move through it.) The trade also must be authorized by the party obligated to deliver the securities (*i.e.*, the selling party) before settlement can occur.

#### *C. The Commission's Interpretive Release on Matching*

On April 6, 1998, the Commission issued an interpretive release regarding matching services ("Matching Release").<sup>9</sup> Matching is the term used to describe the process whereby an intermediary independently determines whether trade data submitted by a broker-dealer (*i.e.*, confirmation information) matches the trade data submitted from the broker-dealer's institutional customer (*i.e.*, allocation information). If the information matches, the intermediary generates an affirmed confirmation to the broker-dealer and the institution. In the Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the "comparison of data respecting the terms of settlement of securities transactions," within the meaning of Section 3(a)(23)(A) of the Exchange Act.<sup>10</sup> Therefore, any person providing independent matching services must either register with the Commission as a clearing agency or obtain an exemption from registration pursuant to

Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder.<sup>11</sup>

### **III. GJVMS's Request for Exemption**

#### *A. Introduction*

The purpose of the GJVMS will be to introduce significant efficiencies into institutional trade processing by combining the complementary post-trade, presettlement services of DTC and Thomson Financial ESG to offer the securities industry an integrated system for post-trade, presettlement processing of institutional trades. This should assist firms in dealing with the ever growing and unprecedented levels of securities trading. The GJVMS will also be a positive response to the expected move to T+1.

According to "Paving The Way To Straight Through Processing" (July 2000), a white paper published by DTCC, as trading volumes have continued their dramatic upward climb over the past decade, securities industry executives are focusing their attention on the transformation the industry must undergo to cope with these volumes and the potential for even greater increases in the years ahead. According to DTCC and the Securities Industry Association ("SIA"), 250 million institutional trade confirmations were processed in 1999.

The industry has concluded that the current post-trade presettlement processing system for institutional trades will need major changes if a shorter settlement period is to be achieved. Even in a T+3 environment, the current system is showing signs of strain under the increasing volumes of trades. Today, institutional trades are primed for settlement through a series of sequential and repetitive steps, using a process developed when the volume of trades was far lower than it is today and when settlement occurred on T+5.

To deal with this increasing volume, the industry has embraced the concept of straight-through processing or STP which, in its most basic form, is the process of seamlessly passing information to all parties without manual handling or redundant processing. Concurrent with this objective, the industry is seeking to reduce risk, by shortening the time between trade date and settlement date.

<sup>11</sup> 15 U.S.C. 78q-1; 17 CFR 240.17Ab2-1. The Commission has approved a proposed rule change filed by DTC that allows DTC to provide matching services. Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR-DTC-95-23]. The Commission has also granted Thomson Financial Technology Services, Inc., a wholly owned subsidiary of TISI, an exemption from registration as a clearing agency. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600-31].

<sup>9</sup> Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7-10-98].

<sup>10</sup> 15 U.S.C. 78c(a)(23)(A).

Many in the industry believe that changing the institutional post-trade presettlement process is called for, even without factoring in a move to T+1.<sup>12</sup> The existing process is showing signs of strain as trade volume grows. As firms have increased their investments to add capacity and improve internal processing, confirm and affirm rates have not improved, leading to greater risk for the industry.<sup>13</sup>

#### B. GJVMS's Proposed Service

GJVMS plans on offering an ETC service and a matching service. The ETC service would transmit messages (*i.e.*, confirmation and affirmation messages) among broker-dealers, institutional customers, and custodian banks and would ultimately result in the production of an affirmed electronic trade confirmation in accordance with the requirements of various self-regulatory organizations rules.<sup>14</sup> The matching service would compare, or match trade information submitted by a broker-dealer (*i.e.*, confirmation information) with the trade information submitted by an institutional customer (*i.e.*, allocation instructions) to produce an affirmed confirmation.<sup>15</sup>

GJVMS represents in its Form CA-1 that as a condition of obtaining an exemption from clearing agency registration, it shall.<sup>16</sup>

<sup>12</sup> In July 2000, the SIA released its T+1 Business Case Model which the Commission is in the process of reviewing.

<sup>13</sup> The average daily U.S. institutional trade volume increased to 432,000 trades in 1999 from 182,000 trades in 1995. However, in 1999, an average of 70,000 institutional trade confirmations with an average value of \$15 billion a day, were not submitted by broker-dealer into DTC's TradeSuite system on trade date. This doubled the 1995 average of 36,000 valued at \$7 billion. DTCC has experienced trade date confirmation input rates as low as 76% on certain peak days during the first quarter of 2000 as compared with the fairly steady average rate of 85% over the past several years. In addition, only 12% of trades are currently affirmed on trade date and only 88% of trades are affirmed by noon of T+2, the deadline for automatic submission of the affirmed trade into DTC's settlement system. The remaining 12% are not automatically entered into DTC's settlement system and require further action on the part of the parties to settle. As trade volumes continue to rise or in a T+1 environment, these levels will be unacceptable.

<sup>14</sup> These rules are National Association of Securities Dealers Rule 11860(a)(5), New York Stock Exchange Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G-15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Rule 274(b).

<sup>15</sup> The matching service will be used to match trade information where either the broker-dealer or the institutional customer or both is a U.S. entity and where the security is registered in the United States.

<sup>16</sup> Exhibit S of GJVMS's Form CA-1. GJVMS also represents that it will not impose prohibitions or limit access to its service by potential customers but

(1) Provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies (ARPs);<sup>17</sup>

(2) Provide the Commission (beginning in its first year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs;

(3) Provide the Commission with twenty business days advance notice of any material changes that it makes to its matching service and ETC service. These changes will not require the Commission's approval before they are implemented;

(4) Provide the Commission with prompt notification of significant systems outages lasting more than thirty minutes;

(5) Respond and its service providers (including DTCC and Global Joint Venture) shall respond to requests from the Commission for additional information relating to its matching service and ETC service and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions of GJVMS's exemptive order;

(6) Supply the Commission or its designee with periodic<sup>18</sup> reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC Service;

(7) Preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. It shall retain these records for a period of not less than five years,

that it might terminate a subscription for failure to pay fees.

<sup>17</sup> Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 and 29185 (May 9, 1991), 56 FR 22490.

<sup>18</sup> DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule.

the first two years in an easily accessible place;

(8) Develop fair and reasonable linkages between its matching service and other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission; and

(9) Not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted under the contemplated exemption.

#### C. Statutory Standards

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission before performing any of the functions of a clearing agency.<sup>19</sup> However, Section 17A(b)(1) also states that, upon our own motion or upon a clearing agency's application, we may conditionally or unconditionally exempt the clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A. The GJVMS believes that the undertakings it has proposed as a condition of obtaining an exemption from clearing agency registration will allow it to protect the public interest and will strike the appropriate balance between the necessity of safety and soundness on the one hand and the need to foster efficiency, competition, and capital formation on the other hand.

The Commission has exercised its authority to conditionally exempt an applicant from clearing agency registration on four prior occasions.<sup>20</sup> In those cases, the applicants requesting exemption from clearing agency registration were required to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of that section were furthered (*i.e.*, safety and soundness of

<sup>19</sup> 15 U.S.C. 78q-1(b)(1).

<sup>20</sup> Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving application for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cede Bank, now Clearstream); 39643 (February 11, 1998), 63 FR 8232 (order approving application for exemption from clearing agency registration by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System); and 41377 (May 7, 1999), 64 FR 25948 (order approving application for exemption from clearing agency registration for Thomson Financial Technology Services, Inc.).

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.<sup>21</sup> 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](mailto: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.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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*.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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.

<sup>21</sup> See Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q-1(b)(3)(A).

<sup>22</sup> 17 CFR 200.30-3(a)(16).