

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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, N.W., Washington, D.C. 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 EMCC's principal office. All submissions should refer to File Number SR-EMCC-2001-03 and should be submitted by October 31, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44895; File No. SR-GSCC-2001-11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Relating to Arrangements To Integrate Government Securities Clearing Corporation and The Depository Trust & Clearing Corporation

October 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act"),¹ notice is hereby given that on August 22, 2001,

the Government Securities Clearing Corporation ("GSCC") 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 GSCC. 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 proposed rule change involves the initial arrangements for the integration of GSCC with The Depository Trust & Clearing Corporation ("DTCC").²

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 the 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 such statements.³

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

The proposed rule change is the first formal regulatory step to effect the integration of GSCC with DTCC. Specifically, the rule change would implement certain changes in GSCC's organizational documents to facilitate the integration with DTCC and the subsequent exchange offer.

1. Background

At its meeting on July 24, 2001, GSCC's Board of Directors voted to proceed with a plan for the integration of GSCC and MBS Clearing Corporation ("MBSCC") with DTCC ("Plan").⁴ Such integration is expected to take place concurrently with the integration of Emerging Markets Clearing Corporation

("EMCC") with DTCC.⁵ GSCC has been advised that the Board of Directors of DTCC has also agreed to proceed with the Plan.

A principal goal of the Plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at GSCC, MBSCC, EMCC, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") (collectively, the "Operating Subsidiaries") for the clearance and settlement of both institutional and broker transactions. Harmonized processing should help to accommodate shortened settlement cycles, address increasing volumes, improve risk management, and lower transaction processing costs.

2. The Plan

a. Exchange Offer and Valuation

Under the Plan, DTCC will form a wholly-owned subsidiary ("Acquisition Company") for the purpose of making an exchange offer ("Exchange Offer") for GSCC shares. After receiving all regulatory approvals, Acquisition Company will conduct the Exchange Offer where GSCC shareholders will have the opportunity to exchange their GSCC common stock for DTCC common stock on the basis of the adjusted book value of such GSCC and DTCC shares. Adjusted book value of the GSCC shares will equal book value less the retained earnings of GSCC at the time of (or as of the end of the last full calendar month preceding) the integration of GSCC with DTCC.⁶ Adjusted book value of the DTCC shares will equal book value less the smaller of (i) the retained earnings of DTCC attributable to NSCC's retained earnings at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full calendar month preceding) the integration of GSCC with DTCC.⁷ Following a successful Exchange Offer, the GSCC Shareholder Agreement will be terminated. Acquisition Company will be the majority or sole (depending on whether all GSCC shareholders agree to tender

² DTCC is a holding company for The Depository Trust Company and the National Securities Clearing Corporation, which are registered clearing agencies.

³ The Commission has modified the text of the summaries prepared by GSCC.

⁴ Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release No. 44838 (Sept. 24, 2001) [File No. SR-MBSCC-2001-01].

⁵ Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the integration of GSCC and MBSCC with DTCC is not contingent on the integration of EMCC with DTCC and vice versa. Securities Exchange Act Release No. 44896 (Oct. 2, 2001) [File No. SR-EMCC-2001-03].

⁶ Such retained earnings are dedicated to GSCC's business.

⁷ Such retained earnings are dedicated to NSCC's business.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

their shares) shareholder of GSCC and any non-tendering GSCC shareholders will remain as minority shareholders of GSCC.

b. Changes to GSCC's Shareholder Agreement

GSCC's Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on transferring GSCC shares to Acquisition Company.

c. Selection of GSCC's Directors and GSCC Activities

DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of GSCC the persons elected by the shareholders of DTCC to be the directors of DTCC.⁸ GSCC will continue to exist as a separate registered clearing agency and will operate essentially as it currently does by offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures. As a matter of DTCC policy, GSCC's retained earnings at the time of (or as of the end of the last full calendar month preceding) the integration of GSCC with DTCC will be dedicated to supporting GSCC's business. GSCC will be sufficiently capitalized for its activities as a clearing agency.

d. DTCC's Role

Neither Acquisition Company nor DTCC will engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration, and corporate communications will continue to be centralized in DTCC and be provided by DTCC to GSCC pursuant to service contracts.

e. Fair Representation

As a part of the proposed integration, a structure will be implemented in order that the Operating Subsidiaries will satisfy the fair representation requirement of Section 17A of the Act. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of GSCC, MBSCC, and EMCC, which become shareholders of DTCC as a result of the Plan, will elect the persons to serve on DTCC's Board of Directors. These

individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board, rights to purchase DTCC common stock will be relocated to shareholders using the services of any one or more of the Operating Subsidiaries based upon their usage. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

f. Committees

In addition, DTCC will create a Fixed Income Operations and Planning Committee that will include representatives of members of GSCC and MBSCC. The Fixed Income Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to fixed income products and/or services of the Operating Subsidiaries and will have certain other responsibilities to be assigned to the Committee.

Furthermore, GSCC and MBSCC will establish a joint GSCC/MBSCC Membership and Risk Management Committee that will include representatives of participants of GSCC and MBSCC. The joint GSCC/MBSCC Membership and Risk Management Committee will advise GSCC's and MBSCC's Board of Directors and management with respect to membership, credit, and risk matters, and will have certain other responsibilities to be assigned to the Committee.

g. Changes to DTCC's and GSCC's Governing Documents

DTCC's Certificate of Incorporation, By-Laws and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of GSCC, MBSCC, and EMCC that become shareholders of DTCC as a result of the Exchange Offer the rights that the shareholders of DTCC currently have and, in particular, to satisfy the Fair Representation Requirement of the Exchange Act. The Basic Documents will provide the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including EMCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as an owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc.,

as the owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.

- The rights to purchase DTCC common stock will be reallocated to the users of each of the Operating Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by DTCC's Board and in accordance with the DTCC Shareholders Agreement.

- DTCC common stock owners will be able to exercise cumulative voting in the election of DTCC's directors.

- Each year the DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of DTCC common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

In addition, GSCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in GSCC's corporate governance structure.⁹ GSCC's Certificate of Incorporation shall be amended and restated in accordance with Section 807 of the New York Business Corporation Law as follows:

- Current Article 2 of the Certificate of Incorporation will be revised to state that the purposes for which GSCC is formed are to engage in any lawful act or activity for which corporations may be organized under New York Business Corporation Law, provided, however, that GSCC is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without first obtaining the consent of such body.

- The supermajority voting provisions previously contained in Article 3 will be deleted since they will be unnecessary because DTCC through its wholly-owned subsidiary,

⁸ Given that GSCC's initial post-integration board would be elected upon the effectiveness of the integration plan, GSCC has determined to postpone its 2001 annual election of directors, which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, then GSCC will call an annual meeting for the election of directors pursuant to its current procedures.

⁹ The full text of the proposed changes to the Certificate of Incorporation and to the By-Laws is set forth in Exhibit A of GSCC's rule filing.

Acquisition Company, will be the controlling shareholder of GSCC.

- Current Article 4 of the Certificate of Incorporation, which provides for removal of directors by shareholders, will be deleted as redundant because the By-Laws contain a substantially similar provision.

- Because there are no Class B common shares currently outstanding and because there are no plans to issue any such shares prior to or subsequent to the proposed integration, Article 5 (as revised, Article 3) of the Certificate of Incorporation will be modified to eliminate Class B shares. Because GSCC will no longer have any Class B shares, Article 6, which addressed the conversion of Class B shares to Class A shares, will be deleted. Article 7 (as revised, Article 5) will be amended to eliminate the references to classes of shares.

- A new Article 4 will be inserted to provide that GSCC shareholders may take action by written consent without a meeting as long as such consent is signed by the holders of outstanding shares having no less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

- A new Article 6 will be inserted to limit liability of the directors to GSCC and its shareholders for any breach of duty provided that such limitation is consistent with the provisions of the New York Business Corporation Law.

- Articles 8A, 8B, and 9 will be eliminated because most of the content of those articles is no longer relevant or will not be relevant after the proposed integration since GSCC will have a controlling shareholder, DTCC through its wholly-owned subsidiary Acquisition Company. GSCC's Rules currently address the subject of allocation of liability of failed participants.¹⁰

- Article 10, which refers to the election of the Vice Chairman of the Board pursuant to a shareholder agreement, will be deleted because the GSCC Shareholder Agreement will be terminated as part of the proposed integration.

- After the proposed integration, Acquisition Company, which is wholly-owned by DTCC, will be the majority or sole (depending on whether all current GSCC shareholders tender their shares under the Exchange Offer) shareholder

of GSCC. In order to promote efficiency in the governance of the Operating Subsidiaries after the Plan is completed, GSCC's current By-Laws will be replaced with a set of By-Laws that generally conform to NSCC's By-Laws.¹¹

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder applicable to GSCC because it is designed to coordinate further the activities of each of the Operating Subsidiaries in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry. The proposed rule change will not effect and is therefore consistent with GSCC's duty to safeguard funds and securities in GSCC's custody or control or for which it is responsible.

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

GSCC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. GSCC, as well as each of the other Operating Subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

¹¹ GSCC's By-Laws will differ from NSCC's By-Laws in that (i) all references will be gender-neutral, (ii) Section 1.2 will provide that a majority, rather than twenty-five percent, of all outstanding shares may make a demand to call a special meeting, (iii) Section 1.4 will provide for the ability to notify shareholders of shareholder meetings electronically, (iv) Section 1.2 will set the number of directors at a minimum of fifteen and maximum of twenty-five, rather than twenty-seven, (v) Section 2.1 will provide that the number of directors at any time shall be determined by GSCC's Board of Directors, (vi) Section 2.9 will provide that GSCC's directors that are also GSCC or DTCC officers may not serve on the Audit Committee, (vii) Section 3.1 will state that the GSCC officers will include those required by statute and may include a Chief Executive Officer, (viii) the provision in Section 3.3 that the President shall be the Chief Executive Officer will be eliminated, (ix) the provision in Section 3.4 that Managing Directors shall, upon request, advise and assist the Chief Operating Officer will be eliminated, and (x) Article VIII will provide that a majority of the holders of all outstanding shares, rather than all the holders of all outstanding shares, may amend GSCC's By-Laws.

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

No written comments relating to the proposed rule change have been solicited or received.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 GSCC's principal office. All submissions should refer to File Number SR-GSCC-2001-11 and should be submitted by October 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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¹⁰ GSCC will make a separate rule filing under Section 19(b) of the Act concerning amendments to its Rules to appropriately reflect the integration.

¹² 17 CFR 200.30-3(a)(12).