

Participants represent in their proposal that they have unanimously approved an Interim Plan, and are in the process of getting the requisite Boards' signatures for submission of the proposed Interim Plan to the Commission. Further, the Participants represent that they will make a concerted effort to submit the proposed Interim Plan that would include a process for selecting an alternative securities information processor by July 19, 2001. In light of the current negotiations regarding the existing Plan and the representations of the Participants in their request to the Commission, the Commission approves the requested extension of the Plan until August 20, 2001.

The Commission notes that the revised Plan must provide for either (1) a fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by that Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation

Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan.

information for these members through the SIP.

Furthermore, the revised Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters<sup>16</sup> as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2<sup>17</sup> under the Act until the earlier of August 20, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1<sup>18</sup> under the Act to the BSE through August 20, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f)<sup>19</sup> and 11A<sup>20</sup> of the Act and in Rules 11Aa3-1<sup>21</sup> and 11Aa3-2<sup>22</sup> thereunder.

## VII. Conclusion

*It is Therefore Ordered*, pursuant to Sections 12(f)<sup>23</sup> and 11A<sup>24</sup> of the Act and paragraph (c)(2) of Rule 11Aa3-2<sup>25</sup> thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through August 20, 2001, and certain exemptive relief through August 20, 2001, is approved.

<sup>16</sup> See also discussion in the SuperMontage order, *supra* note 4.

<sup>17</sup> 17 CFR 240.11Ac1-2.

<sup>18</sup> 17 CFR 240.11Aa3-1.

<sup>19</sup> 15 U.S.C. 78l(f).

<sup>20</sup> 15 U.S.C. 78k-1.

<sup>21</sup> 17 CFR 240.11Aa3-1.

<sup>22</sup> 17 CFR 240.11Aa3-2.

<sup>23</sup> 15 U.S.C. 78l(f).

<sup>24</sup> 15 U.S.C. 78k-1.

<sup>25</sup> 17 CFR 240.11Aa3-2(c)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release 34-44553; File No. 600-23]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

July 13, 2001.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency through December 31, 2001. On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act<sup>1</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>2</sup> the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.<sup>3</sup> The Commission subsequently has extended GSCC's registration through July 31, 2001.<sup>4</sup>

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the third quarter of this year.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or

<sup>26</sup> 17 CFR 200.30-3(a)(29).

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

<sup>2</sup> 17 CFR 240.17Ab2-1.

<sup>3</sup> Securities Exchange Act release No. 25740 (May 24, 1988), 53 FR 19639.

<sup>4</sup> Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; and 43900 (January 29, 2001), 66 FR 8988.

instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.<sup>5</sup> 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 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 20549-0102. All submissions should refer to File No. 600-23 and should be submitted by August 9, 2001.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600-23) be and hereby is extended through December 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44554; File No. SR-NYSE-2001-19]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Closed End Fund Listing Fees

July 13, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 6, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 NYSE. 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

The Exchange proposes to cap the total listing fees payable by any one family of closed-end funds, with respect to new or additional listings in 2001,

once the family has paid 2001 fees aggregating at least \$1,250,000.

#### 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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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

###### 1. Purpose

Most closed end investment companies, or closed end funds, that are listed on the Exchange are sponsored by one of a number of companies that specialize in this area. Many of these are household names such as Morgan Stanley Van Kampen; Nuveen; or Merrill Lynch Asset Management, to name the three with the largest number of closed end funds listed on the NYSE. The Exchange is actively engaged in reviewing the listing fees that we charge to closed end funds, and will likely propose a maximum that will apply to the aggregate of initial and annual fees paid by all the funds affiliated with a particular fund sponsor, or "family." While Exchange management has not completed this review and is not yet ready to put forward a definitive proposal, it is far enough along to consider it appropriate to put in place a maximum that will apply for the remainder of this year, so that fund families can be confident that additional listings this year will not incur fees beyond the level at which we anticipate a cap will be enacted.

Accordingly, from and after the effective date of this proposal, no fund family will be required to pay any additional listing fees with respect to new or additional listings in 2001 once the family has paid 2001 fees aggregating at least \$1,250,000. A family that has paid aggregate fees in excess of that amount prior to the effective date hereof will not receive a refund, but will not be required to pay any additional fees with respect to this year beyond what it has paid to that date.

###### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>3</sup> that an Exchange have rules that provide for the equitable

allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange 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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>5</sup>

The Commission notes that under Rule 19b-4(f)(6)(iii),<sup>6</sup> the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested that the Commission designate that the proposed rule change does not become operative for 15 days after the date of its filing so that the benefits of the proposed rule change are available to closed end funds more quickly. The Commission believes that designating the operative date of the proposal for 15 days after the date of the proposal's filing is consistent with the protection of investors and the public interest.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78s(a)(1).

<sup>6</sup> 17 CFR 200.30-3(a)(16).

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(4).