

Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

#### **Applicants Representations**

1. Applicant, a Maryland corporation, is a face-amount certificate company registered under the Act. Applicant currently intends to offer four face-amount certificates ("Certificates") registered under the Securities Act of 1933. In the future, applicant may offer additional Certificates. The Certificates are fixed income securities that entitle the holder to receive, at maturity, the face amount of the Certificate and interest credited thereon, less withdrawals and applicable fees and charges. To meet its payment obligations, applicant is required to maintain a minimum amount of reserves in "qualified investments" as defined in section 28(b) of the Act ("Reserves").

2. Applicant proposes to enter into custodial arrangements with regard to its Reserves with one or more banks that meet certain requirements ("Custodians"). Applicant seeks an order approving the proposed form of custody agreement ("Agreement") to be entered into by applicant with each Custodian. Under the requested order, applicant would be able to select and change Custodians in its discretion.

3. Each Custodian will maintain the Reserves to ensure that applicant meets its payment obligations under the terms and conditions of any outstanding Certificate. If applicant were to default on any obligation under a Certificate, each Custodian would be authorized to cure the default by liquidating so much of the Reserves held by it as necessary to discharge the obligation. In addition, each Custodian will perform the duties and functions typically performed by a custodian, such as securities registration and delivery, income collection, periodic reporting, and other safekeeping and processing functions.

#### **Applicants Legal Analysis**

1. Section 28(c) of the Act requires a registered face-amount certificate company to maintain the Reserves with a custodian that meets the requirements of section 26(a)(1) of the Act and in accordance with such terms and conditions as the Commission shall prescribe and as appropriate for the protection of investors. Under section 26(a)(1), a custodian generally must be

a bank that has at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount which may not be less than \$500,000.

2. Applicant requests an order under section 28(c) of the Act approving the Agreement. Applicant states that the Agreement contains provisions to maintain and safeguard the Reserves, including provisions governing (i) the holding, segregation, registration, depositing, and delivery of securities, (ii) the payment of monies and maintenance of bank accounts, and (iii) the management of real estate and real estate related investments, as well as establishing procedures to cure any defaults by applicant on its obligations under the Certificates and procedures for periodic reporting and inspection of the assets.<sup>1</sup> Applicant represents that it will seek an amended order from the Commission for any material changes in the substantive provisions of the Agreement.

3. Applicant states that it may seek to terminate Custodians and employ new Custodians for many reasons, including: (i) The availability of superior or specialized services through other Custodians; (ii) dissatisfaction with the quality of a Custodian's services; (iii) fee increases or the availability of comparable services from other Custodians at more competitive rates; (iv) changes in a Custodian's management, location, financial condition, or methods of operation; (v) regulatory developments or actions affecting the ability or qualification of a Custodian to serve as such; or (vi) a determination by a Custodian to cease offering its services.

4. Applicant will only enter into an Agreement approved by its board of directors ("Board"), including a majority of directors who are not interested persons within the meaning of Section 2(a)(19) of the Act ("Disinterested Directors"). In addition, the continuance of any Agreement would be subject to annual review by the Board, including a majority of the Disinterested Directors, to determine whether the quality of services provided by the Custodian remains satisfactory and the fees are reasonably competitive. Applicant submits, for all the reasons stated above, that its request is consistent with the protection of investors.

<sup>1</sup> Applicant states it will comply with rule 17f-4 under the Act as if it were a registered management investment company to the extent an Agreement permits a Custodian to maintain any portion of the Reserves in a securities depository.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46045; File No. SR-CBOE-2002-28]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Reduction of the Fees Charged to Public Customers for Transactions in the CBOE Mini-NDX Index (MNXTM) Options**

June 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 31, 2002, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 CBOE. 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 CBOE is proposing to modify its Fee Schedule to reduce the fees charged to public customers for transactions in the CBOE Mini-NDX Index (MNXTM).

The text of the proposed rule change is available at the CBOE and at the Commission.

#### **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 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.

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

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

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

1. Purpose

The CBOE MNX™ is based on 1/10th the value of the Nasdaq-100 Index® (NDX). This filing proposes to reduce customer transaction fees in MNX options to more closely match the rates charged to public customers trading competitive products at other exchanges. Specifically, this filing proposes to reduce the customer transaction fee to a flat \$.15 per contract, rather than the previous rate of \$.40 per contract with premium at or above \$1, or \$.20 per contract with premium below \$1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>3</sup> in general, and with section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

*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 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*

No Written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 day of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.<sup>7</sup>

**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 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 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 File No. SR-CBOE-2002-28 and should be submitted by July 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46053; File No. SR-GSCC-00-12]

**Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Insolvency and Clearing Fund Requirements**

June 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 5, 2000, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission"), and on December 14, 2000, amended the proposed rule change as described in Items I, II, and III below, which items

have been prepared primarily by GSCC. 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 would allow GSCC to amend its clearing fund and insolvency rules to better protect itself and its members from certain types of legal risk.

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

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

On January 30, 1996, the Securities and Exchange Commission ("Commission") issued an order ("Commission's Order") approving GSCC's proposed rule change permitting foreign entities to become members of GSCC's netting system.<sup>3</sup> The rule change established application and continuing membership requirements for foreign entities, including the delivery to GSCC of an opinion of foreign counsel addressing the particular jurisdictional concerns raised by the admission of a foreign entity to netting system membership.<sup>4</sup>

Having gained experience from reviewing the legal opinions regarding foreign law that were provided in connection with the applications of the foreign banks that GSCC has admitted to its netting system to date, GSCC has determined to clarify its insolvency rule, Rule 22, in the manner described in subsection (i) below so that the insolvency rule more appropriately references the types of insolvency proceedings to which a foreign member

<sup>2</sup> The Commission has modified the text of the summaries prepared by GSCC.

<sup>3</sup> Securities Exchange Act Release No. 36788 (January 30, 1996), 61 FR 4500 (February 6, 1996).

<sup>4</sup> GSCC also requires each prospective foreign member to provide an insolvency law opinion discussing applicable U.S. Federal and state laws.

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> See 15 U.S.C. 78b(3)(C).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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