

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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CME-2002-01 and should be submitted by December 6, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³¹ that the proposed rule change, as amended, (File No. SR-CME-2002-01) be, and hereby is, approved, *provided, however*, that CME Rule 930.B.2.b.(3) is approved until May 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46790; File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01]

Self-Regulatory Organizations; Government Securities Clearing Corporation and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to the Merger of MBS Clearing Corporation into the Government Securities Clearing Corporation to Form the Fixed Income Clearing Corporation

November 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 7, 2002, the Government Securities Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01). On October 31, 2002, and on November 5, 2002, GSCC and MBSCC amended the proposed rule changes. The proposed rule changes are described in Items I, II,

and III below, which items have been prepared primarily by GSCC and MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

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

The proposed rule changes propose arrangements for the combination of GSCC with MBSCC. The subject proposal provides the following:

- MBSCC will merge into GSCC.
- GSCC will be renamed the Fixed Income Clearing Corporation ("FICC").
- FICC will provide services currently offered by GSCC and MBSCC through separate divisions of FICC ("Government Securities Division" and "Mortgage-Backed Securities Division" collectively referred to as "Divisions"). FICC will adopt the current rules of GSCC, as amended and described herein, as rules of the Government Securities Division and the current rules of MBSCC, as amended and described herein, as rules of the Mortgage-Backed Securities Division.

• After the merger, current GSCC members will receive the services they currently receive from GSCC from the Government Securities Division, and current MBSCC participants, limited purpose participants, and Electronic Pool Notification ("EPN") users will receive the services they currently receive from MBSCC from the Mortgage-Backed Securities Division. The membership agreements between GSCC and its members and between MBSCC and its participants, limited purpose participants, and EPN users will be modified to reflect the merger.

- The rules of GSCC and MBSCC will be modified to reflect that the formerly separate clearing corporations will be separate divisions of FICC.

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

In their filings with the Commission, GSCC and MBSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC and MBSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

GSCC and MBSCC became wholly-owned, indirect subsidiaries of The Depository Trust and Clearing Corporation ("DTCC") as a result of merger and exchange offer transactions that took place in late 2001 ("DTCC Integration").³ GSCC and MBSCC provide clearing and certain ancillary services for government securities and mortgage-backed securities, respectively. The clearing and other services for these different types of fixed-income products have many common elements. The handling of such products by different clearing corporations hinders development of uniform standards for the fixed-income services industry. The combination of GSCC and MBSCC will lead to development of uniform standards for messaging, reporting, netting and settlement mechanisms, standardized settlement practices, and coordinated cash and mark-to-market flows for fixed-income products. Moreover, combining GSCC and MBSCC will help the clearing corporations achieve important membership and risk management goals, such as building a consolidated risk management platform, optimizing cross-margining among various fixed-income products, and establishing uniform membership standards. Furthermore, redundant facilities, services, and operational aspects⁴ will be eliminated as a result of the merger thereby reducing the costs of processing transactions in fixed-income products over time.

To effect the merger, MBSCC will be merged into GSCC under New York law. At the time of the merger, GSCC Acquisition Company LLC ("GSCC Parent"), the sole shareholder of GSCC, will pay MBSCC Holding Company, Inc., the sole shareholder of MBSCC, a nominal amount of money in consideration for canceling its shares of capital stock of MBSCC, and shares of capital stock of MBSCC will be cancelled. GSCC will be the surviving corporation of the merger and will be renamed FICC. GSCC Parent will be the sole direct shareholder of FICC. The current Certificate of Incorporation and Bylaws of GSCC will be amended to be the Certificate of Incorporation and

³ Securities Exchange Act Release Nos. 44988 (October 25, 2001), 66 FR 55222 [SR-MBSCC-2001-01] and 44989 (October 25, 2001), 66 FR 55220 [SR-GSCC-2001-11].

⁴ Operational aspects include such things as separate annual reports, regulatory reports, audits, financial statements, and regulatory examinations.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

Bylaws of FICC. FICC will form the Government Securities Division as the vehicle for delivering the services now provided by GSCC to GSCC members. FICC will form the Mortgage-Backed Securities Division as the vehicle for delivering the services now provided by MBSCC to MBSCC participants, limited purpose participants, and EPN users of MBSCC.

The members and participants receiving services from the Divisions will retain their shareholdings in DTCC and their rights to be shareholders in DTCC that they received during the DTCC Integration. The structure implemented during the DTCC Integration to assure fair representation for, among others, the members of GSCC and participants of MBSCC will also remain in place. After the DTCC shareholders that are members of GSCC begin receiving services from the Government Securities Division and after the DTCC shareholders that are participants of MBSCC begin receiving services from the Mortgage-Backed Securities Division, they will continue to elect persons to serve on the Board of Directors of DTCC ("DTCC Board") as they did prior to the creation of FICC. The individuals elected to serve on the DTCC board will, in turn, be selected by DTCC to serve as directors of FICC. On a periodic basis to be determined by DTCC pursuant to the DTCC shareholders agreement, DTCC common stock will continue to be reallocated to the shareholders using the services of The Depository Trust Company ("DTC"), Emerging Markets Clearing Corporation ("EMCC"), National Securities Clearing Corporation ("NSCC"), and the Divisions of FICC based upon their usage. The members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division will continue to have the right but not the obligation to purchase some or all of the DTCC common stock to which they are entitled.

The charters of the two committees formed during the DTCC Integration, the DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee of DTCC, which includes representatives of members of GSCC and participants of MBSCC, and the GSCC/MBSCC Membership and Risk Management Committee, which is comprised of the representatives of members of GSCC and participants of MBSCC, will be amended to refer to members receiving services from the Government Securities Division and participants receiving services from the Mortgage-Backed Securities Division.

The DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee will be renamed the DTCC/DTC/FICC/NSCC Fixed Income Operations and Planning Committee. It will continue to advise the DTCC Board and management on its policies and procedures with respect to fixed-income products processed by and services of DTC, EMCC, NSCC, and FICC. The GSCC/MBSCC Membership and Risk Management Committee will be renamed the FICC Membership and Risk Management Committee. It will advise the Board of Directors and management of FICC with respect to membership, credit, and risk matters. Other functions may be assigned to the committees as they are today.

After the merger, FICC will satisfy the fair representation requirement of section 17A of the Act⁵ by (i) continuing to give the members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division, the right to purchase shares of DTCC common stock on a basis that reflects their use of the services of the Divisions, DTC, EMCC, and NSCC; (ii) continuing to allow members and participants receiving services from the Divisions to take part in the selection of individuals to be directors of DTCC (who will also be directors of FICC, DTC, EMCC, and NSCC) to ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of these companies; and (iii) utilizing the committee structure described above to ensure that the members and the participants receiving services from the Divisions will have a voice in the operations and affairs of the Divisions.

As a result of the merger, GSCC's Certificate of Incorporation and Bylaws will be amended to reflect the change of GSCC's name to FICC. The Rules of MBSCC will be adopted by FICC as part of the merger as the rules of the Mortgage-Backed Securities Division. The Rules of GSCC and MBSCC will be amended to reflect that (i) the Government Securities Division and the Mortgage-Backed Securities Division will be separate Divisions of FICC; (ii) neither Division of FICC will be liable for the obligations of the other Division; and (iii) that the clearing fund and other assets of each Division will not be available to satisfy the obligations of the other Division.

GSCC and MBSCC believe that the proposed rule changes are consistent with the requirements of section 17A of

the Act⁶ and the rules and regulations thereunder applicable to GSCC and MBSCC because they facilitate the prompt and accurate clearance and settlement of transactions in government securities and mortgage-backed securities by ensuring the continued availability of efficient and cost-effective clearing services to GSCC members and MBSCC participants.

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

GSCC and MBSCC do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments relating to the proposed rule changes have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes 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 the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes or

(B) institute proceedings to determine whether the proposed rule changes 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 changes are 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 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the

⁵ 15 U.S.C. 78q-1(b)(3)(C).

⁶ 15 U.S.C. 78q-1.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of GSCC and MBSCC.

All submissions should refer to File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01 and should be submitted by December 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46783; File No. SR-NASD-2002-153]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish as Permanent Two Pilot Programs Currently Contained in NASD Rule 6541 Relating to Manning Rule Protection for Customer Limit Orders Executed on the Over-the-Counter Bulletin Board

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 25, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing a proposed rule change to establish as permanent two pilot programs currently contained in NASD Rule 6541. Rule 6541, which generally prohibits member firms from trading ahead of customer limit orders in designated Over-the-Counter Bulletin

Board ("OTCBB") securities, was established on a pilot basis for approximately 325 securities quoted on the OTCBB.³ No new rule language is proposed.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On February 8, 2001, the Commission approved NASD Rule 6541, which, on a pilot basis, applied the basic customer limit order protection principles that presently apply to Nasdaq-listed securities to designated securities that are traded on the OTCBB.⁴ Rule 6541(a) generally prohibited member firms that accepted customer limit orders in these securities from "trading ahead" of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. Rule 6541(b) required member firms to provide a minimum level of price improvement of the lesser of \$0.05 per share or one-half of the current inside spread to incoming orders in OTCBB securities if the member chose to trade as principal with those incoming orders while holding customer limit orders. If a member failed to provide the minimum level of price improvement to the incoming order, the member was required to execute its held customer limit orders.

The limit order protection embodied in Rule 6541 is an investor protection tool based on NASD IM-2110-2 (commonly known as the "Manning Rule"). In *Manning*, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more

favorable than the customer order.⁵ Rule 6541 expands to securities traded on the OTCBB the protections that IM-2110-2 provides to trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to IM-2110-2 in Nasdaq listed securities.⁶ In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq-listed securities. On July 26, 2001, Nasdaq filed and implemented an amendment to Rule 6541(b) (SR-NASD-2001-39) that likewise narrowed the amount of required price improvement in OTCBB securities.⁷ Under SR-NASD-2001-39, the price improvement requirement was narrowed from \$0.05 or one-half the inside spread to \$0.01 or one-half the inside spread (whichever is less) for a member wishing to trade in front of held customer limit orders that are priced at or inside the current inside spread for an OTCBB security. For customer limit orders priced less than \$0.01 outside the inside spread, however, SR-NASD-2001-39 required a member seeking to trade in front of such limit orders to execute its trades at a price at least equal to the inside bid (with respect to held customer limit orders to buy) or inside offer (for held orders to sell). Moreover, SR-NASD-2001-39 provided that limit order protection would not apply to customer limit orders that are priced more than \$0.01 outside the current inside spread. The amendment to Rule 6541(b) adopted by SR-NASD-2001-39 was effective for a three-month pilot period that ended on November 1, 2001.

On November 1, 2001, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.⁸ Accordingly, any degree of price improvement would relieve a member from the obligation to fill a limit order that is outside of the inside spread. The amendment also clarified that the basic prohibition on trading

⁵ See *In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988).

⁶ See Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (SR-NASD-2001-09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (SR-NASD-2001-27). See also Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR-NASD-2001-43).

⁷ See Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001) (SR-NASD-2001-39).

⁸ See Securities Exchange Act Release No. 34-45011 (November 1, 2001); 66 FR 56587 (November 8, 2001) (SR-NASD-2001-78).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR-NASD-00-22).

⁴ See Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR-NASD-00-22).