

GSCC Board, which will set the basic policy direction for GSCC. The second tier will consist of committees of or established by the GSCC Board and committees of or established by the DTCC Board.⁵ The third tier will be GSCC management, which will oversee the daily routine operations of GSCC. The changes to GSCC's rules will reassign various management responsibilities to the GSCC Board, the new committees, or GSCC management in light of the revised management structure summarized above.

II. Discussion

The Commission finds that the 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)(A)⁶ of the Act, which requires, among other things, that a clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because GSCC's new governance structure should help ensure that GSCC's operations will continue to be conducted in an efficient and orderly manner once it is integrated into the DTCC organization.

The Commission has previously found that GSCC's integration plan satisfies the requirement of section 17A(b)(3)(C)⁷ that GSCC assure the fair representation of its members in the selection of its directors and in the administration of its affairs.⁸ The Commission finds that this proposal is also consistent with the fair representation requirement because the integration plan has been refined so that the Board committees primarily responsible for GSCC's operations are now also joint committees of the GSCC Board.

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 implement changes to its governance structure in an efficient, orderly, and expeditious manner once its integrated into the DTCC organization.

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-2001-13) be, and hereby is, 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. 34-45358; File No. SR-MBSCC-2001-04]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Liability of Affiliated Entities

January 29, 2002.

On October 11, 2001, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") pursuant section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change (File NO. MBSCC-2001-04). Notice of the proposal was published in the **Federal Register** on December 20, 2001.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change addresses liability issues that may arise after the completion of integration of MBSCC, the Government Securities Clearing Corporation ("GSCC"), and the Emerging Markets Clearing Corporation

("EMCC") with The Depository Trust and Clearing Corporation ("DTCC").³ For purposes of this notice, MBSCC, GSCC, EMCC, DTCC, The Depository Trust Company ("DTC"), and National Securities Clearing Corporation ("NSCC")⁴ are collectively referred to as the "Synergy Companies."⁵

An important aspect of the integration plan is to insulate MBSCC, its members, and its clearing fund from the risks and obligations that may arise from the activities of the other Synergy Companies.⁶ The rule change will add a new Rule 15 to Section V of MBSCC's Rules and a new Rule 14 to Article X of MBSCC's EPN Rule that provides that notwithstanding any affiliation between MBSCC and any other entity, including any clearing agency, except as otherwise provided by written agreement between MBSCC and such other entity, (1) MBSCC shall not be liable for any obligations of such other entity and the clearing fund or other assets of MBSCC shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of MBSCC and any assets of such other entity shall not be available to MBSCC.

II. Discussion

Section 17A(b)(3)(F) of the Act⁷ requires that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. The

³ Securities Exchange Act Release Nos. 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001) (order approving integration of MBSCC), 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) (order approving integration of GSCC), and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001) (order approving integration of EMCC).

⁴ DTC and NSCC are wholly-owned subsidiaries of DTCC.

⁵ After the completion of the integration, MBSCC, GSCC, and EMCC shall each be a wholly-owned subsidiary of DTCC, and a single group of individuals shall serve as directors of each of the Synergy Companies. Following the integration, MBSCC will continue to exist as a separate registered clearing agency. The retained earnings of MBSCC existing at the time of (or as of the end of the last full calendar month preceding) the integration of MBSCC with DTCC will, as a matter of DTCC policy, be dedicated to supporting the business of MBSCC. MBSCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

⁶ The integration plan attempts to similarly insulate GSCC and EMCC. Securities Exchange Act Release Nos. 45357 (Jan. 29, 2002) (order approving GSCC's limitation of liability) and 45359 (Jan. 29, 2002) (order approving EMCC's limitation of liability). DTC and NSCC adopted rules similar to this proposed rule as part of their 1999 integration with DTCC. Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999) (order approving NSCC's limitation of liability) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (order approving DTC's limitation of liability).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁵ Many of GSCC's Board committees will be joint committees of the Boards of DTCC and its operating subsidiaries. For example, there will be a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Nominating Committee, a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Fixed Income Operations and Planning Committee, a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Audit Committee, and a GSCC/MBSCC Membership and Risk Management Committee.

⁶ 15 U.S.C. 78q-1(b)(3)(A).

⁷ 15 U.S.C. 78q-1(b)(3)(C).

⁸ Securities Exchange Act Release No. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) (order approving integration of GSCC).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 45153 (Dec. 14, 2001), 66 FR 65769.

Commission finds that the proposed rule change is consistent with MBSCC's obligations under section 17A(b)(3)(F) because it should help ensure that MBSCC's assets, including its participants fund, are not diminished as a result of its affiliation with the Synergy Companies.

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-2001-04) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45377; File No. SR-MBSCC-2001-05]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to a New Governance Structure

January 31, 2002.

On October 11, 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-2001-05). On December 26, 2001, MBSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 15, 2001.² No comment letters were received.³ For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will amend MBSCC's rules to reflect MBSCC's new ownership and governance structure that will result from the integration of MBSCC, the Government Securities Clearing Corporation ("GSCC"), and Emerging Markets Clearing Corporation ("EMCC") with The Depository Trust & Clearing Corporation ("DTCC") whereby MBSCC, GSCC, and EMCC will become operating subsidiaries of DTCC.⁴

In order for MBSCC to maintain orderly and efficient operations, MBSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of MBSCC that will be identical in composition to the Board of Directors of GSCC, EMCC, DTC, NSCC, and DTCC. MBSCC's business will be managed under the direction of the MBSCC Board, which will set the basic policy direction for MBSCC. The second tier will consist of committees of or established by the MBSCC Board and committees of or established by the DTCC Board.⁵ The third tier will be MBSCC management, which will oversee the daily routine operations of MBSCC. The changes to MBSCC's rules will reassign various management responsibilities to the MBSCC Board, the new committees, or MBSCC management in light of the revised management structure summarized above.

II. Discussion

The Commission finds that the 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)(A)⁶ of the Act, which requires, among other things, that a

clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because MBSCC's new governance structure should help ensure that MBSCC's operations will continue to be conducted in an efficient and orderly manner once it is integrated into the DTCC organization.

The Commission has previously found that MBSCC's integration plan satisfies the requirement of Section 17A(b)(3)(C)⁷ the MBSCC assure the fair representation of its member in the selection of its directors and in the administration of its affairs.⁸ The Commission finds that this proposal is also consistent with the fair representation requirement because the integration plan has been refined so that the Board committees primarily responsible for MBSCC's operations are now also joint committees of the MBSCC Board.

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 implement changes to its governance structure in an efficient, orderly, and expeditious manner once it is integrated into the DTCC organization.

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-2001-05) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 45248 (Jan. 7, 2002), 67 FR 2006.

³ This proposed rule change had a fifteen day comment period.

⁴ For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) (order approving integration of GSCC); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001) (order approving integration of MBSCC); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001) (order approving integration of EMCC). The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC") are currently operating subsidiaries of DTCC. Securities Exchange Act Release Nos. 41786 (Aug. 24, 1999), 64 FR 47882 (Sept. 1, 1999) and 41800 (Aug. 27, 1999), 64 FR 48694 (Sept. 7, 1999) (orders approving integration of DTC, NSCC, and DTCC).

⁵ Many of MBSCC's Board committees will be joint committees of the Boards of DTCC and its operating subsidiaries. For example, there will be a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Nominating Committee, a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Fixed Income Operations and Planning Committee, a DTCC/DTC/NSCC/GSCC/MBSCC/EMCC Audit Committee, and a GSCC/MBSCC Membership and Risk Management Committee.

⁶ 15 U.S.C. 78q-1(b)(3)(A).

⁷ 15 U.S.C. 78q-1(b)(3)(C).

⁸ Securities Exchange Act Release No. 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001) (order approving integration of MBSCC).

⁹ 17 CFR 200.30-3(a)(12).