

<sup>12</sup> Specifically, the Commission finds that the proposal to allocate options classes to prospective market makers on the proposed BOX market is consistent with Section 6(b)(5) of the Act,<sup>13</sup> because it will help the Exchange manage the initial launch of trading on the proposed BOX market. In this regard, the Commission notes that all allocations under this proposal are contingent on a prospective firm obtaining approval as a BOX market maker and Options Participant, and Commission approval of the BOX market. Further, the Commission notes that the proposal provides an appeal process for an applicant in the event that any such applicant is denied any privilege in connection with the allocation process.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>14</sup> to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that in Amendment No. 1 the BSE proposes no substantive changes to its filing and, instead, merely clarifies the proposed allocation procedure.

In approving this allocation plan, the Commission is not prejudging the BOX proposal. If the Commission were not to approve BOX, all deposits would be refunded to applicant firms. Approving the allocation plan does, however, afford the BSE an opportunity to prepare for the possibility that the Commission will approve BOX and reduces the time between any such approval and the commencement of trading on the BOX market.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that Amendment No. 1 is approved on an accelerated basis, and that the proposed rule change (File No. SR-BSE-2003-13) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48636; File No. SR-GSCC-2002-07]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Elimination of the Comparison-Only Requirement for New GSCC Netting Members

October 15, 2003.

#### I. Introduction

On September 5, 2002, the Government Securities Clearing Corporation ("GSCC")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-2002-07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice of the proposed rule change was published in the **Federal Register** on June 20, 2003.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

GSCC's rules currently provide that an entity is eligible to become a netting member if, among other things, it has been a comparison-only member for at least six months unless the requirement is waived by GSCC's Membership and Risk Management Committee ("Committee"). The comparison-only membership requirement was included in GSCC's rules when GSCC first began operations. The purpose of this provision was to give GSCC staff the opportunity to ensure that a firm was operationally sound and had the ability to properly communicate with GSCC before being permitted to participate in the netting system. Over the years, GSCC netting membership has become more critical for active market participants, and it has become increasingly common for management to seek and receive approval to waive the six month comparison-only membership requirement. Unlike other netting membership requirements, such as minimum financial standards and

regulation by an established regulatory entity, the comparison-only membership requirement has not been necessary to ensure the integrity of the admission and membership processes. GSCC staff has gained significant experience in making determinations about a firm's operational capability without having any comparison-only membership history. The granting of netting membership based on reviews without any comparison-only membership history has not presented GSCC with any operationally-deficient netting members.

For these reasons, GSCC is amending its rules to (1) eliminate the six month comparison-only membership requirement as a routine matter and (2) permit GSCC to require an applicant to be a comparison-only member for a time period GSCC deems necessary if GSCC believes such action, in order to protect itself and its members, is necessary to assess the operational capability of the applicant. GSCC's determination to impose a comparison-only membership requirement shall be based on the presence of one or more of the following conditions: (a) The applicant is a newly-formed entity with little or no functional history; (b) its operational staff lacks significant experience; (c) if one of the above conditions is present, it has not engaged a service bureau or correspondent clearing member with which GSCC has had a relationship; or (d) any other factor that management believes might suggest insufficient operational ability.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>4</sup> GSCC believes that in most cases it can adequately and without compromising its ability to safeguard its members securities and funds make the determination about an applicant's operational capability and can grant netting membership without requiring the applicant to be a comparison-only member for at least six months. In those situations where GSCC believes it would be prudent to require an applicant to be a comparison-only member for some period of time, GSCC has retained the ability to do so. Accordingly, the proposed rule change should not negatively affect GSCC's ability to safeguard securities and funds

<sup>1</sup> On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) [File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01].

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Securities Exchange Act Release No. 48010 (June 10, 2003), 68 FR 37035.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

which are in its custody or control or for which it is responsible.

#### 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.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2002-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48631; File No. SR-NASD-2003-127]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for the Listing of Additional Shares Program and To Institute a Record-Keeping Fee for Certain Changes by Issuers

October 15, 2003.

#### I. Introduction

On August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the fees for the listing of additional shares ("LAS") program and to institute a record-keeping fee for certain changes by issuers. The proposed rule change was published for comment in the **Federal Register** on September 9, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The purpose of the proposed rule change is to modify the fees for the LAS

program and to institute a record-keeping fee for certain changes by issuers in order to respond to the needs of Nasdaq. The LAS program involves notification and fee requirements for the issuance of additional shares. Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the Commission. Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from \$2,000 to \$2,500 for issuances of between 50,000 and 250,000 additional shares.<sup>4</sup> Second, the current quarterly cap of \$22,500 would be eliminated. The annual cap of \$45,000, however, would be retained.

In addition, Nasdaq also proposes to institute a \$2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

#### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities association,<sup>5</sup> and, in particular, with the requirements of Section 15A<sup>6</sup> of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(5)<sup>7</sup> of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system, which the NASD operates or controls. The Commission finds that the proposed rule change is reasonably designed to accomplish these ends by modifying the fees for the listing of additional shares program and to institute a record-keeping fee for certain changes by issuers on an equal basis. Moreover, the Commission believes that the additional fees should

<sup>4</sup> As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

<sup>5</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

assist the NASD in carrying out its self-regulatory responsibilities.<sup>8</sup>

#### IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NASD-2003-127) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48627; File No. SR-NASD-2003-130]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Amendments to Its Recently Adopted Rules Regarding Shareholder Approval for Stock Option or Purchase Plans or Other Equity Compensation Arrangements

October 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 18, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October

<sup>8</sup> Nasdaq has represented to the Commission that the LAS program fees are used to fund issuer-related operations, including educational initiatives, issuer service initiatives, and surveillance measures. See Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the terms "compensation committee" or "compensation committee

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 48413 (August 26, 2003), 68 FR 53209.