

*D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*F. Terms of Access to Transaction Reports*

See Item I(A).

*G. Identification of Marketplace of Execution*

Not applicable.

*III. Solicitation of Comments*

The CTA has designated this proposal as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants which under Section 11Aa3-2(c)(3)(i) of the Act renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendments within sixty days of its filing and require refiling and approval of the amendments by Commission order pursuant to 11Aa3-2(c)(3)(iii), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

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. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39372; File No. SR-GSCC-97-07]

**Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Election of Directors**

November 28, 1997

On July 23, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on August 18, 1997, amended the proposed rule change (File No. SR-GSCC-97-07). Notice of the proposal was published in the **Federal Register** on September 22, 1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The proposed rule change modifies GSCC's Shareholder Agreement ("Agreement"),<sup>3</sup> By-laws, and Certificate of Incorporation relating to GSCC's procedures for election of directors and to restrictions currently placed on transfers of GSCC's securities. As described more fully below, the proposed rule change amends GSCC's procedures in four major categories: (a) nomination and election process for board members, (b) composition of the board, (c) restrictions on issuance and transfer of shares, and (d) miscellaneous.

**A. Nomination and Election Process for Board Members**

Similar to the process in place at NSCC and other clearing corporations, GSCC has a nominating committee that

will be responsible for nominating candidates for election as participant directors to the board.<sup>4</sup> NSCC will continue to nominate and to elect two directors to the board outside the nominating committee process. The board seat for a management representative and for the GSCC president also will remain outside the nominating committee process.

The nominating committee consists of five individuals, a majority of whom are representatives from active participants. With the exception of the initial nominating committee, an individual cannot serve on the nominating committee if he or she has served on the board or the nominating committee within the past year. The term of a nominating committee member is two years, and the terms of nominating committee members are staggered.<sup>5</sup>

With the exception of the first nominating committee, incoming nominating committee members will be designated by the board after consideration of the recommendations of current nominating committee members. The participant category is irrelevant for purposes of the selection of nominating committee members. However, as a general guideline, the individuals serving on the nominating committee will reflect GSCC's overall membership and potential membership base.

Participants will be provided an opportunity early in the nomination process to suggest one nominee for each open board seat. After consideration of the participants' suggestions, the nominating committee will then select its candidates. The nominating committee will nominate one nominee for each open participant director seat. Participants will then be notified of the nominating committee's slate of candidates for open board seats.

<sup>4</sup> The procedures governing the selection of the nominating committee are contained in Section 2.B of the Agreement, and the nomination procedures are contained in Section 2.C of the Agreement. The prior nomination process for participant directors was open to all members with every member being able to nominate any shareholder member, including itself. However, a member was restricted to submitting nominations only for its own correlative participant category (*i.e.*, broker participants nominated broker participant directors, clearing agent bank participants nominated clearing agent bank participant directors, and all other participants nominated dealer participant directors). The election process involved ballots being circulated to every member with such voting being similarly limited to one's own correlative participant category.

<sup>5</sup> Initially, one class with two individuals will be designated for a one year term, and another class with three individuals will be designated for a two year term. After these initial terms, both classes will serve two year terms. Therefore, subsequent nominating committees will have two staggered classes of members.

<sup>4</sup> 17 CFR 200.30-3(a)(27)

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

<sup>2</sup> Securities Exchange Act Release No. 39068 (September 12, 1997), 62 FR 49548.

<sup>3</sup> The Agreement was first executed in 1988 before GSCC had a set of rules in place. GSCC currently has forty-six shareholders, each of which is a party to the Agreement. The National Securities Clearing Corporation ("NSCC") is the largest shareholder, holding approximately eighteen percent of GSCC's shares.

After being notified of the nominating committee's selections, participants can nominate additional nominees with a petition signed by the lesser of seven participants or five percent of GSCC's participants. Each participant may only sign one petition for each open board seat.

If no nominating petitions have been filed by participants, the nominating committee will certify to the shareholders the participant directors selected by the nominating committee. Shareholders will then be bound to cast their votes supporting the nominating committee selections at the annual meeting.

However, if participants have filed one or more formal nominating petitions, GSCC will circulate ballots to all participants and will permit them to cast their votes to fill each open participant director seat in the contested participant category or categories. Active comparison only participants are entitled to one vote per open board seat. Active clearing agent bank participants are entitled to two votes per open seat. Active netting participants are entitled to two votes per open seat. In addition, each netting member will receive another two votes for approximately every ten million dollars of its clearing fund deposit up to an additional ten votes. Affiliated members will be considered one participant for purposes of determining voting entitlements. Cumulative voting rights have been eliminated.

Based upon the recommendation of the outgoing executive committee, the incoming board will designate the chairman of the board.<sup>6</sup> The chairman will be elected for a one year term with no overall term limit other than the six year term limit applicable to all participant directors.

#### *B. Composition of the Board*

The proposal removes the specific board composition requirements from the Agreement so that the Agreement outlines only board parameters such as a maximum number of board seats and a minimum required number of categories of directors that will be represented.<sup>7</sup> Pursuant to the By-laws, the board is empowered to make changes within the Agreement's broad parameters, including changing the size or composition requirements of the

board in order to reflect membership demographics and other criteria.<sup>8</sup>

The current board composition has been recategorized as one management director, one at-large director, two NSCC directors, six general user participant directors, three broker participant directors, and two clearing agent bank directors.<sup>9</sup> Many of the related definitions of the participant categories have been expanded. The Agreement's definition of "broker" is broadened to include any entity regularly engaged in the business of effecting transactions in any securities eligible for processing by GSCC on behalf of participants.<sup>10</sup> "Clearing agent bank" is more broadly defined essentially to mean any commercial bank member of the Federal Reserve System that provides clearing services with respect to GSCC eligible securities on behalf of others for at least ten percent of GSCC's participants and that provides those services using its own Federal Reserve account.<sup>11</sup> The terms "general user participant" and "general user participant director" are used instead of "dealer participant" and "dealer participant director."<sup>12</sup> The definition of "general user participant" is essentially any participant that is not a broker or clearing agent bank, including futures commission merchants and registered investment companies.

Finally, GSCC directors are currently limited to serving two consecutive three year terms on the board. Under the revisions, the current term limits are retained for all but the vice chairman and management director, who will not have term limits. Furthermore, the Agreement specifies that there must be a one year absence from the board before a former director is eligible for a new overall six year term limit. The three staggered classes of directors are retained. The By-laws specify the categories of directors that compose each of the three classes.

<sup>8</sup> Before changing the number of directors, GSCC must file a proposed rule change with the Commission.

<sup>9</sup> Prior to the amendment, the Agreement provided for twelve participant directors consisting of six dealer participant directors, three broker participant directors, and three clearing agent bank participant directors.

<sup>10</sup> "Broker" was previously defined as an entity regularly engaged in the business of effecting transactions specifically in treasury securities and specifically for the account of primary dealers and aspiring primary dealers.

<sup>11</sup> "Clearing agent bank" was defined as any clearing bank regularly used by brokers, primary dealers, and aspiring primary dealers for the clearance and settlement of transactions in treasury securities.

<sup>12</sup> "Dealer participant" was defined as a primary dealer or an aspiring primary dealer that is a participant. All references to primary and aspiring dealers have been removed from the Agreement.

#### *C. Restrictions on Issuance and Transfer of GSCC Shares*

GSCC is removing the price restrictions on its shares, which currently require that both Class A and Class B shares generally must be issued, sold, or transferred at a price of \$500 per share. However, under the revisions GSCC generally will not be able to sell shares at less than current book value.

Pursuant to the revisions, GSCC may issue Class A shares to an existing Class A shareholder, participant, or affiliate of a participant rather than only to participants not already holding Class A shares.<sup>13</sup> GSCC's authority to issue new Class B shares is removed from the Agreement.<sup>14</sup>

Class A shareholders may now sell Class A shares to any existing Class A shareholder, participant, or affiliate of a participant in lots of 300 shares.<sup>15</sup> However, no shareholder other than NSCC may own more than five percent of Class A shares unless such shares are held as a result of acquisition, merger, or a comparable event. Similarly, shareholders may sell Class B shares to any existing shareholder, participant, or affiliate of a participant in lots of 200 shares.

The proposed rule change extends GSCC's right of first refusal to any sale or transfer of shares by any shareholder.<sup>16</sup> GSCC may purchase such shares at the lesser of the agreed price or the current book value. GSCC may resell such securities for a price at least equal to the book value unless the board approves a lower price.

GSCC has the right to repurchase Class A shares from participant shareholders provided that each participant shareholder is required to sell to GSCC the same percentage of Class A shares and NSCC continues to hold twenty percent of GSCC's Class A shares unless NSCC agrees otherwise. Pursuant to the proposal, GSCC may offer to repurchase shares at any price determined by the board or may require that the shares be sold to it at current book value.

<sup>13</sup> If GSCC issues additional Class A shares, NSCC has the right to request that enough additional Class A shares be issued to it in order for NSCC to retain its twenty percent holdings in GSCC.

<sup>14</sup> The board recently stated its intention to repurchase the existing Class B shares when GSCC is determined to be adequately capitalized, which is expected to occur by year end 1997.

<sup>15</sup> Previously, the Agreement contained restrictions on transfers of Class A shares by participant shareholders including a requirement that the Class A shareholder must transfer all of its Class A shares and that the transfer must be to a single participant not already holding Class A shares.

<sup>16</sup> Prior to this proposed rule change, GSCC had a right of first refusal only with respect to NSCC's sale of its Class A shares.

<sup>6</sup> Prior to the amendment, there was no provision in the Agreement for selecting the chairman of the board.

<sup>7</sup> Section 2.A of the Agreement.

The revisions authorize GSCC to issue shares in response to an extraordinary corporate action (e.g., a joint business venture). Pursuant to such an issuance, GSCC may exchange or transfer such shares for cash in any amount or for any noncash consideration.

If a shareholder ceases to be a GSCC participant, GSCC may mandate the sale to itself of shares of such a shareholder at book value.<sup>17</sup> However, the proposal also authorizes GSCC to offer to repurchase shares for any price determined by the board under such circumstances.

#### D. Miscellaneous Amendments

The proposal deletes loss allocation provisions in the Agreement that are redundant with the loss allocation provisions set forth in GSCC's rules. All timing references and procedures specific to the period between 1988 and 1991 contained in the Agreement are removed. In addition, provisions naming a specific individual to hold one NSCC director seat and another specific individual to act as the management director for purposes of the 1988 annual meeting are removed.

The supermajority voting requirements<sup>18</sup> with respect to future amendments of the Agreement are removed. However, GSCC retains the requirement that an affirmative vote of at least eighty percent of the entire board is required to change its business from that of a registered clearing agency including any change that would put GSCC in the business of being a broker or of performing brokered transactions. Moreover, for the protection of its shareholders and members, any change of business that puts GSCC in competition with clearing agent banks is subject to a veto by a unanimous vote of all the clearing agent bank directors and one other participant director.

#### II. Discussion

Section 17A(b)(3)(C)<sup>19</sup> of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. In the release announcing standards for the registration of clearing agencies ("Standards Release"), the

Division of Market Regulation ("Division") stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.<sup>20</sup> The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that GSCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in GSCC's election process. The board, which should be responsive to participant concerns, will designate the members of the nominating committee. GSCC participants will have the opportunity both informally and formally to nominate candidates for board seats. If there is a contested election, GSCC participants will have the opportunity to vote for participant directors. Therefore, the Commission believes that GSCC's procedures should provide fair representation to its members.

The Commission also believes that the changes to the composition of the board will provide enhanced fair representation. Several classes of participants that did not fit within the eligible categories of participant directors are now represented by the general user participant category. Thus, the Commission believes that GSCC's proposal is consistent with its obligations to assure the fair representation of participants.

The Commission finds that the removal of certain restrictions on the issuance and transfer of GSCC shares may assist GSCC in operating efficiently as a clearing agency. By exercising its right of first refusal, GSCC will be able to ensure that ownership of GSCC is limited to industry participants. Thus, GSCC's primary focus will continue to be on the clearance and settlement of securities. Also, GSCC may be better able to respond quickly to new business ventures by having the ability to issue shares in connection with new operations.

Finally, the Commission finds that the remaining miscellaneous amendments to the Agreement, such as the deletion of the loss allocation provision, the removal of obsolete references, and the removal of the supermajority voting

requirements, provide for a more flexible and efficient operation of GSCC and, therefore, are consistent with the requirements of the Act. For example, by eliminating supermajority voting requirements, GSCC will be able to make necessary changes in its operations on an expedited basis.

#### 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-97-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39378; File No. SR-MSRB-97-04]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Its Arbitration Code

December 1, 1997.

#### I. Introduction

On May 22, 1997, the Municipal Securities Rulemaking Board, Inc. ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule G-35, the Board's Arbitration Code. The proposed rule change would create two new sections: Section 37 would state that the Board will not accept any new arbitration claims filed on or after January 1, 1998; and Section 38 would provide that, as of January 1, 1998, every bank dealer (as defined in Rule D-8) shall be subject to

<sup>17</sup> Previously, GSCC had the discretionary right to repurchase its shares provided that GSCC repurchases all of the shares for \$500 per share.

<sup>18</sup> Prior to the proposed rule change, the Agreement set forth a number of supermajority board voting requirements that had to be met in order to make certain changes to the Agreement, including classification of directors, procedures for electing and replacing directors, provisions related to loss allocation, and procedures and requirements for amending the Agreement.

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>20</sup> Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.