

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 19125/October 14, 1982

In the Matter of

Chicago Board Options Exchange, Incorporated
LaSalle at Jackson
Chicago, Illinois 60604

Options Clearing Corporation
200 South Wacker Drive
Chicago, Illinois 60606

File Nos. SR-CBOE-82-15
SR-OCC-82-21

NOTICE OF FILING AND ORDER APPROVING PROPOSED RULE CHANGES

I. Introduction

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(2), (the "Act"), the Commission is hereby giving notice of and approving proposed rule changes filed by the Chicago Board Options Exchange, Incorporated ("CBOE") and the Options Clearing Corporation ("OCC"). The proposed rule changes incorporate the terms and conditions of previously filed and approved rule changes which would modify CBOE and OCC rules to enable the CBOE to provide for exchange trading of standardized options on mortgage pass-through certificates guaranteed by the Government National Mortgage Association ("GNMA options"). 1/

1/ The proposed rule changes refer to and incorporate previously-approved rule changes. SR-CBOE-82-15, which was filed with the Commission on October 12, 1982, incorporates by reference all or parts of SR-CBOE-80-7, SR-CBOE-81-2, SR-CBOE-81-6, SR-CBOE-81-7, SR-CBOE-81-12, SR-CBOE-81-13, SR-CBOE-81-15, SR-CBOE-81-17, SR-CBOE-81-19, SR-CBOE-81-20, SR-CBOE-81-23. See File No. SR-CBOE-82-15.

SR-OCC-82-21, which was filed with the Commission on October 12, 1982, incorporates by reference all or parts of SR-OCC-81-2, SR-OCC-81-10, SR-OCC-82-2, SR-OCC-82-5 and SR-OCC-82-20. See File No. SR-OCC-82-21.

The CBOE and OCC filed these rule changes and the Commission is approving these proposed rule changes because the Court of Appeals for the Seventh Circuit on March 24, 1982, in Board of Trade of the City of Chicago v. Securities and Exchange Commission, 2/ invalidated the Commission order approving the CBOE rule filing relating to the listing and trading of GNMA options. 3/ Recently, however, Congress enacted, and the President has signed, legislation that clarifies Commission authority to oversee and regulate the listing and trading on national securities exchanges of options on exempted securities, including GNMA's and Treasuries. 4/ In related orders, being issued today, the Commission is approving other rule changes by the CBOE, Amex, NYSE and OCC with respect to options on exempted securities. 5/

II. Jurisdiction

In CBT I, the Seventh Circuit found three grounds for invalidating the Commission's CBOE-GNMA Options Approval Order. First, the court held that the Commission lacked authority to regulate options on GNMA's because exchange-traded

2/ 677 F.2d 1137 (7th Cir. 1982) (hereinafter, "CBT I" decision). For a discussion of the grounds upon which the court invalidated the Commission order, see Part II, infra.

3/ Securities Exchange Act Release No. 17577 (February 26, 1981), 46 FR 15242 (March 4, 1981). File No. SR-CBOE-80-7 (hereinafter, "CBOE-GNMA Options Approval Order").

The Court also issued an unpublished slip opinion that same day invalidating the Commission order approving the OCC's rule changes with respect to the issuance, clearance and settlement of GNMA options. Board of Trade of the City of Chicago v. Securities and Exchange Commission, et al., No. 81-2587 (hereinafter, "CBT II" decision) (March 24, 1982), which invalidated Securities Exchange Act Release No. 18015 (August 6, 1981), 46 FR 40849 (August 12, 1981). File No. SR-OCC-81-2 (hereinafter, "OCC-GNMA Options Approval Order").

4/ See Part II, infra, for a discussion of the salient aspects of the legislation.

5/ See Securities Exchange Act Release Nos. 19126 - 19132 (October 14, 1982).

"offset" options were not "securities" as defined in Section 3(a)(10) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act") and because Section 9(f) of the Exchange Act, which grants the Commission plenary authority over exchange-traded options on securities, does not apply to options on exempted securities, such as GNMA's. Second, the Seventh Circuit held that, regardless of the status of GNMA options under the federal securities laws, trading in GNMA options is subject to the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") under Section 2(a)(1) of the Commodity Exchange Act ("CEA"). 6/ Third, because GNMA options are "commodity options," the court determined that they are subject to the Congressionally imposed commodity options ban contained in Section 4c(c) of the CEA until the CFTC affirmatively takes action under that section to permit their trading. 7/

Prior to the Seventh Circuit's decision in CBT I, the Commission and the CFTC announced that the two agencies had agreed to clarify their respective regulatory responsibilities and would seek to codify that agreement formally. Among other things, the agreement on jurisdiction ("SEC/CFTC Jurisdictional Accord") clarified that the Commission has jurisdiction over put and call options on exempt and non-exempt securities, certificates of deposit, groups or indices of securities, and, when traded on a national securities exchange, foreign currency. It also clarified that the CFTC has jurisdiction over futures contracts on exempt securities, certificates of deposit and broad-based indices of securities, as well as over options on futures and options on foreign currencies traded on a commodities exchange.

The SEC/CFTC Jurisdictional Accord was introduced in Congress as two separate pieces of legislation: the amendments to the securities laws were contained in H.R. 6156 and S. 2260, while the amendments to the CEA were coupled with CFTC reauthorization and contained in H.R. 5447 and S. 2109. The Securities Acts Amendments of 1982 were passed by the

6/ 677 F.2d at 1146-50. The Court concluded that, because GNMA's are "commodities" (by virtue of there being futures traded on them) and because GNMA options "involve contracts of sale of a commodity for future delivery" under the grant of exclusive jurisdiction to the CFTC in Section 2(a)(1) of the CEA, the Commission lacked authority to regulate GNMA options.

7/ 677 F.2d at 1155-61.

House on September 23, 1982 and by the Senate on October 1, 1982, 8/ and signed by the President on October 13, 1982. 9/ The House and Senate, however, passed differing versions of the CEA amendments, and accordingly, those bills must await resolution by Congress. 10/

The SEC/CFTC Jurisdictional Accord would legislatively overrule the CBT I decision by amendments to both the federal securities laws and the CEA. As noted above, however, although the Accord was introduced in Congress as two separate sets of legislation, only the securities portion of the Accord has been enacted into law.

The Securities Acts Amendments of 1982 (1) amend the definition of "security" in Section 3(a)(10) of the Exchange Act to clarify that options on securities are separate securities, 11/ (2) amend Section 9 of the Exchange Act to provide explicitly that the Commission has the authority to regulate trading of options on any security, certificate of

8/ S. 2260 was never enacted. Rather, Senator D'Amato, the Senate sponsor of the legislation introduced H.R. 6156 on the floor of the Senate, and the Senate accepted and passed the House bill.

9/ H.R. 6156 indicates that it is an Act "to clarify the jurisdiction of the [SEC] and the definition of security, and for other purposes." For ease of reference, it is identified below as the Securities Acts Amendments of 1982.

10/ Among other things, the two bills differ on the level of SEC review of CFTC designation of stock index futures contracts and the length of the CFTC's reauthorization.

11/ Section 3(a)(10), as amended, reads as follows:

The term "security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, any put, call straddle, option, or privilege on any security,

deposit, group or index of securities or, when traded on a national securities exchange, options on foreign currency "[n]otwithstanding any other provision of law," 12/ and (3) amend Section 28 of the Exchange Act to pre-empt all state laws prohibiting wagering or gaming contracts, or the operation of "bucket shops," with respect to activity incidental to the trading of any instrument by a self-regulatory organization. 13/

In the Commission's view, the Securities Acts Amendments of 1982 remove the basis for the Seventh Circuit's invalidation of the Commission's CBOE-GNMA Options Approval Order. First, by amending the definition of security to include options "on any security," the legislation specifically overrules the first basis of the CBT I decision that the Commission lacked jurisdiction under the Exchange Act to approve the CBOE proposed rule change.

Second, the legislation overrides the court's determination that the CFTC's grant of exclusive jurisdiction in Section 2(a)(1) of the CEA removes Commission jurisdiction over options on securities that also are the subject of futures

(Footnote Continued)

certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited. (New language underlined.)

12/ In addition, Section 9(f) of the Exchange Act is amended to clarify that the Commission's authority to regulate options on securities under Section 9 is not limited to options on non-exempt securities.

13/ The definitions of security in the Securities Act of 1933, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Securities Investor Protection Act of 1970 are amended in a manner similar to the revised definition of security in the Exchange Act.

trading (and hence "commodities"). New Section 9(g) of the Exchange Act provides that,

Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency ***.

It is a well-recognized canon of statutory construction that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ***." 14/ Accordingly, the phrase "[n]otwithstanding any other provision of law" must serve a purpose. Literally interpreted, the phrase suggests that the authority conveyed in the section exists irrespective of any other provision of law.

This construction of Section 9(g) conflicts with the Seventh Circuit's view that Section 2(a)(1) of the CEA vests in the CFTC exclusive jurisdiction over options instruments that are the subject of futures trading, such as options on GNMA's, Treasury securities and foreign currency. It is also a recognized principle of statutory construction, however, that when "there is any irreconcilable conflict between the new provision and a prior statute relating to the same subject matter, the new provision will control as it is the later expression of statutory intent." 15/ At the same time, the Supreme Court has noted that "repeals by implication are not favored," 16/ and that the Court would decline to read statutes "as being in irreconcilable

14/ American Radio Relay League v. FCC, 617 F.2d 875, 879 (D.C. Cir. 1980), citing 2A Sutherland, Statutes and Statutory Construction, §46.06, at 63 (4th ed. C. Sands 1973).

15/ 2A Sutherland, Statutes and Statutory Construction, §51.02, at 274, cited with approval in Watt v. Alaska, 451 U.S. 259, 266 (1981). See also Travelers Ins. Co. v. Panama-Williams, Inc., 597 F.2d 702 (10th Cir. 1979); Univ. of Texas v. United States, 577 F.2d 483 (5th Cir. 1977).

16/ Morton v. Mancari, 417 U.S. 535, 549 (1974), citing Posadas v. National City Bank, 296 U.S. 497, 509 (1936).

conflict without seeking to ascertain the actual intent of Congress." 17/

In seeking to understand the intent of Congress, it should be noted that the Senate sponsor of the securities portion of the Accord, Senator D'Amato, has indicated that Section 9(g) was intended to grant the Commission the authority to regulate the instruments enumerated in the section. 18/ The Chairman of the Senate Committee on Banking, Housing and Urban Affairs, Senator Garn, also indicated that, with the enactment of the securities legislation, the SEC will have the "clear authority" to authorize trading in options on exempted securities such as GNMA and U.S. Treasury securities. 19/

In contrast to these clear statements of intent stands a statement by Senator Huddleston inserted for the record during the floor debate immediately preceding passage by the Senate of H.R. 6156:

[S]ince the seventh circuit decision rests on independent holdings under the [CEA] and Federal securities laws, I believe that it is generally agreed that both H.R. 6156

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- 17/ Watt v. Alaska, 451 U.S. 259, 266 (1981). The Court noted that, if possible, statutes should be read "to give effect to each" if such a result can be accomplished "while preserving their sense and purpose." Id. at 267.
- 18/ Statement of Senator D'Amato, 128 Cong. Rec. S. 13112 (October 1, 1982) ("*** H.R. 6156 would amend Section 9 of the Securities Exchange Act to make it clear that the SEC has plenary authority to regulate the trading of such options, notwithstanding any other provision of law. This means that the SEC's authority to regulate such options would not be diminished or affected in any way by the provisions of the [CEA] or any other law." See also Report of the House Committee on Energy and Commerce to Accompany H.R. 6156, H. Rep. No. 626, Part I, 97th Cong., 2nd Sess. 8 (1982).
- 19/ Statement of Senator Garn, 128 Cong. Rec. S. 13113 (October 1, 1982). There are suggestions, in fact, that Section 9(g) was intended to give the Commission exclusive jurisdiction over trading in options on securities and the other enumerated instruments. Statement of Senator D'Amato, 128 Cong. Rec. 13112 (October 1, 1982) (Section 9(g) is added "to confirm the SEC's exclusive jurisdiction over those instruments").

and S. 2109 must be enacted to remove any legal barriers that exist which prohibit the legal trading of [options on exempted securities]. 20/

In addition, in the Senate deliberations on S. 2109 (the amendments to the CEA), Senator Helms stated:

Since S. 2109 would amend the [CEA], while H.R. 6156 amends the Federal Securities laws, enactment of S. 2109 is essential in overturning the seventh circuit's decision and authorizing the SEC to regulate these options. 21/

In the Commission's view, the Seventh Circuit's determination that Section 2(a)(1) of the CEA gives the CFTC exclusive jurisdiction over options on GNMA securities or other securities, or options on certificates of deposit or foreign currency, is not reconcilable with Section 9(g). The language of Section 9(g), as well as the legislative history, clearly indicates that Congress intended to clarify that the Commission has at least some authority to regulate the instruments enumerated therein. This intention is confirmed by the amendments to the definition of "security" to encompass the same instruments, which make it clear that the Commission's authority over "securities" is also to extend to such instruments. The only way to reconcile the CFTC's exclusive jurisdiction with the authority conveyed to the Commission under Section 9(g), and at the same time preserve the "sense and purpose" underlying those provisions, is to interpret Section 9(g) as an exception to Section 2(a)(1) of the CEA with respect to options on securities, certificates of deposit and foreign currency.

20/ 128 Cong. Rec. S. 13114 (October 1, 1982).

21/ 128 Cong. Rec. S. 13103 (October 1, 1982). In this regard, it should be noted that, the courts traditionally have given substantial deference to the views of sponsoring legislators. Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548 (1976). By contrast, the views of other congressmen, while considered probative, generally are not accorded substantial weight. Castaneda-Gonzalez v. Immigration and Naturalization Service, 564 F.2d 417 (D.C. Cir. 1977). Thus, in discerning Congressional intent, the unambiguous statements of Senators D'Amato and Garn should be deemed controlling over any inconsistent views expressed by Senators Huddleston and Helms.

To the extent these provisions nevertheless are considered irreconcilable, Section 9(g), as the later enacted provision, is controlling. 22/

The legislation also overrides the third basis of the Seventh Circuit holding in CBT I that the Commission was precluded from approving trading in GNMA options because of the so-called commodity options ban in Section 4c(c) of the CEA. For the reasons discussed above with respect to Section 2(a)(1) of the CEA, the Division believes that Section 9(g) precludes an interpretation that the commodity options ban prohibits the Commission from taking action with respect to options on securities (or the other instruments enumerated in Section 9(g)).

In addition, the Commission believes that Section 9(g), as well as the modifications to the definition of security, removes the application of the commodity options ban to trading in options on securities that are also commodities. 23/ Analytically, it makes no sense for Congress to grant the Commission jurisdiction over options on debt securities if it cannot exercise that jurisdiction because of an options ban in the CEA under which it is powerless to act. Indeed, the Seventh Circuit decision raises doubt as to whether the CFTC could even exercise its authority under the CEA to remove the commodity options ban with respect to options regulated by the Commission since the ban, in the court's view, requires the CFTC to document that the CFTC, and not another entity such as the Commission, has the ability adequately to regulate such options. 24/ Thus, Section 9(g) can only

22/ Amendments to the CEA would make it clear that the CEA does not apply to options on the instruments enumerated in Section 9(g). Thus, enactment of the commodities portion of the Accord would eliminate any appearance of inconsistency between the CEA and the federal securities laws. The Commission does not believe, however, that such action is necessary to give effect to the clear meaning of Section 9(g).

23/ The Commission, of course, will continue to work with the CFTC in developing programs for the cooperative surveillance of the markets for securities and related futures and options contracts.

24/ 677 F.2d at 1144, n. 13.

be given its intended effect if it is read, at a minimum, to override the options ban with respect to options regulated by the Commission.

Furthermore, a provision known as the "SEC savings clause" in Section 2(a)(1) of the CEA 25/ supports the proposition that, despite the commodity options ban, Section 9(g) grants to the Commission the authority to regulate options on the instruments enumerated in that section. In determining the applicability of the CEA to GNMA options, the Seventh Circuit was required to address the "SEC savings clause." In this regard, the court stated:

* * * We interpret the savings clause so that an expanded definition of commodity does not divest the SEC of jurisdiction via the [commodity] options ban or otherwise, except where SEC jurisdiction is divested by the CFTC's exclusive jurisdiction clause. 26/

The Court went on to hold that the CFTC had exclusive jurisdiction over trading in GNMA options and that the SEC savings clause was thus inapplicable. However, as noted above, with the enactment of Section 9(g) of the Exchange Act, Commission jurisdiction with respect to options on GNMA's or other securities cannot be deemed to be divested by the CFTC's exclusive jurisdiction clause.

The analysis above addresses only the effect of the legislation on the CBT I decision. The Commission believes that analysis is equally valid with respect to the CBT II decision, and thus believes the legislation also makes clear its authority to act on the OCC's GNMA options filing. 27/

25/ The SEC "savings clause" provides that "except as hereinafter provided, nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any state, or (ii) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws."

26/ 677 F.2d at 1146.

27/ In the past week, the Commission has received letters from counsel for the CBT and several congressmen with respect to its authority to act on the proposed rule changes. Counsel for CBT acknowledges that the adoption

III. Discussion

A. GNMA Options

The CBOE filed with the Commission its original proposed rule change to provide for the trading of GNMA options on

(Footnote Continued)

of the Securities Acts Amendments of 1982 overturns the holding in CBT I with respect to the Commission's authority under the federal securities laws to regulate the trading of GNMA and Treasury options. It asserts, however, that those instruments are within the CFTC's exclusive jurisdiction under Section 4c(c) of the CEA, notwithstanding the new legislation, because the proposed amendments to the CEA have not yet been adopted. Letter from John H. Stassen, Kirkland and Ellis, and Mahlon M. Frankhauser, Barrett Smith Schapiro Simon & Armstrong (counsel for the CBT), to George A. Fitzsimmons, Secretary, SEC, dated October 12, 1982. The Chairman and Ranking Minority Member of the House Agriculture Committee submitted a joint letter asserting that Commission regulation of options on exempted securities would not comply with the CEA until the Futures Trading Act of 1982 (H.R. 5447) has been enacted into law. Letter from the Honorable E. (Kika) de la Garza and William C. Wampler to John S.R. Shad, Chairman, SEC, dated October 7, 1982.

The Commission also received a joint letter from the Chairman of the House Energy and Commerce Committee, and the Ranking Minority Member of the Telecommunications, Consumer Protection and Finance Subcommittee, the committees with jurisdiction over H.R. 6156. The letter states that:

H.R. 6156 amended the definition of 'security' under the federal securities statutes expressly to include options on securities, options on certificates of deposit, options on securities indices or groups, and, when traded on a national securities exchange, options on foreign currency. Congress, in enacting this legislation, expressed the view that these instruments do not fall within the exclusive jurisdiction of the CFTC and stated its desire that trading in these instruments be allowed to commence. Nonetheless, certain Members of the Agriculture Committee contend that the expanded definition of 'commodity' which is incorporated in

(Footnote Continued)

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Sections 4c(b) and 4c(c) of the CEA still gives the CFTC the power to ban trading in these options on a national securities exchange. We believe that this contention is inconsistent with Congressional intent, the legislative history of H.R. 6156 and the plain language of the statutes involved.

Letter from the Honorable John D. Dingell and James M. Collins to John S.R. Shad, dated October 13, 1982.

Finally, the Commission received a letter from the Honorable Timothy E. Wirth, Chairman of the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce and sponsor of H.R. 6156. In his letter, Mr. Wirth states:

I introduced H.R. 6156 on April 22, 1982, for the purpose of removing the cloud over the SEC's jurisdiction to regulate options on securities that were the subject of CFTC-approved futures contracts. * * * As our report on the legislation makes clear, it was the Committee's intent that H.R. 6156, by itself, would sufficiently clarify the SEC's jurisdiction so as to permit it to approve proposals of certain national securities exchanges to trade options on government debt securities as well as options on other instruments listed in the bill. Nothing in the report speaks to the need for H.R. 6156 to work in tandem with amendments to the [CEA] in order to accomplish the purpose of the legislation. * * *

We were very aware of the fact that H.R. 5447 was a far more complicated bill, because it contained not only jurisdictional provisions but also provided for the reauthorization of the CFTC, with numerous amendments to the Commodity Exchange Act. I can assure you that one of our purposes in maintaining separate bills was to ensure that if H.R. 5447 were delayed, for whatever reason, any cloud over the SEC's jurisdiction would be removed at the earliest possible time by the passage of H.R. 6156.

Letter from Timothy E. Wirth to John S.R. Shad dated October 14, 1982.

The Commission has reviewed these letters and, for the reasons set forth above, remains of the view that the Securities Acts Amendments of 1982 effectively overturn the CBT I decision and that the Commission possesses the authority to regulate trading of options on GNMA securities (as well as the other instruments enumerated in Section

April 17, 1980. 28/ Subsequently, on July 24, 1980, the Commission published a release extending the time for the submission of public comments responding to the proposal. 29/ Also, comments were specifically solicited from several government agencies concerning their respective interests and views regarding the development of an exchange-based GNMA options market. 30/ Except for a comment by the Chicago Board of Trade questioning the Commission's jurisdiction over, and authority to permit the trading of, GNMA options, 31/ all commentators were essentially supportive of CBOE's proposal for exchange-based trading of standardized GNMA options. 32/ On December 19, 1980, the CBOE filed several amendments to its proposal in order to treat various technical and procedural matters necessary to the implementation of the GNMA options program. 33/

28/ Notice of the proposed rule change was given by Securities Exchange Act Release No. 16801 (May 12, 1980), 45 FR 32458 (May 16, 1980).

The NYSE also filed a proposal to provide for the listing and trading of GNMA options. Securities Exchange Act Release No. 17578 (February 26, 1981), 46 FR 15245 (March 4, 1981). File No. SR-NYSE-81-4. The Commission is taking no action on that proposal today.

29/ Securities Exchange Act Release No. 17005 (July 24, 1980), 45 FR 51016 (July 31, 1980). The Commission received 85 comment letters concerning CBOE's proposal. Copies of the comment letters have been placed in a public file. See File No. SR-CBOE-80-7.

30/ Comments were solicited from the GNMA, the Department of the Treasury, the CFTC, the Federal Reserve Board ("FRB"), and the Federal Reserve Bank of New York ("FRB-NY"). See note 17 of the CBOE-GNMA Options Approval Order.

31/ See note 13 of the CBOE-GNMA Options Approval Order.

32/ See File No. SR-CBOE-80-7.

33/ Securities Exchange Act Release No. 17413 (January 5, 1981), 46 FR 2439 (January 9, 1981). For a detailed discussion of the significant features of CBOE's proposal, see the CBOE-GNMA Options Approval Order.

On February 20, 1981, the OCC filed with the Commission its proposed rule change to facilitate the trading of GNMA options on participating exchanges. 34/ Specifically, the proposal empowers the OCC to issue GNMA options and to provide for the clearance and settlement of GNMA options. On May 8, 1981, the OCC filed various technical clarifying amendments. 35/ Two comment letters were received by the Commission in response to its published notice of the proposed rule change, both setting forth the argument that the Commission lacked jurisdiction to regulate the issuance, clearance and settlement of GNMA options. 36/

On February 26, 1981, the Commission approved CBOE's proposal relating to GNMA options, finding it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the CBOE. 37/ In its approval order, the Commission addressed such concerns as contract design, sales practice requirements, margin standards, pricing considerations, surveillance and multiple trading, and listed several requirements that the CBOE had to satisfy with respect to these concerns before the commencement of trading in GNMA options. 38/ On August 6, 1981, the Commission similarly approved OCC's proposed rule change relating to GNMA options. 39/ In the OCC-GNMA Options Approval Order, the Commission discussed such concerns and pre-commencement of

34/ Securities Exchange Act Release No. 17598 (March 4, 1981), 46 FR 16103 (March 12, 1981).

35/ For a detailed discussion of the significant features of OCC's proposal, see the OCC-GNMA Options Approval Order.

36/ See note 2 of the OCC-GNMA Options Approval Order.

37/ See note 3, supra.

38/ See CBOE-GNMA Options Approval Order. The CBOE subsequently filed proposed rule changes amending its margin rules relating to GNMA and Treasury options. Notice of the proposed rule changes was given by Securities Exchange Act Release Nos. 18256 (November 12, 1981), 46 FR 57209, (November 20, 1981) and 18535 (March 4, 1982), 47 FR 10334 (March 10, 1982). See File Nos. SR-CBOE-81-24 and SR-CBOE-82-4. The Commission today is approving these proposals in related orders. Securities Exchange Act Release Nos. 19130 and 19131 (October 14, 1982).

39/ See note 3, supra.

trading conditions such as qualification of OCC's clearing members, satisfactory net capital and margin requirements, separate clearing fund deposits for debt options, and discrete settlement processes for the exercise of GNMA options.

Based on the enactment of amendments to the federal securities laws clarifying the Commission's authority to regulate trading of options on exempted securities, including GNMA's, the Commission has concluded that it has the authority to review and take action on the proposed rule changes which incorporate the terms and substance of these previously-approved rule changes concerning GNMA options. Moreover, the Commission has reviewed these proposals in light of the CBT I and II decisions and the recent legislation implementing the Securities Acts portion of the Jurisdictional Accord and finds that the reasons and bases for originally approving the proposals are an appropriate basis for approval of the new rule filings. Because of extensive prior notice and comment on the original proposed rule changes, (and the lack of substantive criticism of the proposed rule changes), the Commission does not believe it is necessary to publish the new proposed rules for additional comment. In reapproving the CBOE and the OCC proposed rule changes relating to GNMA options, the Commission understands that the pre-commencement of trading requirements discussed in the original approval order have been satisfied and therefore concludes that trading in GNMA options may commence without further Commission action. 40/

B. Related Orders Regarding GNMA's

In response to the Commission's original approval of the CBOE's and OCC's proposed rule changes to provide for the development of an exchange-based GNMA options market, the CBOE and OCC have filed with the Commission proposed rule changes to accommodate the conditions and concerns addressed

40/ The CBOE has stated to the Commission that, pursuant to another order being issued today, it intends to commence trading in Treasury bond options on October 22, 1982. The CBOE has indicated that it does not intend to commence GNMA options trading until its Treasury options market is established. The Commission finds this manner of proceeding to be orderly and sound, and approves the CBOE GNMA options rule filing on that basis.

in the original approval orders. 41/ Several of these proposed rule changes were previously approved by the Commission. For example, regarding implementation of the GNMA options program, the Commission has approved rule changes of CBOE governing supervision and testing of sales personnel, separate account approval and surveillance of corporate affiliates of GNMA options market makers 42/ as well as rules governing the GNMA pools from which eligible underlying securities for GNMA options could be drawn. 43/ Also, in connection with GNMA options, the Commission has approved proposals by the CBOE relating to application and acceptance fees for permit applicants, 44/ transaction fees, 45/ delivery responsibilities of member firms, 46/ position and exercise limits, 47/ and margin requirements. 48/

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- 41/ Proposed rule changes SR-CBOE-82-15 and SR-OCC-82-22 incorporate by reference only those rule filings that have been previously approved by the Commission. The rule filings that had been deferred by the Commission following the CBT I and II decisions and pending legislative enactment of the Securities Acts portion of the Jurisdictional Accord are treated in related orders. See note 5, supra.
- 42/ Securities Exchange Act Release No. 17787 (May 8, 1981), 46 FR 26969 (May 15, 1981). File No. SR-CBOE-81-2.
- 43/ Securities Exchange Act Release No. 17760 (April 29, 1981), 46 FR 25583 (May 7, 1981). File No. SR-CBOE-81-6.
- 44/ Securities Exchange Act Release No. 17958 (July 22, 1981), 46 FR 38796 (July 29, 1981). File No. SR-CBOE-81-12.
- 45/ Securities Exchange Act Release No. 18238 (November 4, 1981), 46 FR 55819 (November 12, 1981). File No. SR-CBOE-81-23.
- 46/ Securities Exchange Act Release No. 18138 (October 1, 1981), 46 FR 58389 (December 1, 1981). File No. SR-CBOE-81-20.
- 47/ Securities Exchange Act Release No. 18129 (September 29, 1981), 46 FR 49029 (October 5, 1981). File No. SR-CBOE-81-7.
- 48/ Securities Exchange Act Release No. 18109 (September 21, 1981), 46 FR 47335 (September 25, 1981). File No. SR-CBOE-81-15.

The Commission has approved proposed rule changes by the CBOE that provide specifications for the Interest Rate Options Qualification Examination, 49/ establish an Interest Rate Options Committee, and specify procedures for recording interest rate options transaction information. 50/ The Commission also approved a proposal by the CBOE to establish a plan for issuing permits to trade non-equity options. 51/ Finally, the Commission recently has approved proposed rule changes by the OCC that amend its GNMA options rules respecting aggregate exercise price and buy-in procedures, 52/ that amend its good delivery requirements for GNMA's delivered in settlement of GNMA options contracts, 53/ that permit the OCC, in certain circumstances, to release margin deposited with it by clearing members, 54/ and that amend the OCC's fee structure regarding clearing services for non-equity options. 55/ Because the Commission's authority to take action on these proposed rule changes has been clarified, and for the reasons set forth in the original approval orders, the Commission hereby approves that portion of the new proposed rule changes relating to these previously filed and approved rule changes by the CBOE and OCC.

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- 49/ Securities Exchange Act Release No. 18069 (August 28, 1981), 46 FR 58388 (December 1, 1981). File No. SR-CBOE-81-17.
- 50/ Securities Exchange Act Release No. 18110 (September 21, 1981), 46 FR 47346 (September 25, 1981). File No. SR-CBOE-81-19.
- 51/ Securities Exchange Act Release No. 18077 (September 3, 1981), 46 FR 45232 (September 10, 1981). File No. SR-CBOE-81-13.
- 52/ Securities Exchange Act Release No. 18174 (October 16, 1981), 46 FR 52266 (October 26, 1981). File No. OCC-81-10.
- 53/ Securities Exchange Act Release No. 18505 (February 23, 1982), 47 FR 8443 (February 26, 1982). File No. SR-OCC-82-2.
- 54/ Securities Exchange Act Release No. 18922 (July 26, 1982), 47 FR 33351 (August 2, 1982). File No. SR-OCC-82-5.
- 55/ File No. SR-OCC-82-20 was filed with the Commission on October 8, 1982.

IV. Findings and Conclusion

Under Section 19(b)(2) of the Act, the Commission must approve the foregoing rule changes if it determines that the proposed rule changes are consistent with the requirements of the Act and the rules thereunder applicable to registered securities exchanges and registered clearing agencies. The Commission has reviewed carefully the rules proposed by CBOE and OCC to accommodate the listing, trading, issuance and clearance trading of options on GNMA's, and the comments previously submitted in connection with the proposed rule change, and has concluded, for the reasons set forth above and in the original approval orders, that the rules provide for adequate and proper regulation of the proposed markets. Furthermore, because the terms and substance of the foregoing proposed rule changes have previously been subject to extensive public review and comment and have been previously reviewed and approved by the Commission, the Commission finds good cause for approving the proposals prior to thirty days notice. In addition, based upon its prior review of the filings, and its current review, the Commission finds that the trading of GNMA options on a national securities exchange is in the public interest, and believes that no further delay would be in the public interest. Accordingly, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6 and 17A of the Act and the rules and regulations thereunder.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, Washington, D.C. 20549. Reference should be made to File Nos. SR-CBOE-82-15 and SR-OCC-82-21.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes be, and they hereby are, approved.

By the Commission.

George A. Fitzsimmons
Secretary