

For the Nuclear Regulatory Commission.
David B. Matthews,
*Director, Division of Regulatory Improvement
 Programs, Office of Nuclear Reactor
 Regulation.*
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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25467; 812-12214]

Bear Stearns Funds, et al.; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(f), and 17(b) of the Investment Company Act of 1940 ("Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit (a) certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; (b) the registered investment companies to use uninvested cash ("Uninvested Cash") and cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of certain money market funds; and (c) the registered investment companies to lend portfolio securities to affiliated broker-dealers.

APPLICANTS: The Bear Stearns Funds ("BSF"), Bear, Stearns & Co. Inc. ("Bear Stearns"), Bear Stearns Securities Corp. ("BSSC"), Bear Stearns Asset Management Inc. ("BSAM"), Bear Stearns Funds Management Inc. ("BSFM"), and Custodial Trust Company ("CTC").

FILING DATES: The application was filed on August 9, 2000 and amended on March 15, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the

reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants: c/o Jay G. Baris, Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. BSF is a Massachusetts business trust registered under the Act as an open-end management investment company. BSF currently consists of 12 separate portfolios (together with future series, the "Portfolios") with varying investment objectives and management policies, one of which is the Prime Money Market Portfolio ("PMMP"), a money market fund that complies with the requirements of rule 2a-7 under the Act. BSAM, a wholly owned subsidiary of The Bear Stearns Companies, Inc. ("BSCI"), is registered as an investment adviser under the Investment Advisers Act of 1940. BSAM serves as each Portfolio's investment adviser. BSFM, a wholly owned subsidiary of BSCI, serves as each Portfolio's administrator. Bear Stearns, an affiliate of BSAM, serves as each Portfolio's distributor.

2. CTC, a wholly owned subsidiary of BSCI, serves as custodian of each of the existing Portfolios (other than the Emerging Markets Debt Portfolio) and as lending agent with BSSC, a wholly owned subsidiary of BSCI (each of CTC and BSSC, the "Lending Agent"). BSSC is a broker-dealer registered under the Securities Exchange Act of 1934.

3. Applicants request that any relief granted pursuant to the application also apply to (a) any other registered investment company or series thereof for which BSAM or any person controlling, controlled by or under common control with BSAM (included in the term "BSAM") now or in the future serves as investment adviser (such investment company or series thereof included in the term "Portfolio"), (b) any other broker-dealer

now or in the future controlling, controlled by or under common control with BSSC (together with BSSC, "Affiliated Broker-Dealers"), and (c) any investment entity excluded from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act, advised by BSAM, and established for the purpose of investment of Cash Collateral in connection with the securities lending program described below (each, a "PIF").¹ Each PIF will comply with the requirements of rule 2a-7 under the Act.

4. CTC currently administers a securities lending program ("Lending Program") pursuant to a securities lending policy with the respective Portfolios that participate in the securities lending program (the "Lending Portfolios"). Each Lending Portfolio is permitted by its investment policies to lend its portfolio securities, and its prospectus or statement of additional information will disclose that it may engage in portfolio securities lending. BSF's Board of Trustees (the "Board"), including a majority of the trustees who are not interested persons within the meaning of section 2(a)(19) of the Act ("Disinterested Trustees"), have approved BSF's participation in the Lending Program, and will monitor the Lending Program on an ongoing basis.

5. Under the Lending Program, the Lending Agent will enter into agreements ("Securities Loan Agreements") with certain entities ("Borrowers") that wish to borrow portfolio securities owned by the respective Lending Portfolios. The Securities Loan Agreements will require that loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for such loans may include Cash Collateral or other collateral, such as U.S. government securities.

6. Under the Lending Program, the Lending Agent will be responsible for soliciting Borrowers for each Lending Portfolio's securities, monitoring daily the value of the loaned securities and collateral, and requesting Borrowers to add to the collateral when required by the Securities Loan Agreements. The Lending Agent may manage Cash Collateral only in accordance with specific parameters established by a Lending Portfolio. These guidelines include permissible investment of Cash

¹ All existing entities that currently intend to rely on the requested relief have been named as applicants. All existing entities currently intending to rely on the requested order have been named as applicants.

Collateral as well as a list of eligible types of investments.²

7. With respect to securities loans that are collateralized by assets other than cash, the Lending Portfolio involved will receive a loan fee paid by the Borrower equal to a percentage of the market value as specified in the applicable Securities Loan Agreement. With respect to securities loans collateralized by cash, the Borrower will be entitled to receive a fixed Cash Collateral fee based on the amount of cash held as collateral. The Lending Portfolio in such a case will be compensated on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's Cash Collateral Fee.

8. Portfolios may have Uninvested Cash that comes from a variety of sources, including dividend or interest payments received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions, as well as new monies received from investors.

9. The applicants request relief to permit: (a) The Lending Portfolios to pay the Lending Agent a fee based on a share of the revenue derived from securities lending activities; (b) the Portfolios to use Cash Collateral and Uninvested Cash (together, "Cash Balances") to purchase shares of PMMP, PIFs and any future registered open-end management investment company that complies with rule 2a-7 under the Act (together with PMMP, "Money Market Funds"); and (c) the Lending Portfolios to lend portfolio securities to Affiliated Broker-Dealers.

Applicants' Legal Analysis

A. Payment of Lending Agent Fees

1. Section 17(d) of the Act and Rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of another

person to include any person directly or indirectly controlling or controlled by, or under common control with, such other person. Applicants state that CTC and BSAM are wholly owned subsidiaries of BSCI, and therefore CTC may be deemed to be an affiliated person of BSAM, the investment adviser for each Lending Portfolio. Because a fee arrangement between a Lending Agent and a Lending Portfolio, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d-1, applicants request an order to permit each Lending Portfolio to pay, and the Lending Agent to accept, such fees in connection with services provided by the Lending Agent to a Lending Portfolio.

2. Applicants state that each Lending Portfolio will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with CTC or BSSC, as Lending Agent, will meet the standards of rule 17d-1 under the Act:

(a) In connection with the approval of CTC or BSSC as Lending Agent for a Lending Portfolio and implementation of the proposed fee arrangement, a majority of the Board, including a majority of Disinterested Trustees, will determine that (i) the contract with the Lending Agent is in the best interests of the Lending Portfolio and its shareholders, (ii) the services to be performed by the Lending Agent are appropriate for the Lending Portfolio, (iii) the nature and quality of the services provided by the Lending Agent are at least equal to those provided by others offering the same or similar services for similar compensation, and (iv) the fees for the Lending Agent's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Lending Portfolio's contract with CTC or BSSC for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby CTC or BSSC will be compensated as Lending Agent based on a percentage of the revenue generated by a Lending Portfolio's participation in the Lending Program, the Board will obtain competitive quotes with respect to lending agent fees

from at least three independent lending agents to assist the Board in making the findings referred to paragraph (a) above.

(d) The Board, including a majority of the Disinterested Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Portfolio will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in Money Market Funds and PIFs

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit each

² The personnel who will provide day-to-day lending agency services to the Lending Portfolios do not and will not provide investment advisory services to the Lending Portfolios, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Portfolios.

Portfolio to use Cash Balances to acquire shares of the Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and the Money Market Funds to sell its shares to the Portfolios in excess of the percentage limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by sections 12(d)(1)(A) and (B) of the Act are created by the proposed investment of Cash Balances in PMMP. Applicants state that the arrangement will not result in an inappropriate layering of fees because PMMP will not charge a sales load, redemption fee, asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. Conduct Rules ("NASD Conduct Rules")), or if such shares are subject to any such fees, BSAM will waive its advisory fee for each Portfolio in an amount that offsets the amount of such fees incurred by the Portfolios. In addition, before approving any advisory contract for a Portfolio, the Board, including a majority of the Disinterested Trustees, will consider the extent to which the advisory fees charged to the Portfolio by BSAM should be reduced or waived to account for reduced services provided to the Portfolio by BSAM as a result of Uninvested Cash being invested in PMMP or PIF. If PMMP offers more than one class of shares, each Portfolio will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. Neither PMMP nor any PIF whose shares are acquired by a Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A).

4. Sections 17(a)(1) and (2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among other things, any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person or any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that to the extent that a Portfolio owns 5% or more of the voting securities of PMMP or PIF, PMMP or PIF could be deemed to be an affiliated person of the Portfolio. In addition, to the extent that the Portfolios, PMMP and PIF share a common investment adviser and the

Portfolios and PMMP share a common Board, applicants state that the Portfolios, PMMP and PIF may be considered to be under common control and therefore be affiliated persons. As a result, section 17(a) may prohibit the sale of shares of PMMP or PIF to a Portfolio, and the redemption of such shares by PMMP or PIF from the Portfolio.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or 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.

6. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Portfolios to use Cash Balances to purchase shares of PMMP or PIF and to permit the redemption of the shares. Applicants maintain that the terms of the proposed transaction are reasonable and fair because the Portfolios will purchase and sell shares of PMMP or PIF on the same terms and on the same basis as other shareholders. Applicants assert that the proposed transactions comply with each Portfolio's investment restrictions and policies. Applicants further state that the investment of Cash Collateral in PMMP or a PIF will comply with all present and future Commission and staff positions concerning securities lending. Applicants also state that the PIFs will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

7. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants state that the Portfolios, BSAM (by managing assets of the Portfolios and PIFs), and PMMP or a PIF (by selling shares to and redeeming shares from the Portfolios) may be deemed to be participants in a joint enterprise or arrangement within the meaning of

section 17(d) and rule 17d-1.

Applicants request an order pursuant to section 17(d) and rule 17d-1 to permit the described transactions relating to investments of Cash Balances in PMMP or PIFs. For the reasons discussed above, applicants believe that the proposed transactions meet the standards of rule 17d-1.

C. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, to borrow money or other property from the registered investment company. Applicants state that because an Affiliated Broker-Dealer may be deemed to be a person under common control with BSAM, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Portfolio. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Portfolios.

2. As noted above, section 17(d) and rule 17d-1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d-1 to permit the Lending Portfolios to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Portfolio will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.³ In this regard, applicants state that at least 50% of the loans made by the Lending Portfolios, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board, including a majority of the Disinterested Trustees, and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending Portfolio. The Board, including a majority of the Disinterested Trustees, also will review quarterly reports on all lending activity.

³ A "spread" is the compensation earned by a Lending Portfolio from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower to the Lending Portfolio (when non-cash collateral is posted) or of the excess retained by the Lending Portfolio over a rebate rate payable by the Lending Portfolio to the Borrower (when Cash Collateral is posted and then invested by the Lending Portfolio).

Applicants' Conditions

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

A. General

1. Each Portfolio, Money Market Fund and PIF that relies on the requested order will be advised by BSAM.

2. The securities lending program of each Lending Portfolio will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

3. Before a Lending Portfolio may participate in the Lending Program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Lending Portfolio's participation in the Lending Program. The Board will evaluate the Lending Program and its results no less frequently than annually and a majority of the Board, including a majority of the Disinterested Trustees, will determine that investing Cash Collateral in PMMP or a PIF is in the best interests of the shareholders of the Lending Portfolio.

B. Investment of Cash Balances in PMMP and PIF

1. The shares of PMMP or a PIF sold to and redeemed from the Portfolios will not be subject to a sales load, redemption fee, asset-based sales charge, or service fees (as defined in the NASD Conduct Rules).

2. If BSAM collects a fee from PMMP or a PIF for acting as its investment adviser with respect to assets invested by a Portfolio, before the next meeting of the Board on behalf of the Portfolio is held for the purpose of voting on an advisory contract under section 15 of the Act, BSAM will provide the Board with specific information regarding the approximate cost to BSAM for, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Portfolio that can be expected to be invested in PMMP or the PIF. Before approving any advisory contract under section 15, the Board, on behalf of the Portfolio, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Portfolio by BSAM should be reduced to account for the fee indirectly paid by the Portfolio because of the advisory fee paid by PMMP or a PIF to BSAM. The minute books of each Portfolio will record fully the Board's considerations in approving the advisory contract, including the considerations relating to the fees referred to above.

3. Each of the Portfolios will invest Uninvested Cash in, and hold shares of, PMMP and PIFs only to the extent that the Portfolio's aggregate investment of Uninvested Cash in PMMP and PIF does not exceed 25% of the Portfolio's total assets. For purposes of this limitation, each Portfolio or series thereof will be treated as a separate investment company.

4. Investment in shares of PMMP and PIFs will be in accordance with each Portfolio's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. Neither PMMP nor any PIF will acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. A majority of the Board of a Portfolio, including a majority of the Disinterested Trustees of such Portfolio, will initially and at least annually thereafter, determine that investment of Uninvested Cash in shares of PMMP or a PIF is in the best interests of the shareholders of the Portfolio.

7. A Portfolio's Uninvested Cash will be invested in PMMP or a PIF only if PMMP or the PIF invests solely in the types of instruments that the Portfolio has authorized for the investment of its Uninvested Cash.

8. Each PIF in which a Portfolio invests will comply with rule 2a-7 under the Act. Each PIF will value its shares, as of the close of business on each business day, using the amortized cost method to determine its net asset value per share. BSAM, as the managing member of the PIF, will adopt and monitor the procedures described in rule 2a-7(c)(7) under the Act and BSAM will take such other actions as are required to be taken pursuant to such procedures. A Portfolio may purchase shares of a PIF only if BSAM determines on an ongoing basis that the PIF is operating as a money market fund in compliance with rule 2a-7. BSAM will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the Staff.

9. Each PIF in which a Portfolio invests will comply with sections 17(a), (d) and (e) and 18 of the Act as if the PIF were an open-end registered investment company. With respect to all redemption requests made by a Portfolio, the PIF will comply with section 22(e) of the Act. BSAM, as managing member, will adopt

procedures designed to ensure that the PIF complies with sections 17(a), (d) and (e), 18 and 22(e) of the Act. BSAM will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii) and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and the staff.

10. The net asset value per share of a PIF in which a Portfolio may invest will be determined by dividing the value of the assets belonging to the PIF, less the liabilities of the PIF, by the number of shares of the PIF outstanding.

11. Each Portfolio will purchase and redeem shares of a PIF on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis as other shareholders investing in the same PIF. A separate account will be established in the shareholder records of the PIF for the account of each applicable Portfolio.

C. Loans to Affiliated Broker-Dealers

1. The Lending Portfolios, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list of Borrowers of securities from a Lending Portfolio will be in accordance with a schedule to be approved by the Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Lending Portfolio, computed at market value.

3. A Lending Portfolio will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from time to time by the Board and by a majority of the Disinterested Trustees ("Schedule of Spreads").

(b) The Schedule of Spreads will set forth rates of compensation to the Lending Portfolio that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Lending Portfolios' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) Each Lending Portfolios' portfolio securities lending program will be monitored on a daily basis by an officer of the Lending Portfolio who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Board, including a majority of the Disinterested Trustees.

5. The Board, including a majority of the Disinterested Trustees, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Lending Portfolios will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the procedures and the other undertakings set forth herein.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45593; File No. SR-GSCC-2001-08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Revising Margin Factor and Offset Class Schedules

March 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 11, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The proposed rule change refines GSCC's "margin factor and offset class schedules" and "disallowance percentage schedules."

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

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by GSCC.

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

GSCC netting members are required to maintain deposits in a clearing fund account. Each member's required deposit is calculated daily to ensure that enough funds are on hand to cover the risks associated with that member's activities. GSCC calculates the margin amount on a member's net settlement positions using factors (percentages) that are based on an assessment of historical daily price volatility data. In order to give "credit" for offsetting net settlement positions to the extent appropriate, GSCC established offset classes for securities of varying maturity and disallowance percentages among those different offset classes.

As a result of GSCC's ongoing monitoring of its risk management processes, GSCC has determined to refine its "margin factor and offset class schedules" and its "disallowance percentage schedules" to take into account (i) its growing business in non-mortgage-backed agency securities ("Agencies") and in mortgage-backed agency securities ("MBS"),³ (ii) potential differences in price volatility between its regular settlement services ("DVP service") and its GCF Repo service, and (iii) the recent establishment of a daily data feed from GSCC's clearing banks that provides GSCC with accurate information regarding the specific securities which its members deliver against generic CUSIP numbers established for the GCF Repo service.

In the revised margin factor and offset class schedules, GSCC has established a different margin factor for MBS. Although it has retained the same margin factors for Agencies as it uses for Treasury securities,⁴ the format of the new schedules will enable GSCC to more easily establish different margin factors for Agencies in the future if the need arises. The clearing bank data feed now permits GSCC to classify each security settled in the GCF Repo service according to its true remaining maturity instead of requiring GSCC to categorize each security as if it had the longest remaining maturity of all the securities within the same generic CUSIP number. It should be noted that for the present

³ Mortgage-backed agency securities are only processed in the GCF Repo service at GSCC and not in GSCC's regular services.

⁴ Price volatility studies indicate that there is currently no need to establish different margin factors for Treasuries and Agencies. GSCC monitors price volatility on an ongoing basis.