

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 in Washington, DC. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR-GSCC-00-08 and should be submitted by February 1, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43794; File No. SR-GSCC-00-10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Submission of Repo Collateral Substitutions

January 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 11, 2000, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on November 20, 2000, amended the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends GSCC's rules relating to repo collateral substitutions processes and the fees associated with such substitutions.

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 section A, B, and C below, of the most significant aspects of these statements.²

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

Support of repo collateral substitutions has been an integral part of GSCC's array of services for blind-brokered repo markets since its introduction in 1996. Over the past two years, however, GSCC members have at times engaged in certain practices in

connection with the repo collateral substitution process that present risk to GSCC and its members by placing an inordinate level of stress on the operational infrastructures of GSCC and its inter-dealer broker members, and by causing undue fail-financing expenses for other members. GSCC desires to prohibit these practices and to impose an additional risk management measure on the repo substitution process.

1. Late Notifications

Over the past two years, there have been an increasing number of occasions where GSCC experienced dramatic increases in the number of substitutions requests.³ In addition, many members have not followed The Bond Market Association's ("TBMA") published deadlines for substitution requests applicable to dealers and brokers which has resulted in GSCC receiving the substitution requests late in the day.⁴ Specifically, some dealers are not complying with the substitution deadlines and some brokers, in turn, are not able to submit the requisite notifications to GSCC in a timely manner. The combination of the increased volume and the late submissions has, on certain occasions, placed an inordinate amount of stress on both GSCC's and the brokers' infrastructures. In addition, because "new" collateral is often delivered at or too near the close of the securities Fedwire to be redelivered by GSCC, GSCC is forced in many instances to obtain overnight financing, the cost of which is passed on to the netting members.⁵

GSCC has requested a number of times over the past two years that industry participants voluntarily comply with TBMA deadlines for

³ These spikes in substitution requests occur most often at month-end and quarter-end.

⁴ Update 98-3 of the TBMA's Repo Trading Practices Guidelines (August 1996) (hereinafter "TBMA's Guidelines") states:

Unless the parties to a trade otherwise agree, in all trades executed through brokers, dealers should notify the brokers of any substitution of collateral *no later than 9:55 a.m. (New York Time)*. In turn the broker should notify the counterparty dealer of the substitution by *10:00 a.m. (New York time)*. Substitution notifications received after the relevant deadline will be accommodated on a "best efforts" basis. Additionally, dealers should provide brokers with the description of the substituted collateral by *11:00 a.m. (New York time)*. (Emphasis in original.)

⁵ GSCC's Rule 12 provides that the costs or expenses incurred by GSCC in obtaining financing under such circumstances are generally allocated pro rata among all netting members based upon usage of GSCC's services. Rule 12 also provide that if the GSCC Board determines that a netting member has on a frequent basis and without good cause caused GSCC to incur financing costs, the member can become obligated to pay for or reimburse GSCC for the entire amount of the financing costs.

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by GSCC.

¹⁰ 17 CFR 200.30-3(a)(12).

submitting the requisite notifications for repo collateral substitution requests and that GSCC receive the notifications by or shortly after the 11:00 a.m. TBMA deadline by which the broker should have all requisite substitution information. There has not been sufficient compliance with these requests. Therefore, GSCC believes it is necessary to amend its rules to impose deadlines for the submission of the requisite notifications to GSCC.

Under the proposed rule change, GSCC will amend Rule 18 ("Special Provisions for Repo Transaction"), its Schedule of Timeframes, and its Fee Schedule to initially impose: (i) a deadline of noon (12 p.m.) after which the dealer member that initiated the substitution will be subject to a late fee of \$500 per substitution notification and (ii) an absolute deadline of 12:30 p.m. after which GSCC will reject the substitution notification.⁶ GSCC will extend these submission deadlines by one hour on those days that the TBMA announces in advance will be extraordinary volume days. All required information must be included in the notification in order for it to be deemed to be received by the imposed deadlines. Finally, substitution notifications or amendments thereto will no longer be accepted verbally but instead will only be accepted through the use of GSCC's designated messaging utility that is available to all repo netting participants.

2. Improper Use of Delivery Identification Codes

The other inappropriate practice in which members have been engaging with respect to the repo collateral substitution process involves the manner in which some members have been identifying the securities being delivered to GSCC. There are two codes that can be used to identify a securities delivery over the Fedwire: (i) A delivery code and (ii) a reversal code. The delivery code indicates to the receiver of the securities that the securities are being delivered to satisfy a "pending receive" obligation. The reversal code indicates that a delivery of securities has been rejected and is being sent back to the initiating party. (The industry terminology for this situation is "DK," that is the receiver of the securities "does not know" transaction.)

⁶ The 12:00 p.m. deadline is one hour after which the broker should have received all of the requisite substitution information under TBMA guidelines. In the future, GSCC may change these deadlines depending on market practice. GSCC will notify its members of any changes in these timeframes in advance by an important notice.

There have been occasions where GSCC has received a securities delivery in relation to a repo collateral substitution before receiving the requisite substitution notification because members have been submitting the notifications to GSCC late in the day. Without the requisite notification, GSCC "does not know" the transaction for which the securities are being delivered and thus is forced to DK the securities. These securities eventually are redelivered to GSCC. However, many members have been redelivering the securities to GSCC using a reversal code instead of a delivery code.⁷

When GSCC receives a repo collateral substitution notification, it establishes a "pending receive" instruction on the clearing bank's system. The only automated way in which that "pending receive" may be satisfied is by securities identified by a delivery code. If the securities are sent using a reversal code, they will not automatically match the obligation that they are supposed to satisfy. A securities delivery identified by a reversal code appears from GSCC's point of view to be a DK of an original delivery (sent by GSCC) causing GSCC staff to have to research the reason for the DK. In instances where this process occurs near the close of the securities Fedwire, GSCC may be required to obtain overnight financing, the cost of which is usually borne by all members.

The proposed rules change revises Rule 12 ("Securities Settlement") to make clear that the use of the reversal codes in the situation described above is improper and that members may not use a reversal code for a securities delivery obligation to GSCC unless the member has obtained GSCC's prior consent. Moreover, the proposed rule changes provide that, if GSCC is required to obtain overnight financing with respect to securities delivered in violation of this new rule, the entire amount of the financing cost will be borne by the offender. It should be noted that a member may continue to use a reversal code under circumstances where it wishes to indicate to GSCC (with GSCC as the initiating party of a securities delivery to the member) that it "does not know" the transaction. For example, if GSCC sends a securities delivery to a member in error, it is appropriate for the member to DK such delivery.

3. Prohibition of Substitutions Outside of GSCC

For risk management reasons, it is important to require that repo collateral substitutions with respect to repos that

⁷ These members are, in effect, "DK-ing" a GSCC "DK."

are in GSCC's net be made through GSCC. GSCC marks-to-market and establishes settlement obligations based on the transaction information underlying a repo transaction as it knows it. If a repo substitution occurs outside of GSCC, these calculations, which are vital for risk management purposes, will be incorrect. Therefore, GSCC proposes to change Rule 18 to add a requirement that all collateral substitutions with regard to repos that are on GSCC's books pending settlement must be made through GSCC.

4. Definition of a "Repo Broker"

In order to accommodate proposed changes to Section 4 of Rule 18, which will permit a repo broker to submit a repo collateral substitution, GSCC is proposing to add the definition of repo broker to its definitions under Rule 1. A repo broker will be defined as an inter-dealer broker or a division or other separate operating unit within a dealer netting member that operates in the same manner as a broker and that participates in GSCC's repo netting service pursuant to the same requirements imposed under Rule 15 governing special provisions for certain netting members and Rule 19 governing special provisions for brokered repo transactions.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to GSCC and in particular with section 17A(b)(3)(F) of the Act because it will prohibit practices that are potentially harmful to GSCC's risk management process and operational infrastructure, and will result in undue financing costs for members.

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

GSCC does not believe that the proposed rule change will have an 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 relating to the proposed rule change have not yet been solicited or received. 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at GSCC's principle office. All submissions should refer to File No. SR-GSCC-00-10 and should be submitted by February 1, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-898 Filed 1-10-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43795; File No. SR-ISE-00-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to Marking Orders

January 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 28, 2000, the International Securities Exchange LLC ("Exchange" or "ISE") 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 the Exchange. 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 Exchange proposes to amend ISE Rule 712 to provide that Members mark orders appropriately. The text of the proposed rule change is as follows. New text is italicized and deleted text is bracketed.

Rule 712. Submission of Orders and [for] Clearance of Transactions

(a) *Order Identification. When entering orders on the Exchange, each Member shall submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and match orders and quotations pursuant to Rule 713 and report resulting transactions to the Clearing Corporation.*

[(a)](b) All transactions made on the Exchange shall be submitted for clearance to the Clearing Corporation, and all such transactions shall be subject to the rules of the Clearing Corporation. Every Clearing Member shall be responsible for the clearance of the Exchange Transactions of such Clearing Member and of each Member who gives up such Clearing Member's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Member to such Member, which authorization must be submitted to the Exchange.

[(b)](c) On each business day at or prior to such time as may be prescribed by the Clearing Corporation, the Exchange shall furnish the Clearing Corporation a report of each Clearing Member's matched trades.

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

In its filing with the Commission, the ISE 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 Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

When entering an order on the Exchange, certain information, such as account type (e.g., Public Customer or Firm Proprietary), must be indicated for the System to execute orders as specified in the Exchange's rules. Rather than relying upon ISE Rule 400 (Just and Equitable Principles of Trade) as the authority for the Exchange to conduct investigations and bring enforcement actions for misrepresenting trade information when entering orders, the Exchange proposes to adopt a rule specifying that Members are required to submit trade information to allow the Exchange to properly prioritize and match orders and quotations pursuant to the ISE Rule 713 (Priority of Quotes and Orders).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).