currently are owned by KBK Capital Corporation and all of the issued and outstanding shares of the Subsidiary are held by Financial. Financial provides working capital financing and asset-based loans to small to medium size companies through term loans, lines of credit, and the discounted purchase of accounts receivable. Financial also securitizes a portion of the accounts receivable through the Subsidiary, which is a bankruptcy remote subsidiary of Financial. Applicants state that, other than with respect to bankruptcy protection, Financial and the Subsidiary effectively operate as one company.

2. Pursuant to a plan of reorganization, all of the issued and outstanding shares of Financial will become publicly owned. Financial will continue to own all of the issued and outstanding shares of common stock of the Subsidiary. Following the reorganization, Financial will elect to be regulated as a BDC under the Act and the Subsidiary will continue to rely on section 3(c)(5) of the Act.

3. Applicants request relief to permit the assets held by the Subsidiary, rather than the common stock of the Subsidiary itself, to be treated as assets held by Financial for the purpose of determining whether Financial meets certain requirements for BDCs under the Act. Applicants request that the relief extend to any future bankruptcy-remote subsidiaries that are wholly-owned by Financial and comply with the terms and conditions of the order (''Future Subsidiaries'').

Applicants' Legal Analysis

1. Section 2(a)(48) of the Act generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70% of its assets invested in assets described in sections 55(a)(1) through (6) (''Qualifying Assets''). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) generally excludes from the definition of an eligible portfolio company an investment company, as defined under section 3 of the Act, and a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

2. Applicants state that the Subsidiary may not be deemed an eligible portfolio company because it is relying on section 3(c)(5) of the Act. Applicants request relief under section 6(c) from section 55(a) to permit the assets held by the Subsidiary, rather than the Subsidiary itself, to be treated as assets held by Financial for the purposes of: (a) Determining whether Financial is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 55(a); (b) determining whether Financial makes available managerial assistance to companies as described in section 2(a)(48); and (c) applying the 70% test in section 55(a).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets the section 6(c) standards for the reasons discussed below.

4. Applicants state that all of the voting securities of the Subsidiary will be held by Financial and Financial will control the operations of the Subsidiary, including the acquisition and disposition of its assets. Applicants also state that the assets of the Subsidiary will be held by the Subsidiary and not directly by Financial only for bona fide business reasons that are unrelated to the policies underlying the Act. In addition, applicants state that any activity carried on by the Subsidiary will in all material respects have the same economic effect on Financial's shareholders as if done by Financial directly. Applicants also acknowledge that any assets or debts of the Subsidiary will be treated as assets or debts of Financial for purposes of the asset coverage requirements under the Act. Therefore, applicants state that it is appropriate to look to the assets held by the Subsidiary, rather than to the common stock of the Subsidiary held by Financial, in determining whether Financial meets the requirements for BDCs under the Act discussed above.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Subsidiary, and any Future Subsidiary, may not acquire any asset if the acquisition would cause Financial to violate section 55(a) of the Act.

2. Financial will at all times own and hold, beneficially and of record, all of the outstanding voting capital stock of the Subsidiary and any Future Subsidiary.

3. No person will serve or act as investment adviser to the Subsidiary or any Future Subsidiary unless the directors and shareholders of Financial will have taken the action with respect thereto also required to be taken by the directors and shareholder of the Subsidiary or Future Subsidiary.

4. No person will serve as a director of the Subsidiary or any Future Subsidiary who will not have been elected as a director of Financial at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies, other than one additional director of the Subsidiary or a Future Subsidiary who is not a director or affiliated person of Financial. Notwithstanding the foregoing, the board of directors of the Subsidiary or a Future Subsidiary will be elected by Financial as the sole shareholder of the Subsidiary or the Future Subsidiary, and the boards will be composed of the same persons, other than as described above, that serve as directors of Financial.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30012 Filed 11–9–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40635; File No. SR–GSCC–98–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding Amendments to GSCC's By-Laws

November 4, 1998.

On August 31, 1998, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–98–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 30, 1998.[2] No comment

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40463 (September 23, 1998), 63 FR 52313.

letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

GSCC was formed by the National Securities Clearing Corporation (''NSCC'') in 1986. Initially, GSCC was a wholly-owned subsidiary of NSCC. However, in December 1987 GSCC shares were issued in a private placement, and now approximately seventy-five percent of GSCC's shares are owned by its member firms.

GSCC's shareholders agreement provides that NSCC has the right to nominate two individuals for election to the GSCC Board and that GSCC is to designate one of those individuals to the position of Vice-Chairman. Since GSCC was incorporated in 1986, GSCC's by-laws have provided that the Vice-Chairman of GSCC's Board shall automatically be its CEO and that GSCC's President shall automatically be the COO.

GSCC believes that in order to ensure its independence, GSCC's Board of Directors should determine itself which individuals should serve as the CEO and COO. Therefore, the rule change amends GSCC's by-laws to:

(1) Delete the provision that states that the Vice Chairman of the Board shall be CEO of GSCC,

(2) Delete the provision that states that the President shall be the COO of GSCC, and

(3) Make other conforming changes to appropriately reflect the responsibilities of the CEO and COO.

II. Discussion

Section 17A(b)(3)(C) of the Act [3] requires that the rules of a clearing agency be designed to assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the rule change is consistent with GSCC's obligations under Section 17A(b)(3)(C) because the amendments to GSCC's by-laws should increase the flexibility of GSCC's Board of Directors to determine which individuals should serve as GSCC's CEO and COO. As a result, the rule should give GSCC's member firms better representation and control the administration of GSCC's affairs.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act [4] 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–98–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30100 Filed 11–9–98; 8:45 am]

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[3] 15 U.S.C. 78q–(b)(3)(C).

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40634; File No. SR–NSCC–98–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying NSCC's Annuities Processing Service

November 4, 1998.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 8, 1998, as amended by facsimile on October 8, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–98–13) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit members to use the Annuities Processing Service (''APS'') to submit data and to settle payments with respect to life insurance products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently transmits data and information and settles payments with respect to annuities through APS.[3] Under the proposed rule change, NSCC will transmit data and information and settle payments relating to life insurance products as well as annuity products through APS. According to NSCC, the processing of data and information and the settlement of payments with respect to life insurance products would be identical to the processing of annuity products. Since the name ''Annuities Processing Service'' or APS is commonly known and recognized, NSCC has no current plans to change the name of the service.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder since it will facilitate the prompt and accurate processing of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

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

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(e)(4) thereunder [6] because the

[1] 15 U.S.C. 78s(b) (1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] APS is a centralized communication link connecting participating insurance carriers with broker-dealers, banks, and the broker-dealers' or banks' affiliated life insurance agencies where appropriate. For a more detailed description of APS, refer to Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [File No. SR–NSCC–96–21] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).