the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C) [12] of the Act. Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its direction and administration of its affairs. The Commission finds that EMCC's proposal is consistent with this requirement because the integration plan should provide EMCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of EMCC and should provide EMCC members through their holding of DTCC stock with adequate and fair representation in the selection of EMCC's directors and in the administration of EMCC's affairs. Furthermore, EMCC members will have an opportunity to advise DTCC through the International Operations and Planning Committee and Membership and Risk Committee that will include EMCC members.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to begin its integration in accordance with the schedule for the integration of EMCC, MBSCC, and GSCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that EMCC may begin its integration in accordance with the schedule for the integration of EMCC, MBSCC, and GSCC with DTCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2001–03) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44989; File No. SR–GSCC–2001–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Accelerated Approval of A Proposed Rule Change Relating to Arrangements to Integrate Government Securities Clearing Corporation and The Depository Trust & Clearing Corporation

October 25, 2001.

On August 22, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] a proposed rule change (File No. GSCC–2001–11), Notice of the proposal was published in the **Federal Register** on October 10, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will modify GSCC's organizational documents to facilitate its integration with the Depository Trust and Clearing Corporation (''DTCC'') (''Plan''). The primary purpose of the Plan, which was approved by GSCC's Board of Directors on July 24, 2001, is to ultimately harmonize the processing streams at GSCC, the MBS Clearing Corporation (''MBSCC''),[3] the Emerging Markets Clearing Corporation (''EMCC''),[4] The Depository Trust Company, and the National Securities Clearing Corporation (''NSCC'') [5] (collectively, the ''Operating Subsidiaries'') for the clearance and settlement of institutional and broker transactions by integrating all of the Operating Subsidiaries with DTCC. Under the Plan, GSCC and DTCC will take the following initial actions:

(1) *Conduct an Exchange Offer.* DTCC will form a wholly-owned subsidiary (''Acquisition Company'') that will make an exchange offer (''Exchange Offer'') for GSCC shares. Under the terms of the Exchange Offer, GSCC shareholders will have the opportunity to exchange their GSCC common stock for DTCC common stock.[6] 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 tender their shares) shareholder of GSCC, and any non-tendering GSCC shareholders will remain as minority shareholders of GSCC.

As a matter of DTCC policy, GSCC's retained earnings at the time of (or as of the end of the last preceding calendar month) the integration of GSCC with DTCC will be dedicated to supporting GSCC's business. Acquisition Company and DTCC will not 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.

(2) *Change 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.

(3) *Select New GSCC's Directors.* DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of GSCC the persons

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[12] 15 U.S.C. 78q–1(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44895 (Oct. 2, 2001), 66 FR 51698.

[3] 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 Nos. 44838 (Sept. 24, 2001), 66 FR 51695; 44988 (Oct. 25, 2001) [File No. SR–MBSCC–2001–01].

[4] 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 Nos. 44896 (Oct. 2, 2001), 66 FR 51695 (Oct. 10, 2001); 44987 (Oct. 25, 2001) [File No. SR–EMCC–2001–03].

[5] DTC and NSCC are already wholly owned subsidiaries of DTCC.

[6] The share exchange rate will be based on the adjusted book values of GSCC and DTCC. The adjusted book value of GSCC will equal book value less the retained earnings of GSCC at the time of (or as of the end of the last full preceding calendar month) the integration of GSCC with DTCC. The adjusted book value of DTCC 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.

elected by the shareholders of DTCC to be the directors of DTCC.[7] 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 part of the integration, a structure will be implemented that is designed to ensure that the Operating Subsidiaries satisfy the fair representation requirement of section 17A(b)(3)(C) of the Act.[8] Specifically, the DTCC shareholders, consisting of the current DTCC shareholders and GSCC's, MBSCC's, and EMCC's shareholders that become shareholders of DTCC as a result of the Plan, will elect the persons to serve on DTCC's Boards 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 reallocated to shareholders based upon their usage of one or more of the Operating Subsidiaries. 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.

(4) *Form New Committees.* 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 services of the Operating Subsidiaries and will have certain other responsibilities to be assigned to the Committee. GSCC and MBSCC will also 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 assigned to it.

(5) *Change 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 DTCC shareholders as a result of the Exchange Offer the rights that DTCC's shareholders currently have and, in particular, to satisfy the fair representation requirement. The Basic Document will provide the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Opening Subsidiaries, including GSCC.
- 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 Opening 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.

GSCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in GSCC's corporate governance structure. 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, 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 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.
- 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

[7] 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, GSCC will call an annual meeting for the election of directors pursuant to its current procedures.

[8] 15 U.S.C. 78q–1(b)(3)(C).

allocation of liability of failed participants.[9]

- 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 of 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 Operation Subsidiaries after the Plan is completed, GSCC's current By-Laws will be placed with a set of By-Laws that generally conform to NSCC's By-Laws.[10]

II. Discussion

The Commission finds that GSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C) [11] of the act. Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its direction and administration of its affairs. The Commission finds that GSCC's proposal is consistent with this requirement because the integration plan should provide GSCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of GSCC and should provide GSCC members through their holding of DTCC stock with adequate and fair representation in the selection of GSCC's directors and in the administration of GSCC's affairs. Furthermore, GSCC members will have an opportunity to advise DTCC through the new Fixed Income Operations and Planning Committee and Membership and through the Risk Management Committee that will be composed, in part, of GSCC members.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow GSCC to amend its rules to begin its integration in accordance with the schedule for the integration of GSCC, MBSCC, and EMCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that GSCC may begin its integration in accordance with the schedule for the integration of GSCC, MBSCC, and EMCC with DTCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2001–11) be, and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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

[10] 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.

[11] 15 U.S.C. 78q–1(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44988; File No. SR–MBSCC–2001–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating To Arrangements To Integrate MBS Clearing Corporation and The Depository Trust & Clearing Corporation

October 25, 2001.

On August 22, 2001, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] a proposed rule change (File No. MBSCC–2001–01). Notice of the proposal was published in the **Federal Register** on October 10, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will modify MBSCC's organizational documents to facilitate its integration with the Depository Trust and Clearing Corporation (''DTCC'') (''Plan''). The primary purpose of the Plan, which was approved by MBSCC's Board of Directors on July 19, 2001, is to ultimately harmonize the processing streams at MBSCC, the Government Securities Clearing Corporation (''GSCC''),[3] the Emerging Markets Clearing Corporation (''EMCC''),[4] The Depository Trust Company, and the National Securities Clearing Corporation (''NSCC'') [5] (collectively, the ''Operating Subsidiaries'') for the clearance and settlement of institutional and broker transactions by integrating all of the Operating Subsidiaries with DTCC.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44838 (Sept. 24, 2001), 66 FR 51701.

[3] Because of the current functional integration of operations of MBSCC and GSCC, the integration of MBSCC with DTCC is contingent upon the successful integration of GSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44985 (Oct. 2, 2001), 66 FR 51698 (Oct. 10, 2001); 44989 (Oct. 25, 2001) [File No. SR–GSCC–2001–01].

[4] 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 MBSCC and GSCC become operating subsidiaries of DTCC. However, the integration of MBSCC and GSCC with DTCC is not contingent on the integration of EMCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44896 (Oct. 2, 2001), 66 FR 51695 (Oct. 10, 2001); 44987 (Oct. 25, 2001) [File No. SR–EMCC–2001–03].

[5] DTC and NSCC are already wholly owned subsidiaries of DTCC.