

eight business days prior to payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located outside of New York City that are deposited less than eight business days prior to payable date will be credited to the participant ten business days following the date of the deposit. Interest for coupons for which the paying agent is located in New York City that are deposited at least five business days prior to the payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located in New York City that are deposited less than five business days prior to payable date will be credited to the participant seven business days following the date of the deposit. Interest for past due coupons will be credited to the participant as if they were received less than eight business days prior to the original payable date if the paying agent is located outside New York City and less than five business days prior to the original payable date if the paying agent is located in New York City.⁷

DTC will credit the accounts of its depositing participants on the foregoing payable dates without regard to whether DTC actually has received the interest payment from the issuer or paying agent as of such date.⁸ All coupons deposited after 11:00 a.m. will be considered to be received the following business day. In addition, during the first quarter of 1996, a new Participant Terminal System function will be made available which will enable DTC participants to view the status of their coupon deposits.

DTC proposes to charge its participants the following fees for this service:

Shells deposited a minimum of 15 days before payable date: \$4.50.

Shells deposited less than 15 days before payable date (including past due coupons): \$5.25.

Rejected shells: \$15.00.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act⁹ and the rules and regulations

thereunder because it promotes efficiencies in the clearance and settlement of securities transactions. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

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

Written comments from DTC participants and others have not been solicited nor 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 DTC 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. 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. 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 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for

inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-95-18 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36544; International Series Release No. 897; File No. SR-GSCC-95-05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Permitting Entities Established or Organized in a Foreign Country to Become Members of GSCC's Netting System

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 6, 1995, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-GSCC-95-05) as described in Items, I, II, and III below, which items have been prepared primarily by GSCC. On October 30, 1995, GSCC filed an amendment to the proposed rule change.² 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 Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC's rules to enable entities that are established or organized in a foreign country and regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system.³

¹⁰ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (October 26, 1995).

³ The netting system is a system for aggregating and matching offsetting obligations resulting from trades submitted by or on behalf of members in eligible securities. The resulting deliver, receive, and payment obligations are settled through designated clearing banks.

⁷ DTC will accept past due coupons into the coupon collection service program for up to three years after the original coupon payment date.

⁸ According to DTC, payments due DTC from issuers and paying agents are received on or before the payable date between 97 and 98 percent of the time. Typically, late payments are the result of transmission problems or equipment failures that are unrelated to the ability of the issuer or paying agent to actually make such payments. Telephone conversation with Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

⁹ 15 U.S.C. § 78q-1 (1988).

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

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (C), and (B) below, of the most significant aspects of such statements.⁴

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

The purpose of this proposed rule change is to permit entities that are organized or established under the laws of a country other than the United States ("foreign entities") and that are regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system. Currently, a foreign entity is eligible to apply to become a comparison-only member if it has demonstrated to GSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to GSCC's services. The proposed rule change also will establish new requirements applicable to foreign comparison-only members.

Currently, GSCC has eleven enumerated categories of netting system membership. A foreign entity is not eligible for any of these categories of netting membership. Nevertheless, foreign entities are among the most significant participants in the government securities marketplace and trade actively with many current netting members. Six of the seven firms on GSCC's list of grandfathered entities (Daiwa Europe Ltd.; Nikko Europe PLC; The Nikko Securities Co., Ltd., Tokyo; Nomura International PLC, London; Nomura International Inc., Tokyo; and Nomura Securities Co., Ltd., Tokyo) are foreign entities.⁵ GSCC believes it is appropriate for regulated foreign entities to be eligible for netting system

membership and proposes to establish a new category of netting system membership for such foreign entities.

GSCC recognizes that admitting foreign entities to netting system membership raises various unique issues and concerns for GSCC in connection with the legal and financial requirements for those entities, information sharing obligations, the requirements of the foreign entities' home country, and the physical presence of the foreign entities in the United States. GSCC's proposed rule change addresses each of these issues as discussed below. Except as otherwise indicated, the requirements set forth below are not applicable to a foreign entity that applies for membership only in GSCC's comparison system.

1. Legal Considerations

In order to address the particular legal concerns raised by the admission of foreign entities to netting system membership, GSCC will require foreign netting system applicants to enter into a special netting member agreement ("Agreement"). The Agreement, which generally requires the foreign netting system applicant to adhere to GSCC's rules, will provide that the Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Under the Agreement, the foreign entity (i) irrevocably waives all immunity for attachment of its assets in this country, (ii) irrevocably submits to the jurisdiction of a court in the U.S. with respect to any action or proceeding brought against it relating in any way to the Agreement, (iii) irrevocably waives any objection to the laying of venue in a court in the U.S., (iv) expressly states that any judgment obtained against it by GSCC may be enforced in the courts of any jurisdiction where it or any of its property may be found and will irrevocably submit to the jurisdiction of each such court, (v) agrees that payment of any judgment obtained by GSCC shall be in U.S. dollars, and (vi) agrees to provide GSCC with information on its financial condition and/or trading activity that is deemed pertinent by GSCC and understands and agrees that any such information may be provided by GSCC to the Commission.

GSCC further will require the foreign netting system applicant to submit an opinion of foreign counsel ("Opinion"). The Opinion must provide that the execution by the foreign entity of the Agreement with GSCC, the foreign entity's performance under the Agreement, and the exercise by GSCC of its rights and remedies under the Agreement will not conflict with or be

impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator. In addition, the Opinion must state that the Agreement's provision for governance by and construction in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

The Opinion also must provide the (i) The waiver by the foreign entity of all immunity from attachment of its assets in the U.S. is valid and will be recognized and given effect by the courts of the foreign entity's home country, (ii) for foreign entity has the power to irrevocably submit to the jurisdiction of a court in the U.S. and to waive all objections to venue, (iii) any judgment obtained against the foreign entity by GSCC may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be found and its submission to the jurisdiction of each such court is valid and will be recognized and given effect by the courts of the foreign entity's home country, (iv) GSCC can institute in the foreign entity's home country an action for breach of the Agreement without first having to obtain a judgment against the entity in the U.S., and (v) GSCC can institute in the U.S. an action for breach of the Agreement without first having to obtain a judgment against the entity in the entity's home country. Finally, the Opinion must state that the foreign entity has the power to provide GSCC with information in its financial condition and/or trading activity that is deemed pertinent by GSCC and that neither the foreign entity's compliance with such a request nor the sharing by GSCC of such information with the Commission will conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator.

In addition to the Agreement and the Opinion, GSCC also will require any foreign netting system applicant to submit a designation specifying an appropriate person or persons located in the State of New York as its agent to receive service of process or other legal summons.

While there will be no special agreement applicable to a foreign entity that applies for membership in GSCC's comparison system, such entity will be required to provide to GSCC an opinion of foreign counsel stating that (i) the execution by the foreign entity of the

⁴The Commission has modified the text of the summaries prepared by GSCC.

⁵GSCC maintains a list of "grandfathered" entities which are non-netting system members that historically have done business with GSCC's interdealer netting members. Business done by the interdealer broker netting members with grandfathered entities is treated by GSCC as business done with an actual netting member. GSCC's goal is to eliminate the list of grandfathered entities by having each of the entities on that list become a member of the netting system.

comparison-only member agreement ("Comparison Agreement") with GSCC, its performance under that agreement, and the exercise by GSCC of its rights and remedies under that agreement will not conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator and (ii) the language in the Comparison Agreement providing that the agreement shall be governed by and construed in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

2. Minimum Financial Standards and Clearing Fund Requirements

GSCC also seeks to amend its rules to establish minimum financial standards and clearing fund requirements for foreign netting system applicants. The minimum financial standards, the clearing fund deposit, and any other payments or deposits called for under GSCC's rules required to be met by a foreign netting system member will be the same as those applicable to the domestic netting system membership category that in GSCC's sole determination is most comparable in type to the foreign entity. In making this determination, GSCC will take into account, among other things, whether the entity's trading activity is done primarily for itself or for others. If a foreign netting system member falls out of compliance with its minimum financial requirements, the consequences of such noncompliance shall be determined by reference to the subsection of GSCC Rule 3, Section 5 that is applicable to the netting system membership category upon which the foreign entity's minimum financial standards are based.

3. Home Country Standards

In order to be eligible for netting system membership, the foreign entity will have to be in compliance with the financial reporting and responsibility standards of its home country. The foreign entity applying for netting system membership will have to be regulated in its home country in ways and pursuant to provisions comparable to those imposed on domestic members of a comparable type.

4. Information Sharing/Regulatory and Financial Reporting

To insure appropriate information sharing, the foreign entity applying for netting system membership must have a home country regulator that has entered into a memorandum of understanding

with the Commission regarding the sharing or exchange of information. In its application for membership (either comparison-only or netting system), the foreign entity will have to agree to provide GSCC with all material regulatory filings made with its primary home country regulator over the prior year, audited financial statements for the prior three years, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members. Upon acceptance to comparison-only or netting system membership, a foreign member must provide GSCC with all material regulatory filings made with its primary home country regulator promptly following its filing with such regulator, audited financial statement, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members.

GSCC ordinarily will accept for financial monitoring purposes audited financial statements prepared in accordance with the home country's generally accepted accounting principles ("GAAP"). If GSCC believes that those statements are not satisfactory, it will assess whether the foreign entity can provide information equivalent to that information provided by financial statements prepared in accordance with U.S. GAAP. All required financial and other reports will have to be submitted to GSCC in English. All required financial reports will have to be submitted to GSCC in dollar equivalents indicating the conversion rate and date used.

As noted above, pursuant to the Agreement the foreign netting system member will have agreed to provide GSCC with information on its financial condition and/or trading activity deemed pertinent by GSCC and that GSCC may share this information with the Commission. In addition, GSCC will expect the foreign entity to prepare and provide to GSCC information in the form of unaudited financials sufficient for GSCC to monitor and assess the entity's financial condition on no less than a quarterly basis.

5. Physical Presence

With respect to the foreign netting member's physical presence in the U.S., GSCC will require every foreign entity to maintain an office in the U.S. either directly or through a suitable agent that (i) has available individuals fluent in English who are knowledgeable about the entity's business and can assist GSCC representatives as necessary and (ii) ensures that the foreign member can meet its data submission and settlement obligations to GSCC.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will extend the benefits of GSCC's netting and risk management processes to a broader segment of government securities market participants and will provide those benefits to trades of current members with foreign entity counterparties.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

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

Comments on the proposed rule change have not yet been solicited. GSCC members will be notified of the rule filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

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

Within thirty-five days of the date of publication in 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 provisions of

5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR-GSCC-95-05 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-30069 Filed 12-8-95; 8:45 am]

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[Release No. 34-36551; File No. SR-OCC-95-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending the Agreements Governing Non-Proprietary Cross-Margining Accounts of Market Professionals in the Cross-Margining Program Among The Options Clearing Corporation ("OCC"), the Intermarket Clearing Corporation ("ICC"), and the Chicago Mercantile Exchange, in the Cross-Margining Program Between OCC and ICC, and in the Cross-Margining Program Between OCC and the Kansas City Board of Trade Clearing Corporation

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 15, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-95-12) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On September 12, 1995, and on October 11, 1995, OCC filed amendments to the proposed rule change to include in addition to proposed changes to the agreements governing non-proprietary cross-margining ("XM") accounts in the XM program between OCC, The Intermarket Clearing Corporation ("ICC"), and the Chicago Mercantile Exchange ("CME"), proposed changes to the agreements governing non-proprietary XM accounts in the XM program between OCC and ICC and in the XM program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC"),

respectively.² 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 purpose of the proposed rule change is to amend the agreements governing non-proprietary XM accounts of market professionals in the OCC/ICC/CME XM program, in the OCC/ICC XM program, and in the OCC/KCC XM program in order to implement the revised distributional scheme adopted by the Commodity Futures Trading Commission ("CFTC") in the new appendix to the CFTC's bankruptcy rules.³ The proposed rule change also seeks to revise the terms of the agreements governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and in the OCC/ICC XM program.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

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

The proposed rule change seeks to amend the agreements governing non-proprietary XM accounts of market professionals to correspond with the requirements of the distributional scheme adopted by the CFTC as a new appendix to its bankruptcy rules. The proposed rule change also seeks to conform the terms of the agreements

governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to make the terms of those agreements substantially identical to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and the OCC/ICC XM program.

In November 1991, the Commission and the CFTC approved non-proprietary cross-margining.⁵ As part of the CFTC's approval, it required each futures commission merchant ("FCM") participating in cross-margining to agree that all funds and property in a non-proprietary XM account would be treated as customer property subject to the segregation requirements of the Commodity Exchange Act⁶ and to segregate such fund and property from that of non-XM customers. In addition, the CFTC required each market professional to subordinate its XM related claims to customer claims based on non-XM positions.

Pursuant to that subordination requirement, if a clearing member became insolvent, all non-XM customers of the FCM would be paid their pro-rata share of the combined segregated funds pool, including funds of XM market professionals, before the XM market professionals received any portion of their claims. The subordination was intended to insulate non-XM customers from losses arising from XM accounts. The subordination also ensured that the XM accounts of market professional would not be treated as accounts of securities customers subject to liquidation under the Securities Investors Protection Act of 1970⁷ or the stock broker liquidation provisions of the Bankruptcy Code.⁸ Therefore, the accounts could be liquidated as accounts of commodity customers under the commodity broker liquidation provisions of the Bankruptcy Code⁹ and the CFTC's bankruptcy rules,¹⁰ and both the

⁵ Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary XM program); 56 FR 61404 (Comm. F. T. Comm'n 1991) (order approving OCC/CME non-proprietary XM program); 30041 (December 5, 1991) 56 FR 64824 [File Nos. SR-OCC-90-04 and SR-ICC 90-03] (order approving OCC/ICC non-proprietary, market professional cross-margin program); and 56 FR 61406 (Comm. F. T. Comm'n 1991) (order approving OCC/ICC non-proprietary cross-margin program). In August 1993, the Commission approved expansion of the OCC/KCC XM program established in February of 1992 to include non-proprietary positions. Securities Exchange Act Release No. 32708 (August 2, 1993), 58 FR 42586 [File No. SR-OCC-93-13] (order approving OCC/KCC non-proprietary XM program).

⁶ 7 U.S.C. § 6d(2) (1988) and 17 CFR 1.20 (1991).

⁷ 15 U.S.C. §§ 78aaa-78lll (1988).

⁸ 11 U.S.C. §§ 741-752 (1988).

⁹ 11 U.S.C. §§ 761-766 (1988).

¹⁰ 17 CFR 190.01-190.10.

² Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 11, 1995, and October 10, 1995).

³ The CFTC's distributional requirements are set forth in Appendix B to Part 190 of the CFTC's General Regulations. 17 CFR 190. The CFTC's distributional framework was adopted in April 1994. 59 FR 17468 (April 13, 1994).

⁴ The Commission has modified the text of the summaries prepared by OCC.

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).