

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

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).

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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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.

Under the Plan, MBSCC and DTCC will take the following initial actions.

(1) *Conduct an Exchange Offer.* DTCC will form (i) a company that will engage in a merger with MBSCC ("Operating Company"), (ii) a company that will own all of the capital stock of Operating Company ("Holding Company"), and (iii) an acquisition subsidiary ("Acquisition Company") that will make an exchange offer ("Exchange Offer") for Holding Company shares, as described below, and hold all shares of Holding Company received pursuant to the Exchange Offer. Under the terms of the Exchange Offer, Operating Company will merge with MBSCC in a transaction ("Merger") in which (i) the MBSCC shareholders will receive an equal number and class of shares of Holding Company stock for their shares of MBSCC Class A and Class B common stock; (ii) all of the shares of MBSCC will be canceled; and (iii) all the shares of Holding Company stock owned by DTCC will be canceled. MBSCC shareholders will have the opportunity to vote against the Merger and to exercise their appraisal rights. MBSCC will be the surviving corporation of the Merger.

The Acquisition Company will conduct the Exchange Offer whereby Holding Company's shareholders *i.e.*, former MBSCC Shareholders will have the opportunity to exchange their shares of Holding Company common stock for shares of DTCC common stock on the basis of the adjusted book value of the shares of MBSCC common stock that they exchanged for their shares of Holding Company common stock and the adjusted book value of the DTCC common shares.⁶ Following a successful Exchange Offer, (i) Acquisition Company will be the majority or sole (depending on whether all Holding Company shareholders agree to tender their shares) shareholder of Holding Company; (ii) Holding Company will be the sole shareholder of MBSCC; and (iii) any non-tendering Holding Company shareholders (former MBSCC Shareholders) will be minority shareholders of Holding Company.

⁶ Adjusted book value of MBSCC shares will equal book value less the retained earnings of MBSCC at the time of (or as of the end of the last full preceding calendar month) the integration of MBSCC with DTCC. Such retained earnings will thereafter be used only to support the business of MBSCC. Adjusted book value of the DTCC common shares will equal book value less the smaller of (i) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of the integration of NSCC and DTCC 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 preceding calendar month) the integration of MBSCC with DTCC.

As a matter of DTCC policy, MBSCC's retained earnings at the time of (or as of the end of the last full preceding calendar month) the integration of MBSCC with DTCC will be dedicated to supporting MBSCC'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 MBSCC pursuant to service contracts.

(2) *Change MBSCC's Shareholder Agreement.* MBSCC's Shareholder Agreement will be terminated.

(3) *Select New MBSCC's Directors.* DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of MBSCC the persons elected by the shareholders of DTCC to be the directors of DTCC.⁷ As a subsidiary of the Holding Company (and indirect subsidiary of Acquisition Company), MBSCC will continue to operate essentially as it does currently, 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 allowing for the fair representation of the members of each of the Operating Subsidiaries in the governance of DTCC. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of MBSCC, GSCC, and EMCC, which become shareholders of DTCC as a result of the Plan, will elect the persons to serve on the Board of Directors of DTCC. 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 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.

⁷ Given the MBSCC's initial post-integration board would be elected upon the effectiveness of the integration plan, MBSCC 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, MBSCC will call an annual meeting for the election of directors pursuant to its current procedures.

(4) *Form New Committees.* DTCC will create a Fixed Income Operations and Planning Committee that will include representatives of members of each of MBSCC and GSCC. The Fixed Income Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the fixed income products and services of the Operating Subsidiaries and will have certain other responsibilities to be assigned to the Committee.

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

(5) *Change DTCC's and MBSCC's Governing Documents.* DTCC's Certificate of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of MBSCC, GSCC, and EMCC, which become shareholders of DTCC as a result of the Plan, the rights that the shareholders of DTCC currently have and, in particular, to satisfy the Fair Representation Requirement of section 17A of the Exchange Act.⁸ In this regard, the Basic Documents will provide for the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including MBSCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the 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.
- As discussed above, 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 the DTCC Board.
- The owners of DTCC common stock will be able to exercise cumulative voting in the election of directors of DTCC.

⁸ 15 U.S.C. 78q-1(b)(3)(C).

• With respect to the nomination process, each year the DTCC Board will appoint a nominating committee that may include both members and nonmembers 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.

MBSCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in MBSCC's corporate governance structure. MBSCC's Certificate of Incorporation will be amended and restated in accordance with section 245 of the Delaware General Corporation Law ("section 245") as follows:

- The amended and restated Certificate of Incorporation shall contain a preamble and recitals pursuant to section 245.
- The fourth article of the Certificate of Incorporation shall be amended to eliminate all references to Class A and Class B Common Stock, including the right of holders of Class B Common Stock to elect one MBSCC director. References to Class B Common Stock, including the right of holders of Class B Common Stock to elect a director, will no longer be necessary as MBSCC will be wholly-owned by Holding Company. All of MBSCC's directors will be elected by DTCC through its wholly-owned subsidiary, Acquisition Company, which will be the majority or sole (depending on how many Holding Company shareholders, *i.e.*, former MBSCC shareholders, tender their Holding Company shares in the Exchange Offer) shareholders, of Holding Company. The former holders of MBSCC Class B Common Stock, as well as the former holders of Class A Common Stock, that participate in the Exchange Offer will have the opportunity to participate in the governance of DTCC through the election of DTCC's directors.
- The fifth article of the Certificate of Incorporation shall be stricken as permitted by section 245 of the

Delaware Corporation Law and the sixth, seventh, ninth and tenth articles of the Certificate of Incorporation shall be deleted as unnecessary. The remaining articles shall be renumbered accordingly.

- The eighth article (as revised, the fifth article) of the Certificate of Incorporation shall be modified to include a reference to a testator or intestate of a person that is being indemnified.

After the proposed integration, Acquisition Company, which is wholly owned by DTCC, will be the majority or sole (depending on whether all Holding Company shareholders, *i.e.* former MBSCC Shareholders, tender their shares during the Exchange Offer) shareholder of Holding Company, which, in turn, will be the sole shareholder of MBSCC. In order to promote efficiency in the governance of Operating Subsidiaries after the Plan is completed, the current By-Laws of MBSCC will be replaced with a set of By-Laws that generally conform to NSCC's By-Laws.⁹

II. Discussion

The Commission finds that MBSCC'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)¹⁰ 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

⁹The modifications include (i) making all references gender-neutral, (ii) changing the references to the State of New York to the State of Delaware (except the reference in section 5.2), (iii) providing in section 1.2 that a majority, rather than twenty-five percent, of all outstanding shares may make a demand to call a special meeting, (iv) providing for the ability to notify shareholders of shareholder meetings electronically in section 1.4 (v) deleting the provision addressing shareholder action by written consent because this is addressed under Delaware law, (vi) setting the number of directors in section 2.1 at a minimum of fifteen and maximum of twenty-five, rather than twenty-seven, (vii) providing in section 2.1 that the number of directors at any time shall be determined by the Board of Directors of MBSCC, (viii) providing in section 2.9 that directors of MBSCC that are also officers of GSCC or DTCC, rather than directors, officers, or employees of any MBSCC shareholders, may not serve on the Audit Committee, (ix) providing in section 3.1 that the officers of MBSCC will include those required by statute and may include a Chief Executive Officer, (x) eliminating the provision in section 3.3 that the President shall be the Chief Executive Officer, (xi) eliminating the provision in section 3.4 that Managing Directors shall upon request advise and assist the Chief Operating Officer, and (xii) providing in Article VIII that a majority of the holders of all outstanding shares, rather than all the holders of all outstanding shares, may amend the MBSCC By-Laws.

¹⁰ 15 U.S.C. 78q-1(b)(3)(C).

selection of its direction and administration of its affair. The Commission finds that MBSCC's proposal is consistent with this requirement because the integration plan should provide MBSCC members with a reasonable opportunity to acquire common stock in DTCC based on their use of MBSCC and should provide MBSCC members through their holding of DTCC stock with adequate and fair representation in the selection of MBSCC's directors and in the administration of MBSCC's affairs. Furthermore, MBSCC 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 MBSCC members.

MBSCC 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 MBSCC to begin its integration in accordance with the schedule for the integration of MBSCC, GSCC, and EMCC with DTCC. The Commission is approving the proposed rule change prior to the end of the comment period in order that MBSCC may begin its integration in accordance with the schedule for the integration of MBSCC, GSCC, 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-MBSCC-2001-01) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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¹¹ 17 CFR 200.30-3(a)(12).