

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants assert that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants further assert that the Substitution is an appropriate solution to the limited Contract owner interest or investment in the IS Portfolio which currently is, and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants assert that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act because: (a) The Substitution is of shares of the IE Portfolio whose objective, policies and restrictions are substantially similar to the objective, policies and restrictions of the IS Portfolio so as to continue fulfilling Contract owners' objectives and risk expectations; (b) while the advisory fees incurred by the IE Portfolio are higher than those applicable to the IS Portfolio, the total expenses of the IE Portfolio—as a percentage of the net assets—are lower than those of the IS Portfolio; (c) the Substitution will, in all cases, be at net asset value of the respective shares, without the imposition of any transfer

or similar charge; (d) Equitable has undertaken to assume the expenses and transaction costs, including, among others, legal and accounting fees and any brokerage commissions relating to the Substitution; (e) within five (5) days after the completion of the Substitution, the Company will send to the Contract Owners written notice of the Substitution and the Supplement stating that shares of the IS Portfolio have been eliminated and that the shares of the IE Portfolio have been substituted; (f) if a Contract owner so requests, during the Free Transfer Period, assets will be reallocated for investment in a Contract owner-selected sub-account; (g) the Substitution will not alter the insurance benefits to Contract owners or the contractual obligations of Equitable; (h) the Substitution will not alter the tax benefits to Contract owners; (i) Contract owners may choose to withdraw amounts credited to them following the Substitution under the conditions that currently exist, subject to any applicable deferred sales charge; and, (j) the Substitution is expected to confer certain economic benefits to Contract owners by virtue of the enhanced asset size.

Conclusion

For the reasons set forth above, Applicants represent that the order requested approving the proposed Substitution, meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-37678; File No. SR-GSCC-96-9]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposal Rule Change Relating to the Establishment of a Mechanism for Returning Certain Excess Clearing Fund Collateral to Members on a Daily Basis

September 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ notice is hereby given that on August 11, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities

Exchange Commission ("Commission") the proposed rule change (File No. SR-GSCC-96-9) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. 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

GSCC is filing a proposed rule change that establishes a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current monthly basis.

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

In filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC 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

GSCC proposes to amend its rules to establish a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current monthly basis. GSCC's clearing fund is designed to protect GSCC from the exposure presented by fluctuations in the value of a defaulting member's net settlement position from the most recent marking-to-market until liquidation of that position. The daily mark-to-market mechanism, which is applicable to forward net settlement positions, is designed to bring net settlement positions from contract value to current market value.

The clearing fund collateral pool in fact serves a number of purposes. It allows GSCC to have on deposit from each netting member assets sufficient to satisfy any losses that may otherwise be incurred by GSCC and ultimately its members as the result of the member's default and the resultant close out of that member's net settlement position. It permits GSCC to maintain a total asset

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The Commission has modified the text of the statements GSCC submitted.

amount sufficient to satisfy potential losses to it and its members resulting from the default of more than one member or the failure of a defaulting member's counterparties to pay their pro rata allocation of loss. It also allows GSCC to ensure that it has sufficient liquidity at all times to meet its payment and delivery obligations. Thus, the maintenance of an appropriate overall level of clearing fund collateral is vital to GSCC's risk-management mechanism.

As GSCC cannot know with any certainty what liquidation exposure it might incur or what its overall liquidity requirements might be, the calculation of clearing fund deposit requirements involves an estimate of such exposure that is based on historical price volatility and on member's historical activity. In fact, on any particular business day, a member's trading activity and the general market price volatility related to the member's activity may be significantly higher than normal. Given this uncertainty and the importance of the purposes served by the clearing fund, members are encouraged to maintain excess clearing fund collateral. GSCC takes significant comfort from the cushion represented by member's excess clearing fund collateral.

Member's clearing fund deposit requirements are calculated daily based on the level of members' historical and current day's net activity. However, the maintenance of an appropriate level of overall clearing fund collateral is not designed to be a daily collection and return process. In part, this is due to the administrative burden and cost that this would entail. The process for collection of clearing fund deposit involves not just cash but also securities and letters of credit making it more complex than GSCC's daily morning funds-only collection process. More significantly, the disfavor of daily collection and return of clearing fund collateral recognizes the above stated desirability of maintaining a cushion of excess clearing fund collateral.

Because of these concerns, GSCC's rules currently provide for the return of excess clearing fund collateral to members only once a calendar month on the second business day of each month. This methodology applies regardless of the level of a member's excess clearing fund collateral. Upon review of this process, it is GSCC's view that the importance of maintaining a level of excess collateral adequate to protect GSCC and its members and of avoiding a cumbersome clearing fund deposit collection process should be balanced against the cost and drain on liquidity posed to members that build up an

unusually large amount of excess clearing fund collateral over the course of a month. GSCC therefore proposes as a means of balancing these interests that members may request the return of excess collateral on any business day under the following circumstances: (1) The amount of the member's excess clearing fund collateral is at least \$5 million; (2) the member is not on class 2 or class 3 surveillance status; and (3) the collateral will be returned only to the extent that GSCC retains a cushion of excess collateral of no less than the greater of (a) 110 percent of the member's clearing fund deposit requirement (*i.e.*, GSCC must retain 110% of the member's clearing fund deposit requirement) or (b) \$1 million more than the amount of collateral needed to cover the member's current clearing fund deposit requirement.

GSCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.³ Members will experience less liquidity pressure from not having to maintain large amounts of excess clearing fund collateral with GSCC and will be better able to manage their cash management needs. However, at the same time GSCC will maintain sufficient excess clearing fund collateral to protect itself and its members in an instance of member default.

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

GSCC perceives no impact on competition by reason of the proposed rule change.

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

GSCC has not solicited or received comment on the proposed rule change.

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

Within thirty-five 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 ninety 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 GSCC 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. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number (SR-GSCC-96-9) and should be submitted by October 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

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[Release No. 34-37675; File No. SR-MSRB-96-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

September 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1996,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC")

⁴ 17 CFR 200.30-3(a)(12) (1996).

¹ On September 9, 1996, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 amends proposed language to rule G-37(g) (vii). See Letter from Ronald W. Smith, Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation, SEC (September 9, 1996).

³ 15 U.S.C. § 78q-1 (1988).