

potential benefits to each Fund and its shareholders.

10. The consummation of each reorganization is subject to certain conditions, including that the parties shall have received from the SEC the order requested in the application, and the receipt of an opinion of tax counsel to the effect that upon consummation of each reorganization and the transfer of substantially all the assets of each Acquired Fund, no gain or loss will be recognized by the Acquired or Acquiring Funds or their shareholders as a result of the reorganization. Applicants will not amend, waive, or supplement any term of the plan of reorganization without the prior approval of the SEC if such amendment, waiver, or supplement would materially alter the plan from the description of the plan in the application.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell or purchase securities to or from such registered company.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, in pertinent part, (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of such other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (c) any person directly or indirectly controlling, controlled by, or under common control with such other person, and, (d) if such other person is an investment company, any investment adviser thereof.

3. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state they may not be able to rely on rule 17a-8 because MetLife and its affiliates hold or share direct or indirect ownership of more than 5% of the outstanding shares of the Acquired Fund, that the adviser of the Acquiring Fund is a wholly-owned subsidiary of MetLife which, therefore, could be deemed to control the Acquiring Fund, and that the Acquiring

Fund, therefore, may be deemed an affiliated person of an affiliated person of the Acquired Fund, and vice versa, for reasons not based solely on their common adviser.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the proposed reorganization satisfy the standards set forth in section 17(b). Applicants note that the exchange of the Acquired Fund's assets and liabilities for shares of the Acquiring Fund will be based on each Fund's relative net asset value, and that the proposed reorganization is expected to be effected on a tax-free basis, so that neither the Acquiring Fund, the Acquired Fund, nor the shareholders of the Acquired Fund will recognize taxable gains or losses as a result of the proposed reorganization.

6. Applicants submit that the terms of the proposed reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed reorganization is consistent with the policies of the Acquiring and Acquired Funds.

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

Margret H. McFarland,

Deputy Secretary.

[FR Doc. 97-14692 Filed 6-4-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38699; File No. 4-208]

Intermarket Trading System; Order Approving Twelfth Amendment to the Restated ITS Plan Relating to Amending the Pre-Opening Application, Deleting Text No Longer Applicable, and Making Technical Amendments

May 30, 1997.

I. Introduction

On January 31, 1997, the Intermarket Trading System ("ITS") submitted to the Securities and Exchange Commission

("Commission") an amendment to the Restated ITS Plan ("Plan") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 11Aa3-2 thereunder² to amend the Pre-Opening Application, to delete text no longer applicable, and to make technical amendments.³ The proposed plan amendment was published for comment in Securities Exchange Act Release No. 38520 (April 17, 1997), 62 FR 19846 (April 23, 1997). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposal.

Participants to the Plan include the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

II. Description

The purpose of the proposed changes to the Plan is amend the Pre-Opening Application, to delete text relating to the NASD Pilot Phase and the ITS/Computer Assisted Execution System ("CAES") Linkage, and the National Security Trading System (NSTS)/ITS Automated Linkage, which by their terms are no longer applicable, and to make technical amendments. The current Pre-Opening Application sections of the Plan trigger the use of the Pre-Opening Application whenever an "indication of interest" (i.e., an opening price range) is sent to the Consolidated Tape Association ("CTA") Plan Processor prior to the opening of trading in the relevant security or prior to reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or reopening price is not greater than the "applicable price change." The current Pre-Opening Application sections provide that the Pre-Opening Application applies when an indication

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ The ITS, a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter ("OTC") market operated by the National Association of Securities Dealers, Inc. ("NASD"), is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment changeover, news pending and news dissemination, and for a delay opening.

Under the proposed amendment, the Pre-Opening Application would not also be triggered when indications of interest are disseminated in situations other than those five defined trading halts, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment deletes the definition of "Trading Halt," which is limited to the five defined trading halt situations mentioned above,⁴ and replaces all references to "Trading Halt" with "halt or suspension in trading." As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.

The proposed Plan amendment replaces "NASD Market Services, Inc." with "The Nasdaq Stock Market, Inc.," and "MSI" with "Nasdaq," to reflect the reorganization of the NASD. The amendment also deletes references to and language regarding the operation of the ITS/CAES linkage during the NASD Pilot Phase; restrictions of the participation of the ITS/CAES market makers in the ITS during the Pilot Phase, including the number of ITS/CAES securities the market makers can trade through the ITS during the Pilot; and descriptions of the NASD Pilot Phase, including entire Section 10(d).

The amendment to the Plan deletes reference to the limitations on ITS/CAES third market commitments to sell short until the CAES is modified to permit compliance with SEC Rule 10a-1 (the short sale rule). In connection with this limitation, the proposed amendment to the Plan deletes the body of Section 8(f)(vi) of the Plan, which states that the NASD is to enhance CAES prior to the Pilot Phase to permit execution of commitments to sell short routed through the CAES Switch in compliance with SEC Rule 10a-1, and also deletes mention in Section 8(b) of the Plan of this short sale limitation. In addition, the amendment deletes the limitation on commitments to trade in ITS in Section 8(a)(iii) of the Plan, which states that the commitments can only originate from an ITS/CAES third market maker during the two year Pilot Phase, and then the NASD has to determine how they will be handled, pursuant to Section 10(d) of the Plan.

The proposed Plan amendment deletes references and language pertaining to first and second anniversaries of the NSTS/ITS Automated Linkage ("CSE Linkage") Commencement Date (which was April 1, 1986), and the restrictions that applied to the CSE Linkage during that period between the commencement date and the first or second anniversary. The amendment deletes Sections 10(e)(ii) (A) and (B) of the Plan, which discuss the capacity relief and terminal interface costs of the CSE Linkage; language relating to only Designated Dealers being able to trade System securities; deletes language in Section 8(a)(ii) of the Plan that says for the two years following the CSE Linkage Commencement Date, NSTS Users can only use the ITS as to System securities assigned to a Designated Dealer(s), except they can use ITS with regard to other System securities that are traded on the CSE for the purpose of complying with the CSE trade through and block trade policies adopted by Sections 8(d) (ii) and (iii) of the Plan.

The proposed amendment deletes the body of Section 7(d) of the Plan, which states that the 1990 revised Pre-Opening Application would commence on a date that the operating committee specified, but no later than the 60th day following Commission approval of the 1990 revision of the Pre-Opening Application. The commencement date was August 5, 1991.

The proposed amendment deletes language regarding the limitations on how to calculate the NSTS/ITS Outgoing Agency Interest, Originating Agency Interest, and Incoming Dealer Executions (Incremental Constant) before the "contributing dealer adjustment date," which is the later of one year from the anniversary of the CSE Linkage commencement date or from a determination that "Approved Dealer" no longer excludes Contributing Dealers as anticipated by Section 2(1A).⁵ The proposed amendment also changes the "second anniversary of the NSTS/ITS Automated Linkage Commencement Date" to "April 1, 1986," in sections 8(e)(iv)(A)(6) and 8(e)(iv)(B) of the Plan. The proposed amendment also makes several technical changes to the Plan.

III. Discussion

The Commission finds that the proposed amendments to the Plan are consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national market system plan, and, in particular, with the requirements of Section 11A.⁶ In particular, the Commission believes the proposal is consistent with the Sections 11A(a)(1) (C)(ii) and (D)⁷ requirements with provide for fair competition among the ITS Participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3-2(c)(2)⁸ which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission believes that the proposed amendments to the Pre-Opening Application portions of the Plan are consistent with the act because they will facilitate transactions in securities while continuing to further investor protection and the public interest, by enhancing the linkage among all ITS Participant Markets and promoting coordinated openings and reopenings in ITS securities. The proposed Plan amendment achieves these goals by amending the Pre-Opening Application so that one standard procedure governs all trading halt situations, including circuit breaker halts.⁹

The Commission believes that the changes to the Plan relating to references to and language regarding the operation of the ITS/CAES linkage during the NASD Pilot Phase, references to and language pertaining to the restrictions that applied to the CSE Linkage during the period between the commencement date and the first or second anniversary of that commencement date, and to the commencement of the 1990 revisions to the Pre-Opening Application, are reasonable and consistent with the Act

⁶ 15 U.S.C. 78k-1.

⁷ 15 U.S.C. 78k-1(a)(1) (C)(ii) and (D).

⁸ 17 CFR 240.11Aa3-2(c)(2).

⁹ The Commission published for notice and comment the proposed rule changes by the nine Plan Participants to amend their respective Pre-Opening Application rules, and the Commission is approving those proposed rule changes the same day as this Plan approval order.

⁴ Mention of the five defined terms is also deleted from Section 7(a) of the Plan.

⁵ This language is found in Section 8(e)(iv) of the Plan, titled "Operational Parameters for NSTS/ITS Automated Linkage."

in that they are no longer applicable by their terms because the time periods have expired.

The Commission also notes that the proposal provides additional, technical amendments to the Plan consistent with the ITS's purpose of facilitating intermarket trading in exchange-listed equity securities.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 11A(a)(3)(B) of the Act,¹⁰ that the amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-14689 Filed 6-4-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Agency Meetings; Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 9, 1997.

An open meeting will be held on Monday, June 9, 1997, at 10:00 a.m., in Room 6059. A closed meeting will be held on Wednesday, June 11, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, June 9, 1997 at 10:00 a.m., in Room 6059, will be:

(1) The Commission will hear oral argument on appeal by Sharon M. Graham and Stephen C. Voss from an

administrative law judge's initial decision.

(2) The Commission will hear oral argument on appeal by Adrian C. Havill from an administrative law judge's initial decision.

The subject matter of the closed meeting scheduled for Wednesday, June 11, 1997 at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Post oral argument discussion.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: June 2, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-14841 Filed 6-3-97; 1:40 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release 34-38698; File No. 600-23]

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

May 30, 1997.

Notice is hereby given that on May 8, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")¹ 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 is able to grant GSCC permanent registration.² The Commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency until February 28, 1998.

¹ 15 U.S.C. 78s(a).

² Letter from Sal Ricca, President and Chief Operating Officer, GSCC (April 11, 1997) ("Registration Letter").

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act³ and Rule 17Ab2-1 promulgated thereunder,⁴ the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.⁵ The Commission subsequently has extended GSCC's registration through May 31, 1997.⁶

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, repurchase transactions, 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 an exemption from compliance with the fair representation requirements in Section 17A(b)(3)(C) of the Act.⁷ 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.

However, the shareholder agreement requires the six directors be dealer participants, three directors be broker participants, and three directors be clearing agent bank participants.⁸

As part of GSCC's request for full clearing agency registration, GSCC states that it is finalizing a number of changes to its Shareholders Agreement and

³ 15 U.S.C. 78q-1(b) and 78s(a).

⁴ 17 CFR 240.17Ab2-1.

⁵ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

⁶ Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; and 37983 (November 25, 1996), 61 FR 64183.

⁷ 15 U.S.C. 78q-1(b)(3)(C). GSCC had also received a temporary exemption from the membership requirements contained in Sections 17A(b)(3)(B) and 17A(b)(4)(B) (15 U.S.C. 78q-1(b)(3)(B) and 78q-1(b)(4)(B)). Subsequently, the Commission determined that GSCC is in compliance with such requirements. Securities Exchange Act Release No. 36508 (November 27, 1995), 60 FR 61719.

⁸ In its order granting GSCC its initial temporary approval, the Commission stated that while the composition of GSCC's board of directors reasonably reflected GSCC's anticipated initial membership, the Commission believed that it would be appropriate to defer to a later date its determination of whether GSCC's process for selecting its board of directors assures participants fair representation. This decision was based on the fact that GSCC planned on expanding its services during the temporary registration period and on the uncertainty with regards to GSCC's future participant base.

¹⁰ 15 U.S.C. 78k-1(a)(3)(B).

¹¹ 17 CFR 200.30-3(a)(29).