

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47015; File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01]

Self-Regulatory Organizations; Government Securities Clearing Corporation and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Relating to the Merger of MBS Clearing Corporation Into the Government Securities Clearing Corporation to Form the Fixed Income Clearing Corporation

December 17, 2002.

I. Introduction

On October 7, 2002, the Government Securities Clearing Corporation ("GSCC") and MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-GSCC-2002-09 and SR-MBSCC-2002-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On October 31, 2002, and on November 5, 2002, GSCC and MBSCC amended the proposed rule changes. Notice of the proposals was published in the **Federal Register** on November 15, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

II. Description

GSCC and MBSCC became wholly-owned, indirect subsidiaries of The Depository Trust and Clearing Corporation ("DTCC") as a result of merger and exchange offer transactions that took place in late 2001 ("DTCC Integration").³ GSCC and MBSCC provide clearing and certain ancillary services for government securities and mortgage-backed securities, respectively. The clearing and other services for these different types of fixed-income products have many

common elements. The handling of such products by different clearing corporations hinders development of uniform standards for the fixed-income services industry. The combination of GSCC and MBSCC will lead to development of uniform standards for messaging, reporting, netting and settlement mechanisms, standardized cash and mark-to-market flows for fixed-income products. Moreover, combining GSCC and MBSCC will help the clearing corporations achieve important membership and risk management goals, such as building a consolidated risk management platform, optimizing cross-margining among various fixed-income products, and establishing uniform membership standards. Furthermore, redundant facilities, services, and operational aspects will be eliminated as a result of the merger thereby reducing the costs of processing transactions in fixed-income products over time.⁴

To effect the merger, MBSCC will be merged into GSCC under New York law. At the time of the merger, GSCC Acquisition Company LLC ("GSCC Parent"), the sole shareholder of GSCC, will pay MBSCC Holding Company, Inc. ("MBSCC Parent"), the sole shareholder of MBSCC, a nominal amount of money in consideration of MBSCC Parent canceling its shares of capital stock of MBSCC. After MBSCC Parent cancels its shares of capital stock of MBSCC, GSCC will be the surviving corporation of the merger and will be renamed FICC, and GSCC Parent will be the sole direct shareholder of FICC. The current Certificate of Incorporation and Bylaws of GSCC will be amended to be the Certificate of Incorporation and Bylaws of FICC. FICC will form the Government Securities Division as the vehicle for delivering the services now provided by GSCC to GSCC members. FICC will form the Mortgage-Backed Securities Division as the vehicle for delivering the services now provided by MBSCC to MBSCC participants, limited purpose participants, and EPN users of MBSCC.

The members and participants receiving services from the Divisions will retain their shareholdings in DTCC and their rights to be shareholders in DTCC that they received during the DTCC Integration. The structure implemented during the DTCC Integration to assure fair representation for, among others, the members of GSCC and participants of MBSCC will also remain in place. After the DTCC

shareholders that were members of GSCC begin receiving services from the Government Securities Division and after the DTCC shareholders that were participants of MBSCC begin receiving services from the Mortgage-Backed Securities Division, they will continue to elect persons to serve on the DTCC Board of Directors as they did prior to the creation of FICC. The individuals elected to serve on the DTCC Board will, in turn, be selected by DTCC to serve as directors of FICC just as those individuals previously were selected by DTCC to serve as directors of GSCC and MBSCC. On a periodic basis to be determined by DTCC pursuant to the DTCC shareholders agreement, DTCC common stock will be reallocated to the shareholders using the services of The Depository Trust Company ("DTC"), Emerging Markets Clearing Corporation ("EMCC"), National Securities Clearing Corporation ("NSCC"), and now the Divisions of FICC based upon their usage if those services. The members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division will continue to have the right but not the obligation to purchase some or all of the DTCC common stock to which they are entitled.

The charters of the two committees formed during the DTCC Integration, the DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee of DTCC, which includes representatives of members of GSCC and participants of MBSCC, and the GSCC/MBSCC Membership and Risk Management Committee, which is comprised of the representatives of members of GSCC and participants of MBSCC, will be amended to refer to members receiving services from the Government Securities Division and participants receiving services from the Mortgage-Backed Securities Division.

The DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee will be renamed the DTCC/DTC/FICC/NSCC Fixed Income Operations and Planning Committee. It will continue to advise the DTCC Board and management with respect to the services provided by and the fixed-income products processed by DTC, EMCC, NSCC, and FICC. The GSCC/MBSCC Membership and Risk Management Committee will be renamed the FICC Membership and Risk Management Committee. It will advise the Board of Directors of FICC with respect to membership, credit, and risk matters. Other functions may be assigned to the committees as they are today.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46790 (November 7, 2002), 67 FR 69277.

³ Securities Exchange Act Release Nos. 44988 (October 25, 2001), 66 FR 55222 [SR-MBSCC-2001-01] and 44989 (October 25, 2001), 66 FR 55220 [SR-GSCC-2001-11].

⁴ Operational aspects include such things as separate annual reports, regulatory reports, audits, financial statements, and regulatory examinations.

After the merger, FICC will satisfy the fair representation requirement of Section 17A of the Act⁵ by (i) continuing to give the members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division, the right to purchase shares of DTCC common stock on a basis that reflects their usage of the services of the Divisions, DTC, EMCC, and NSCC; (ii) continuing to allow members and participants receiving services from the Divisions to take part in the selection of individuals to be directors of DTCC (who will also be directors of FICC, DTC, EMCC, and NSCC) to ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of these companies; and (iii) utilizing the committee structure described above to ensure that the members and the participants receiving services from the Divisions will have a voice in the operations and affairs of the Divisions.

As a result of the merger, GSCC's Certificate of Incorporation and Bylaws will be amended to reflect the change of GSCC's name to FICC. The Rules of MBSCC will be adopted by FICC as the rules of the Mortgage-Backed Securities Division. The Rules of GSCC and MBSCC will be amended to reflect that (i) the Government Securities Division and the Mortgage-Backed Securities Division will be separate Divisions of FICC; (ii) neither Division of FICC will be liable for the obligations of the other Division; and (iii) the clearing fund and other assets of each Division will not be available to satisfy the obligations of the other Division.

III. Discussion

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions.⁶ The purpose of the proposed merger of MBSCC into GSCC to form FICC is to eliminate the inefficiencies and inconsistencies that result from operating two fixed-income clearing corporations as separate entities. Accordingly, the Commission finds that FICC will be organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions first by ensuring the continued availability to GSCC members and MBSCC participants of safe and efficient clearing services which were previously

provided by GSCC and MBSCC and second by providing a means whereby uniform standards and clearance and settlement practices for various types of fixed-income products can be developed and implemented.

In the DTCC Integration, the Commission found that GSCC and MBSCC satisfied the requirements of section 17A(b)(3)(C) of the Act.⁷ 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 directors and administration of its affairs.⁸ The merger of MBSCC into GSCC to create FICC will not affect the structure established by the DTCC Integration to assure fair representation of those who were GSCC members and MBSCC participants and are now Government Securities Division members and Mortgage-Backed Securities Division participants. Accordingly, the Commission finds that the proposed rule changes are also consistent with section 17A(b)(3)(C).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are 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 applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47011; File No. SR-NASD-2002-179]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify the Reserve Size Refresh Functional in Nasdaq's SuperMontage System

December 16, 2002.

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 December 16, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to modify the way shares are refreshed from reserve size into displayed Quotes/Orders in Nasdaq's SuperMontage system. New text is italicized.

* * * * *

4710. Participant Obligations in NNMS

- (a) No Change.
- (b) Non Directed Orders.
- (1) No Change.
- (2) Refresh Functionality.

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁷ *Supra* note 3.

⁸ 15 U.S.C. 78q-1(b)(3)(C).

⁹ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78q-1(b)(3)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(A).