

Date of Filing of Appeal Papers: April 17, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by May 2, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.
Cyril J. Pittack,
Acting Secretary.

Appendix

- April 17, 1995 Filing of Appeal letter
April 24, 1995 Commission Notice and Order of Filing of Appeal
May 12, 1995 Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
May 22, 1995 Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
June 12, 1995 Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
June 27, 1995 Petitioners' Relay Brief should Petitioner choose to file one [see 39 CFR §3001.115(d)]

- July 5, 1995 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
August 15, 1995 Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95-10440 Filed 4-27-95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35640; File No. SR-GSCC 94-7]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Changes in Membership Standards

April 24, 1995.

On October 11, 1994, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to establish minimum financial standards for two current netting system membership categories: insurance companies and registered investment companies. On December 5, 1994, GSCC filed an amendment to the proposed rule change.² On December 15, 1994, the Commission published notice of the proposed rule change in the Federal Register to solicit comment from interested persons.³ On February 14, 1995, GSCC filed a second amendment to the proposed rule change.⁴ The amendment was a technical amendment that did not require republication of notice. On April 20, 1995, GSCC filed a third amendment to the proposed rule change.⁵ That amendment withdrew that portion of the proposed rule change relating to financial standards for investment companies. No comments were received. This order approves the proposal as amended.

¹ 15 U.S.C. 78s(b)(1) (1988).

² Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (December 1, 1994).

³ Securities Exchange Act Release No. 35061 (December 7, 1994), 59 FR 64720.

⁴ Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Staff Attorney [sic], Division, Commission (February 10, 1995).

⁵ Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry Carpenter, Assistant Director, Division, Commission (April 20, 1995).

I. Description

The proposed rule change establishes minimum financial standards for insurance company applicants for membership in GSCC's Netting System.⁶

(A) Background

GSCC Rule 2, Section 1 currently provides that insurance companies as defined by Section 2(a)(17) of the Investment Company Act of 1940 ("Investment Company Act") are eligible to become members of GSCC's Netting System if they are in good standing with their primary regulator.⁷ Insurance companies are regulated primarily by the states in which they organize and operate. States generally have imposed statutory and administrative requirements for the maintenance of reserves that are intended to bear a reasonable relationship to the risks presented by the insurers' outstanding contractual obligations. These requirements appear generally to have served to ensure that insurance companies are financially responsible.

In December 1992, the National Association of Insurance Commissioners ("NAIC") adopted a model law that establishes standards for the adequacy of life and health insurance company surplus levels based upon the risk profile of their operations and investments.⁸ The model law is to replace the fixed dollar minimum capital requirements under state law with an authorized control level risk-based capital ("RBC") at or below which an insurance commissioner must act and place an insurer under varying degrees of increased state control.

The RBC is an adjusted capital requirement based on four main risk categories (asset risk, insurance risk, interest rate risk, and business risk). The asset risk category provides for risk of default on investments held by insurance companies by imposing reductions in valuation ranging from .3% of the value of obligations

⁶ Currently, no insurance companies are members of GSCC's Netting System.

⁷ Section 2(a)(17) of the Investment Company Act provides that "'Insurance company' means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such."

⁸ While only twenty states have adopted the model law as of November 1994, the risk-based capital report has been included in the NAIC financial statement used by all states. As a result, all insurance companies must disclose the risk profile in their annual financial reports.

guaranteed by the U.S. government to 30% of the value of common stock to 100% of the carrying value of foreign domiciled subsidiaries. The insurance risk category imposes capital levels with respect to an insurer's liabilities and obligations. In general, liabilities under health insurance policies require higher capital levels than liabilities under life insurance policies. The interest rate risk category is designed to cover the risk of losses from annuity and other deposit type liabilities with interest guarantees as a result of interest rate swings. Capital requirements range from .75% to 3% of reserve amounts. The business risk category is designed to account for the risk of state guaranty fund assessments and is a percentage of life and annuity premiums.

An insurance company's RBC level is calculated using the company's "total adjusted capital" (which is the sum of its statutory surplus, asset valuation reserve, voluntary investment reserves, and half of the annual dividend liability as adjusted for the capital contribution by subsidiaries) as the numerator and its RBC number as the denominator. If an insurance company's RBC level is equal to or greater than the "company action level," then no regulatory intervention is required under the Model Act. A ratio of 200 percent or more is necessary for a life or health insurance company to avoid any regulatory action.⁹

In December 1993, the NAIC adopted similar risk-based standards for property and casualty insurance companies. These standards will take effect for the 1994 annual financial reports. The RBC property and casualty insurance companies is based on asset risk, credit risk, loss reserve risk, and written premium risk. The asset risk capital represents the capital required to support the risk of potential default of invested assets. Credit risk capital represents the capital required to support the risk of default by reinsurers and other creditors. Loss reserve risk capital represents the capital required to support the risk of adverse development in excess of expected investment income from loss reserves. Written premium risk represents the capital required to support the risk of inadequate rates on business written over the coming year. As with life and health insurers, the RBC level for

⁹ If a life or health insurance company's RBC level is between 150–200%, under the Model Act regulators would require a company to file a plan to increase the capital ratio to greater than 200%. At a RBC level of 100–150%, regulators would do an examination of the company and issue corrective orders. At 70–100%, the regulators would be authorized to take control of the company. Below 70%, the regulators would be required to take control of a company.

property and casualty insurers is calculated by dividing the insurer's surplus by its calculated RBC. The "company action level" for property and casualty insurers is 80%.¹⁰

There are several private organizations that rate insurance companies. A.M. Best ("Best") was the first rating agency to report on the condition of insurance companies. Standards & Poor's ("S&P"), Moody's, and Duff & Phelps ("D&P") also rate insurance companies.

(B) Membership Standards

As a result of the regulation of insurance companies by the states, no uniform regulatory financial standard exists for insurance companies. Instead, the proposed rule change relies on the analysis and rating of each insurance company provided by the rating agencies as a proxy for such a uniform standard. The proposal also establishes a "size" test that at least initially only insurance companies of substantial size can meet and requires that insurance company netting members have a satisfactory RBC level.

Specifically, the proposal establishes the following minimum financial standards for insurance company netting members to be accepted into GSCC Netting System membership:

(1) A Best's rating of "A –" or better (if the member is rated by Best),¹¹

(2) A rating by at least one of the other three major rating agencies (D&P, Moody's, or S&P) of at least "A –" or "A3", as applicable (or an equivalent rating by either a nationally-recognized statistical rating organization or another rating agency acceptable to GSCC),

(3) No rating by any one of the other three major rating agencies of less than "A –" or "A3", as applicable,¹²

(4) A RBC level equal to or greater than the applicable "company action level" as set forth in the Risk-Based Capital for Insurers Model Act, and

¹⁰ Under the Model Act, at an RBC level at 28% or less regulators would be required to take control of a company.

¹¹ Best's ratings are as follows:

A++ and A+=superior
A and A –=excellent
B++ and B+=very good
B and B –=good
C++ and C+=fair
C and C –=marginal
D=below minimum standards
E=under state supervision
F=in liquidation

Currently, approximately one-third of all life insurance companies rated by Best and over one-half of all property and casualty insurance companies rated by Best have a rating of A – or better.

¹² A rating of below "A –" or "A3" by one of the other three major rating agencies generally indicates some weakness.

(5) Statutory capital (consisting of adjusted policyholders' surplus plus the company's asset valuation reserve) of no less than \$500 million.¹³

(C) Reporting Requirements

Each applicant for membership in GSCC's Netting System that is an insurance company will be required to provide its two most recent annual statements and three most recent quarterly financial statements filed with the NAIC, the Commission, and/or the applicant's regulatory authority in its state of domicile. In order to monitor the financial status of insurance company netting members on an ongoing basis, each such member will be required to provide GSCC with copies of its quarterly and annual financial statements and any intervening amendments and addendums thereto at the time that such statements are filed with the NAIC, the Commission, and/or the member's regulatory authority in its state of domicile.

II. Discussion

Section 17A(b)(3)(B) of the Act¹⁴ provides that the rules of a clearing agency must provide that certain types of entities, including insurance companies, may become participants in such clearing agency. Section 17A(b)(4)(B) of the Act¹⁵ provides that a registered clearing agency may deny participation to or condition the participation of any person if such person does not meet such standards of financial responsibility, operational capacity, experience, and competence as are prescribed by the rules of the clearing agency.

In the Commission's release adopting standards for clearing agency registration ("Standards Release"), the Commission stated that although the categories enumerated by Section 17A(b)(3)(B) are already subject to regulation by various federal and state authorities, such regulation does not necessarily qualify an applicant for participation in a clearing agency.¹⁶ Instead, a clearing agency may impose such additional or higher standards as it deems necessary to protect the clearing agency and its participants from unreasonable risks.

In its registration application, GSCC requested an exemption from Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act. At that time GSCC's rules did not

¹³ Currently, this standard encompasses roughly the twenty-five largest life insurers and the twenty-five largest property and casualty insurers.

¹⁴ 15 U.S.C. 78q-1(b)(3)(B) (1988).

¹⁵ 15 U.S.C. 78q-1(b)(4)(B) (1988).

¹⁶ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

enumerate all of the statutory categories of membership. In addition, GSCC's rules did not include applicant and membership financial standards as contemplated by Section 17A(b)(4)(B) of the Act. In its initial temporary registration order,¹⁷ the Commission stated that in developing member financial and operation standards, GSCC should ensure that the standards would allow GSCC to allocate losses resulting from member defaults in order to support GSCC's netting system. The Commission believes that GSCC's experience in operating a clearing and settlement facility for government securities transactions has provided GSCC with the necessary guidance to develop applicant and continuing membership standards for insurance companies that are both fair and adequate to protect GSCC and its participants from unreasonable risk.

The proposals also limits Netting System membership to the largest insurance companies in existence. The Standards Release notes that a clearing agency may discriminate among persons in the admission to the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience, and competence. The Division believes that, at least initially, the limitations on the basis of capital appear to be reasonable as demonstrations of greater financial responsibility, operational capacity, experience and competence.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-94-07) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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¹⁷ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[Release No. 34-35638; File No. SR-ISCC-95-2]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Service Fees

April 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ ("Act"), notice is hereby given that on April 3, 1995, International Securities Clearing Corporation ("ISCC") 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 primarily by ISCC. 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

ISCC is filing the proposed rule change to revise its fee schedule in accord with its current service costs and to make certain technical corrections thereto.

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

In its filing with the Commission, ISCC 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. Summaries are 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

The purpose of the proposed rule change is to adjust certain fees charged to ISCC participants for services to accurately reflect ISCC's current cost of providing such services. Fees for receipt of transaction instructions have been increased from \$1.50 to \$2.25 per item for instructions transmitted by a participant via computer platform and from \$3.00 to \$5.00 per item for instructions transmitted by a participant via mail, facsimile, or telex. Reporting fees for machine readable output, print image output, and hardcopy (via telex or

mail) have doubled to \$10.00, \$20.00, and \$50.00 per report, respectively, and duplicate copies of prior day reports also have doubled to \$50.00 per report requested. Participants will be charged for services in accordance with the new fee structure effective April 1, 1995. In addition, ISCC is deleting all references to "PORTAL" in the fee schedule which references should have been previously removed in connection with the elimination of the PORTAL program in 1994.²

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among ISCC's participants.

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

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)³ of the Act, and pursuant to Rule 19b-4(e)(2)⁴ promulgated thereunder, insofar as the proposed rule change establishes or changes a due, fee, or other charge imposed by a self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

² Securities Exchange Act Release No. 34980, (November 16, 1994), 59 FR 60177 [File No. SR-ISCC-94-05].

³ 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

⁴ 17 CFR 240.19b-4(e)(2) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).