Once fingerprints are taken, the Exchange will review the information on the fingerprint card or in the electronic fingerprint record for the fingerprints, as applicable, for completeness, but not for accuracy, and will then submit the completed fingerprint card or electronic fingerprint record, as applicable, to the Attorney General for identification and processing.

The Exchange shall submit fingerprint cards and electronic fingerprint records to the Attorney General in accordance with any requirements of the Attorney General relating to the manner of submission of this information. The submission may occur through any of the following methods:

1. The Exchange may electronically transmit to the Attorney General an electronic fingerprint record created by a Live-Scan system;

2. The Exchange may print out an electronic fingerprint record created by a Live-Scan system onto a paper fingerprint card and submit the fingerprint card to the Attorney General through manual transmission, such as by United States mail; or

3. The Exchange may submit manually taken fingerprint cards to the Attorney General through manual transmission, such as by United States mail.

The purpose of allowing this flexibility is to permit the Exchange to retain the ability to submit fingerprints to the Attorney General in the event the Exchange is unable to electronically transmit electronic fingerprint records to the Attorney General due to a telecommunication problem or otherwise. Additionally, this flexibility will permit the Exchange to manually transmit to the Attorney General fingerprint cards manually taken by the Exchange and received from Exchange members and Exchange member applicants.

The Exchange will keep a list of the fingerprint cards and electronic fingerprint records submitted to the Attorney General in order to check on fingerprint submissions to the Attorney General pursuant to this Plan for which no fingerprint report has yet been received from the Attorney General. When a fingerprint report is received by the Exchange from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan, the Exchange promptly will manually (such as by United States mail) or electronically forward a copy of the fingerprint report to the appropriate Exchange member or Exchange member applicant.

The Exchange promptly will review all fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan in order to determine whether they contain information involving:

1. A statutory disqualification, as that term is defined in the Act; or

2. Material misstatements or omissions concerning information previously reported to the Exchange.

If so, the Exchange promptly will take appropriate action concerning eligibility or continued eligibility for Exchange membership or for employment or association with an Exchange member.

Copies of fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan will be maintained by the Exchange in accordance with the Exchange's Record Retention/Destruction/Conversion Plan filed with the Commission. Any maintenance of fingerprint records by the Exchange shall be for the Exchange's own administrative purposes, and the Exchange is not undertaking to maintain fingerprint records on behalf of Exchange members pursuant to Rule 17f–2(d)(2).

The above procedures will be modified in the following manner with respect to individuals in registration capacities recognized by the Exchange who are associated persons of Exchange members that are not members of NASD. The Exchange has established an arrangement with NASD to permit these individuals to be electronically registered with the Exchange through the Web Central Registration Depository (''Web CRD''). In connection with this registration process, these registered persons will have their fingerprints processed and submitted to the Attorney General through the facilities of either NASD or the Exchange. The extent to which these registered persons may utilize either one or both of these facilities will be determined by the Exchange and NASD. Fingerprint reports for these registered persons that are generated by the Attorney General will be provided to Web CRD and will be provided to the members with which these registered persons are associated through Web CRD. Record-keeping with respect to fingerprint submissions to and fingerprint reports from the Attorney General for these registered persons will be maintained by NASD. NASD will notify the Exchange if a fingerprint report received by Web CRD for one of these registered persons contains information relating to an arrest or conviction. In such an instance, the Exchange will review the fingerprint report and take appropriate action, if necessary, concerning eligibility or continued eligibility of the individual for employment or association with an Exchange member.

The Exchange will advise Exchange members and Exchange member applicants of the availability of its fingerprint services and any fees charged by the Exchange in connection with those services and the processing of fingerprints pursuant to this Plan. The Exchange shall file any such fees with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange shall not be liable for losses or damages of any kind in connection with its fingerprinting services, as a result of its failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by the Exchange or the Exchange's failure to take action in connection with this Plan.

[FR Doc. 02–23354 9–12–02; Filed 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46472; File No. SR–GSCC–2001–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Establishing a Loss Allocation Cap for Dealers Acting as Brokers on Substantially All of Their Repurchase Agreement Trades

September 6, 2002.

I. Introduction

On August 16, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR-GSCC–2001–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 31, 2001, GSCC amended the proposed rule change. Notice of the proposed rule change was published in the **Federal Register** on March 27, 2002.[2] No comment letters were received. For the reasons discussed below, the

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

[2] Securities Exchange Act Release No. 45605 (March 20, 2002), 67 FR 14753.

Commission is granting approval of the proposed rule change.

II. Description

GSCC is amending its current loss allocation rule concerning non-inter-dealer broker (''dealer'') members who act as brokers in certain of their repurchase agreement (repo) transactions. Under the amended rule, repo transaction accounts of these dealers will be subject to the same $5 million per event absolute loss allocation cap currently applicable to inter-dealer brokers (''IDBs'') instead of an unlimited loss allocation liability. The rule change is designed to afford appropriate relief for these dealers while not unfairly burdening other members.

A. Loss Allocation Procedure Without Benefit of Current Rule Change

If upon liquidating a defaulting member's positions GSCC incurs a loss due to the failure of the defaulting member to fulfill its obligations to GSCC, GSCC looks to the collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's collateral is insufficient to cover the loss, the defaulting member's most ''recent'' trading partners will be looked to, on a pro rata basis, in order to satisfy the ''remaining loss.''

Before the loss can be allocated to the defaulting member's most ''recent'' trading partners, GSCC must first determine the proportion of the loss that arose in connection with member-brokered transactions and non-member brokered transactions and the proportion that arose in connection with direct transactions.

To the extent the remaining loss is determined by GSCC to arise in connection with member brokered transactions, GSCC's rules provide that fifty percent of the loss will be allocated to netting members that are category 1 IDBs or category 2 IDBs pro rata based upon the dollar value of each such IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. The remaining fifty percent of the loss will be allocated to the dealer netting members pro rata based upon the dollar value of the trading activity through IDBs of each such dealer netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with member brokered transactions, an IDB netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than $5 million. A dealer netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to dealer netting members. To the extent that this cap is applicable, any excess amounts not collected from individual netting members, whether an IDB or a dealer, will be reallocated pro rata to the netting membership in general based on average daily clearing fund deposit requirement over the twelve-month period prior to the insolvency. However, even with the reallocation, an IDB netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million.

To the extent a remaining loss is determined by GSCC to arise in connection with non-member brokered transactions, it is allocated among the recent category 2 IDB netting members that were parties to such non-member brokered transactions pro rata based upon the dollar value of each such category 2 IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with non-member brokered transactions, there is no loss-allocation cap.

To the extent a remaining loss is determined to arise in connection with direct transactions, it is allocated among the recent counterparty netting members pro rata based on the dollar value of the trading activity of each such netting member's trading activity with the defaulting member compared, netted, and novated during the recent trading period. For purposes of an allocation of loss determined to arise in connection with direct transactions, there is no loss-allocation cap.

Under the current loss allocation procedure, dealer netting members acting as brokers on all or substantially all of their repo transactions do not enjoy the $5 million per event absolute loss allocation cap applicable to IDBs. Consequently, these dealers are likely to be disproportionately assessed for allocation loss in the current environment.

B. Changes to Loss Allocation Procedure Under the Rule Change

The rule change addresses the manner in which the loss allocation procedure described above will apply to dealers that act as brokers in their repo transactions. Specifically, the rule change establishes an account-based loss allocation process whereby the segregated repo accounts of these dealers are treated in the same way as IDB accounts.

In order to accomplish this, GSCC added two new definitions to its rules, ''non-IDB repo broker'' and ''segregated repo account.'' A non-IDB repo broker with respect to activity in its segregated repo account is a dealer netting member that GSCC has determined operates in the same manner as a broker and participates in GSCC's repo netting service pursuant to the same requirements imposed under GSCC's rules on IDB netting members that participate in that service. These requirements include keeping their brokered repo activity (with a GSCC netting member on each side of each trade) in a separate account called the segregated repo account.

Since GSCC's loss allocation procedures with respect to remaining losses distinguish between brokered transactions and direct transactions and since it is with respect to non-IDB repo brokers' brokered transactions that GSCC is giving relief, the rule change amends: (i) The definition of ''brokered transaction'' to include transactions in which a non-IDB repo broker with regard to activity in its segregated repo account is a party; (ii) the loss allocation rule applicable to brokered transactions to include references to non-IDB repo brokers and the activity in their segregated repo accounts; and (iii) the loss allocation rule to provide non-IDB repo brokers with regard to activity in their segregated repo accounts with a cap on their total loss allocation obligation of $5 million as is currently applied to IDB netting members.

All of the other activity processed by non-IDB repo brokers outside of their segregated repo broker accounts will continue to be subject to the loss allocation rules applicable to dealer netting members.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency not be designed to permit unfair discrimination among participants in the use of the clearing agency.[3] The rule change provides that dealer participants of GSCC that act as brokers in their repo transactions will be subject to the same $5 million per event absolute loss allocation cap that is applicable to IDBs instead of to an unlimited loss allocation liability. The rule change should provide for a more equitable loss allocation process among GSCC's participants and, therefore, should remove any unfair discrimination in the

[3] 15 U.S.C. 78q–1(b)(3)(F).

area of loss allocation among GSCC dealers and brokers where their securities businesses are similar. Therefore, the Commission finds that the rule change is consistent with Section 17A of the Act and the rules and regulations thereunder.

IV. 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 the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2001–10) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23356 Filed 9–12–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46466; File No. SR–NASD–2002–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Late Fee in Connection with Member Payment of CRD Renewal Fees

September 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On August 8, 2002, NASD filed an amendment to the proposal.[3] 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

NASD is proposing to amend Section 4(b) of Schedule A to the NASD By-Laws by establishing a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository (''CRD®'' or ''Web CRD℠''). The proposed late fee would be operative September 1, 2002. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 4—Fees

(a) No change.

(b) NASD shall assess each member a fee of:

(1) Through (6) No change.

(7) 10% of a member's final annual renewal assessment or $100, whichever is greater, with a maximum charge of $5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement.

(c) through (l) No change.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and the 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Section 4(b) of Schedule A to the NASD By-Laws by establishing a fee comprised of 10% of a member's final annual renewal assessment or $100, whichever is greater, with a maximum charge of $5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement. As further detailed below, the proposed rule change is effective immediately upon filing and becomes operative on September 1, 2002.

NASD administers an annual renewal program that simplifies the process of renewing registrations and licenses for member firms and their associated persons by allowing members to pay a single amount to NASD in December of each year. This annual renewal fee covers all NASD registration and licensing fees and fees imposed by states and other self-regulatory organizations (''SROs''). NASD also collects broker-dealer and investment adviser renewal fees on behalf of SROs and state regulators, as applicable, through this program.

During the first week of November, NASD publishes on-line, on Web CRD, a Preliminary Renewal Statement for each member that advises the member of the total amount of renewal fees owed for the following year. The renewal fees are generally due to NASD by the end of the first week in December. Members currently pay the amount indicated on their Preliminary Renewal Statement by check or bank wire transfer, and NASD pays the fees to the various regulators by year-end. NASD advises its members that their failure to return full payment to NASD by the stated deadline could cause a member to become ineligible to do business in the jurisdictions in which it is registered as of the first business day of the new year. The timely payment of renewal fees by NASD members and their subsequent disbursement to appropriate regulators ensures that NASD members will not be precluded from conducting business in the next calendar year as a result of the non-payment of renewal fees.

Because of the potential risk to members' ability to conduct business if they fail timely to make their renewal payments, NASD engages in a comprehensive communications and operational effort beginning in August of each year that informs members of their obligation to complete the renewal process by the stated deadline and the risk associated with their failure to do so. These communications include an Advance Calendar of Key Dates, a Notice to Members, a CRD Bulletin, reminder e-mails, and daily reminder Broadcast Messages through CRD.

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[4] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, Investor Protection, Market Integrity, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 8, 2002 (''Amendment No. 1''). In Amendment No. 1, NASD corrected the basis for which summary effectiveness was requested. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 8, 2002.