

Rule 23 contains a section on the relationship between company officials and Specialists designed to ensure that the relationship is appropriate. Consistent with that goal, the Exchange seeks to impose a broad restriction that Specialists cannot pay listing fees for any issuer, whether the issue is exclusive or not. The Exchange believes that the proposed rule change will help ensure that there are no incentives on the part of issuers of Specialists that may jeopardize or call into question the independence of the market.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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. Copies of the submissions, 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 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-98-15 and should be submitted by August 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-19441 Filed 7-21-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40207; File No. SR-GSCC-98-01]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Funds-Only Settlement Payment Procedures

July 15, 1998.

On February 17, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-98-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of proposal was published in the **Federal Register** on April 21, 1998.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Securities Exchange Act Release No. 39860 (April 14, 1998), 63 FR 19774.

## I. Description

Two important elements of GSCC's risk management process are the daily calculation and collection of clearing fund deposit deficiency amounts and of mark to the market margin. At times, GSCC is obligated to pay a member a FOS amount on a day on which that member also has a clearing fund deficiency call. Pursuant to its current rules, GSCC is required to make the FOS payment to such a member prior to the time the member must make its clearing fund deficiency payment to GSCC.<sup>3</sup> The proposed rule change permits GSCC to retain FOS payments it owes to a member and to apply such amounts to any clearing fund deposit obligation the member owes to GSCC.<sup>4</sup>

Under the proposed rule change, GSCC is entitled to retain the lesser of the FOS amount or the amount of the clearing fund call (or the entire FOS amount if the difference between the amounts is zero) and apply it to the member's clearing fund deposit requirement. If a member pays all or a portion of its clearing fund deficiency in any type of eligible collateral by a preestablished time before GSCC's deadline to make its own FOS payments to members,<sup>5</sup> GSCC is only entitled to retain the portion of its FOS obligation to the member in an amount equal to the member's remaining clearing fund deficiency.<sup>6</sup>

## II. Discussion

Section 17A(b)(3)(F) of the Act<sup>7</sup> requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will allow GSCC to increase its control over FOS payments it owes to members that have a significant clearing fund deposit obligation. This should

<sup>3</sup> GSCC is required to pay FOS obligations to members by 10:00 a.m. eastern time ("ET"). Members must satisfy clearing fund deficiencies by the later of two hours after the receipt of GSCC's call or 10:00 a.m. ET. However, if the notification is not made earlier than two hours before the close of the cash FedWire, members may satisfy the calls on the next business day.

<sup>4</sup> GSCC does not plan to exercise the offset right unless it has a significant FOS obligation to a member (i.e., \$5 million or more), and the member has a significant clearing fund deficiency (i.e., \$5 million or more).

<sup>5</sup> GSCC plans to set the preestablished time at fifteen minutes before GSCC's deadline to make its own FOS payments to members.

<sup>6</sup> Pursuant to GSCC's existing rules, a member has the right to substitute eligible collateral for any cash that GSCC applies to its clearing fund deposit as a result of an offset.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

help reduce the risk to GSCC that a member will fail after it has received a FOS payment from GSCC but before it has satisfied its clearing fund deficiency call. Thus, the proposal should enhance GSCC's risk management process.

### 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-98-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 98-19440 Filed 7-21-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40197; File No. SR-MSRB-98-04]

### Self-Regulatory Organizations, Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G-32, on Disclosures in Connection with New Issues

July 14, 1998.

#### I. Introduction

On March 25, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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-32, on disclosures in connection with new issues. The proposed rule change provides an alternate method of compliance by brokers, dealers and municipal securities dealers with their obligation to deliver official statements in final form to customers by settlement for certain new issues of variable rate demand obligations. Notice of the proposed rule change appeared in the

**Federal Register** on April 28, 1998.<sup>3</sup> The Commission received one comment letter which endorsed the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

The Board amended Rule G-32, on disclosures in connection with new issues, that would permit brokers, dealers and municipal securities dealers ("dealers"), selling variable rate demand obligations ("VRDO's") to customers during the underwriting period, to deliver a preliminary official statement by no later than settlement and to send the official statement in final form within one business day of receipt from the issuer, provided these VRDOs qualify for the exemption provided under subparagraph (d)(1)(iii) of Rule 15c2-12 under the Act ("Rule 15c2-12").

In 1989, the Commission promulgated Rule 15c2-12,<sup>5</sup> which requires underwriters in primary offerings subject to the rule, among other things, to contract with issuers to receive final official statements within seven business days after any final agreement to purchase, offer or sell municipal securities and to receive these statements in sufficient time to accompany any confirmation that requests payment from any customer. Commenters questioned applying this provision of the rule to VRDOs. In response, the Commission provided an exemption to the rule for obligations that can be tendered by their holders for purchase by the issuer or its agent at least as frequently as every nine months and that are in authorized denominations of \$100,000 or more ("Exempt VRDOs"). This exemption reflects the fundamental structural differences between VRDOs and other traditional municipal securities. For most VRDO issues, particularly those that fall within the Exempt VRDO category, the purchase contract is not executed until the issue closing date or the immediately preceding day.<sup>6</sup> Thus, in the vast majority of these issues, the Bond Delivery Period, the period between the purchase date and the

closing date, is at most one business day. As issuers typically do not authorize the printing of the official statement in final form until the execution of the purchase contract, underwriters usually do not receive the official statement in final form until the closing date at the earliest and, in many instances, the printed version is not available until after the closing date, at which point the issuer has already delivered the Exempt VRDOs to the underwriters.

At the time Rule 15c2-12 was drafted, the industry's standard Bond Delivery Period was two or more weeks.<sup>7</sup> For example, the seven business day time frame of paragraph (b)(3) of Rule 15c2-12 presumably anticipated a typical Bond Delivery Period of at least one and one-half weeks, because the final official statement is generally expected to be available at least by closing of the underwriting transaction. Presumably, Rule G-32's official statement delivery obligation was premised, at least in part, on this industry standard.

In 1997, the Board launch a review of the underwriting process which focused on, among other things, the manner and timeliness of delivery of official statements from issuers to underwriters under Rule 15c2-12 and from underwriters to the Board of Rule G-36.<sup>8</sup> The Board found that, in some instances, issuers do not meet their contractual obligations entered into with underwriters pursuant to Rule 15c2-12 deliver official statements within seven business days after the date of final agreement to purchase, offer or sell the municipal securities. The Board noted that, if issuers are not meeting the current delivery requirement under Rule 15c2-12, it is possible that final official statements also are not being prepared in time to deliver to customers by settlement as required under Rule G-32.

Thus, the Board determined that, because the Bond Delivery Period for Exempt VRDOs is at most one business day, it is often not possible for dealers to settle with customers, who expect to receive delivery of their securities on the issue date, without causing a violation of the requirement that they deliver the official statement in final form to such customers by settlement. As a result, the Board amended Rule G-32 to permit a dealer, selling new issue Exempt VRDOs, to deliver the official statement in preliminary form to the

<sup>3</sup> See Securities Exchange Act Rel. No. 39900 (April 22, 1998), 63 FR 23315.

<sup>4</sup> See letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, SEC, dated May 19, 1998.

<sup>5</sup> Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28700 (July 10, 1989).

<sup>6</sup> This compressed time frame arises as a result of the fact that, as securities bearing short-term yields sold at par, the market dictates that pricing (*i.e.*, the setting of the interest rate borne by the securities during the initial rate period) and settlement occur on a same-day or next-day basis.

<sup>7</sup> Standard industry practice dictated that issuers deliver the securities to the underwriters two or more weeks after the sale date for the securities.

<sup>8</sup> See MSRB Reports, Vol. 17, No. 2 (June 1997) at 3-16.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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