

bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c-1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c-1.

10. The bonus credit recapture provisions are necessary for RLNY or Golden American to offer the bonus credits. It would be unfair to RLNY or Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts' "free look" provision. Because no CDSC applies to the exercise of the "free look" provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's or Golden American's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's or Golden American's expense. In the event of such profits to owners or beneficiaries, RLNY or Golden American could not recover the cost of granting the bonus credits. This is because RLNY and Golden American intend to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY or Golden American must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY and Golden American simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

11. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors

in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The exemption of these classes of persons is 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 because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

12. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about Account B and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

#### *Conclusion*

Applicants submit that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48201; File No. SR-GSCC-2002-10]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability to its Members

July 21, 2003.

#### I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation ("GSCC")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-GSCC-2002-10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice of the proposal was published in the **Federal Register** on January 14, 2003.<sup>3</sup> The Commission received two comment letters in response to the proposed rule change.<sup>4</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of GSCC's rule change is to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to

<sup>1</sup> On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") under New York law, and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order, we will continue to refer to GSCC instead of the GSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [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. 47135 (January 7, 2003), 68 FR 1876.

<sup>4</sup> Letters from Dan W. Schneider, Counsel to the Association of Global Custodians ("AGC") (March 24, 2003) and Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, Fixed Income Clearing Corporation (June 12, 2003).