

## 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 that 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), (B), and (C) below, of the most significant aspects of such statements.<sup>5</sup>

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

Currently, GSCC's rules provide that if a loss resulting from a defaulting member relates to brokered transactions, ten percent of the loss is allocated collectively to IDBs regardless of their activity with the defaulting member. The proposed rule change as initially filed proposed amending GSCC's rules to eliminate the collective loss allocation and instead to allocate fifty percent of the loss from either a member or nonmember brokered transactions to Category 1 and Category 2 IDBs based on the level of their trading activity with the defaulting member.<sup>6</sup> However, pursuant to GSCC's rules, only Category 2 IDBs may enter into nonmember brokered transactions. Amendment No. 2 clarifies that the loss from a nonmember brokered transaction will be allocated among Category 2 IDBs pro rata based on the level of their trading activity with the defaulting member.

The purpose of amendment No. 3 to the proposed rule change is to require that at least thirty percent of a Category 1 IDB's clearing fund deposit consist of cash or eligible netting securities and that no more than seventy percent of the clearing fund deposit be met by pledging eligible letters of credit. Unlike other participants which are required to deposit ten percent of their clearing fund requirement in cash, Category 1 IDBs need only deposit \$100,000 in cash which is two percent of their proposed fixed \$5,000,000 deposit requirement. As originally filed, GSCC's proposed rule change permitted Category 1 IDBs to meet the non-cash component of their

required clearing fund deposit (*i.e.*, \$4.9 million) all or in part by pledging eligible letters of credit to GSCC. However, in amendment No. 3 GSCC states that for Category 1 IDBs, the non-cash component of their clearing fund requirement should be consistent with the composition requirements of other netting members, and therefore, no more than seventy percent of a Category 1 IDB's required clearing fund deposit may be met by pledging eligible letters of credit. At least thirty percent of their clearing fund requirement must consist of cash or eligible netting securities.

Both Category 1 IDBs, because of their increased volumes due to the implementation and expansion of repo brokering services, and Category 2 IDBs, because they may enter trades with nonmembers, present increased risk to GSCC and its other members. Therefore, GSCC believes that IDBs should be subject to the same clearing fund deposit composition requirements as other netting members, with the exception of the lower cash requirement for Category 1 IDBs.

GSCC believes the proposed rule change, as amended, is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder because the proposal should facilitate the prompt and accurate clearance and settlement of securities transactions by IDBs in GSCC's netting system.

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

GSCC does not believe that the proposed rule change as amended will impact 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

Written comments were not solicited with respect to the proposed rule change as amended, and none have been 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 GSCC 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 GSCC. All submissions should refer to the file number SR-GSCC-96-07 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37656; File No. SR-GSCC-96-06]

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Permitting All Netting Members To Receive Credit Forward Mark Adjustment Payments

September 6, 1996.

On June 15, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-96-06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> to allow all netting members to receive credit forward mark adjustment payments. Notice of the

<sup>5</sup> The Commission has modified the text of the summaries submitted by GSCC.

<sup>6</sup> A member brokered transaction is a brokered transaction where both the buy-side and sell-side counterparties to the IDB are netting members. A nonmember brokered transaction is a brokered transaction where either the buy-side or sell-side counterparty to the IDB is a nonmember.

<sup>7</sup> 15 U.S.C. 78q-1 (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

proposal was published in the Federal Register on July 29, 1996.<sup>2</sup> One comment letter was received.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

The rule change amends GSCC Rule 13 to permit all netting members to receive credit forward mark adjustment payments from GSCC pursuant to GSCC's funds-only settlement process.<sup>4</sup> Currently, GSCC collects forward mark adjustment payments from those netting members with a negative forward mark adjustment on a particular business day with regard to a particular CUSIP and remits forward mark adjustment payments to eligible category one dealer and bank netting members that are in a positive forward mark position with regard to such CUSIP. Each member's forward mark adjustment is recalculated each day with any debit or credit from the previous day reversed, and a new forward mark adjustment payment obligation is established. Only cash can be used to fund forward mark adjustment payments because GSCC passes through credit forward mark adjustment payments.

Section 1 of GSCC Rule 13 previously provided that only category one dealer netting members and bank netting members that have been members for at least sixty calendar days are entitled to receive credit forward mark adjustment payments. This limitation was put into effect in connection with the implementation of GSCC's netting service for repurchase transactions ("repo").<sup>5</sup> Under the rule change, all

<sup>2</sup> Securities Exchange Act Release No. 37461 (July 19, 1996), 61 FR 39492.

<sup>3</sup> Letter from Santo C. Maggio, President, Refco Securities, Inc., to Jonathan Katz, Secretary, Commission (July 12, 1996).

<sup>4</sup> The forward mark adjustment is a daily mark-to-market process for all net settlement positions designed to account for GSCC's ongoing exposure on each forward net settlement position. Because GSCC novates and guarantees forward settling trades prior to the settlement of such trades, GSCC incurs multi-day settlement exposure on such trades. To mitigate this risk, GSCC collects from each netting member on a daily basis an amount equivalent to the difference between the contract value of the netting member's positions and GSCC's system value based on current market values ("collateral mark"). GSCC also collects a financing mark based on the rate for all forward repurchase and reverse repurchase transactions ("repos") which is equal to the product of the market value of the repo, GSCC's system repo rate, and the repo term. A member's forward mark adjustment payment is the sum of all collateral marks and all financing marks.

<sup>5</sup> GSCC believed that limiting credit pass throughs in connection with the implementation of the netting service for repos was a prudent measure to ensure that the revised forward mark adjustment process did not pose undue risk to GSCC. For a

netting members are eligible to receive credit forward mark adjustment payments, and the sixty day waiting period has been eliminated.

Although all netting members are now eligible to receive credit forward mark adjustment payments, special provisions apply to category two dealer netting members and category two futures commission merchant ("FCM") netting members. Under GSCC's current rules, category two dealer netting members and category two FCM netting members are required to provide GSCC with additional clearing fund margin protection<sup>6</sup> in part because of the more modest minimum net worth requirements for these types of netting members.<sup>7</sup>

Accordingly, the rule change provides that each category two dealer netting member and category two FCM netting member now have an option as to whether it wishes to (i) receive credit forward mark adjustment payments and have the haircut applicable to its clearing fund deposit raised from the current levels to levels that are based on historical two day volatility designed to cover ninety-five percent of price movements, as determined by using the greater of the price movements from the last quarter or the last year, or (ii) not receive credit forward mark adjustment payments and retain its current clearing fund margin level.

### II. Comment Letters

One comment letter was received with regard to the proposed rule change from Refco Securities, Inc. ("Refco").<sup>8</sup> In its letter supporting the proposed rule change, Refco stated that it is an active participant in the government securities market and wants to participate in the repo netting process in the same manner as other dealers but as a category two dealer netting member it is unable to do so because it is not eligible to receive

complete description of GSCC's repo netting system, refer to Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 49649 [File No. SR-GSCC-95-02] (order approving proposed rule change implementing GSCC's netting services for non-same-day-settling aspects of next-day and term repo transactions).

<sup>6</sup> Category two dealer and FCM netting members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-nine percent of historical one day price volatility. All other GSCC members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-five percent of historical one day price volatility.

<sup>7</sup> For example, category two dealer netting members and FCM netting members must maintain a net worth of \$25 million, but category one banks and category one dealers and FCMs must maintain a minimum net worth of \$100 million and \$50 million, respectively.

<sup>8</sup> *Supra* note 3.

credit forward mark adjustment payments.

### III. Discussion

Section 17A(b)(3)(F)<sup>9</sup> of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with GSCC's obligations under Section 17A of the Act.

The rule change should permit GSCC to deliver credit forward mark adjustment payments to all netting members while still assuring the safeguarding of securities and funds within its custody or control. GSCC has gained some experience with the new forward mark adjustment process since the implementation of the process in November 1995 and is now better able to assess its liquidity needs. Furthermore, GSCC will only permit category two dealer and FCM netting members to receive credit forward mark adjustment payments if such netting members maintain additional clearing fund margin. If any such netting member elects to receive credit forward mark adjustment payments, the increase in the netting member's margin factors should help ensure that GSCC has sufficient collateral if such netting member defaults on its settlement obligations.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular 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-96-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1996).