

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 CBOE. All submissions should refer to File No. SR-CBOE-00-03 and should be submitted by May 2, 2000.

VI. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.³⁰ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)³¹ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

In extending this pilot, the Commission has balanced the commenters concerns with those expressed by CBOE. The Commission notes that CBOE has provided figures that show that kick-outs under this pilot program occur infrequently. Specifically, on February 14, 2000, CBOE conducted a study to determine how often kick-outs from RAES occurred as a result of this pilot program. On that date, CBOE found that out of the 150 classes for which the ABP system had been implemented, only 44 of those classes had an order executed through the ABP system, *i.e.*, the RAES order interacted with an order on the limit order book. In those 44 classes, 1054 orders (representing 9017 contracts) were executed through the ABP system. In those same 44 classes, only 26 orders (representing 130 contracts) were rejected from RAES due to the Autoquote system locking or crossing CBOE's best bid or offer as established by the book. Moreover, the orders rejected from RAES as a result of this pilot represent a small percentage of the total amount of orders routed to RAES in these 44 options classes on February 14 (5908 orders representing 41,102 contracts). These figures support CBOE's position that kick-outs under this pilot program occur infrequently.

³⁰ In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78f(b)(5).

Nevertheless, the Commission is mindful of the commenters concerns. In particular, the Commission agrees with the commenters that there are other solutions than the one employed by CBOE in this pilot program. In this filing, CBOE listed two alternative solutions. One of these alternatives involves having an incoming order trade against the book order at the book price for the volume in the book and then having the balance of the incoming order trade at the next best available price—whether it is with another booked order or with a market makers logged onto RAES. This alternative would allow customer orders to interact with orders on the limit order book, but would eliminate the risk to market makers of executing a RAES order for the maximum eligible size when the limit order is for a smaller number of contracts. In this regard, the CBOE has represented that it will continue work on systems changes to address the situation when the Autoquote system locks or crosses CBOE's best bid or offer as established by the book and has assigned a high priority these systems changes. CBOE stated that it is confident that these changes could be implemented by the end of this calendar year, after it has completed the projects needed for it to convert to decimal trading.³²

In the meantime, the Commission agrees with one of the commenters that CBOE should provide protection to kicked-out orders in options classes where the ABP system has not yet been implemented. When the ABP system was originally proposed, CBOE represented that the ABP system, by allowing RAES orders to interact directly with orders in the exchange's limit order book, would reduce or eliminate the need for kick-outs. Because of this representation, CBOE eliminated Interpretation .04, which provided protection for orders that had been kicked-out. As of the date of this filing, CBOE has not implemented the ABP system on a floor-wide basis. The Commission therefore believes that Amendment No. 1, which re-adopts Interpretation .04, should help provide protection to orders kicked-out in those classes in which the ABP system has not been implemented. CBOE also stated that it would continue to roll out the ABP system in those classes in which it had not yet been implemented.

In light of the likely benefits to customer limit orders expected to be gained by the continued implementation of the ABP system, the Commission finds good cause for

³² See Amendment No. 1 at 2.

approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Further, the Commission notes that the CBOE has agreed to provide monthly reports to the Commission regarding the number of times an incoming RAES order is rejected pursuant to this pilot.³³

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-CBOE-00-03) is hereby approved through August 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42617; File No. SR-EMCC-00-3]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Exclusion of Excess Clearing Fund Deposits in the Calculation of an Inter-Dealer Broker Member's Minimum Margin Amount

April 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 30, 2000, the Emerging Markets Clearing Corporation ("EMCC") 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 EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

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

The text of the proposed rule change provides EMCC the right, in its discretion, to exclude from an inter-

³³ The extension of this pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal permanently.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

dealer member's "minimum margin amount" additional margin that such member has posted to the clearing fund due to its contra-party's failure to timely submit one or more trades to EMCC once the underlying trade(s) have been compared or settled.²

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

In its filing with the Commission, EMCC 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. EMCC has prepared summaries set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.³

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

EMCC's rules require that inter-dealer broker members ("IDBs") be margined in the same way as dealer members. Rule 4, Section 5(A) of EMCC's Rules requires members' clearing fund deposits to equal the greater of (i) their daily margin amount (*i.e.*, the amount calculated for each member on each business day) and (ii) their minimum margin amount (*i.e.*, their "floor"). The floor is the amount equal to the largest single daily margin amount computed for a member during the relevant calendar month and the previous calendar month.

As EMCC has developed and expanded its membership base, there have been concerns about the effect of the late trade matching on IDBs. That is, where an IDB and one of its contra-parties submit a trade on a timely basis but the other contra-party dealer does not, the IDB will be required to post additional clearing fund with EMCC. EMCC's Addendum B requires the late submitting dealer in that situation to cover the IDB's financing cost for the excess clearing fund deposit. Addendum B does not, however, address the impact of such additional margin requirement on the computation of the IDB's floor. The intent of requiring the additional margin from the IDB is to cover EMCC's risk exposure until the trade is compared or settled.

² A copy of the text of EMCC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through EMCC.

³ The Commission has modified the text of the summaries prepared by EMCC.

As written, the IDB Member would have to maintain that additional amount on deposit as its floor for an additional 30 to 60 days. Accordingly, the proposed rule would amend Rule 4 to permit EMCC, in its discretion, to exclude the additional margin from the calculation of the IDB's floor once the underlying trade(s) have been compared or settled and thus return the excess clearing fund so posted by the IDB.

This rule change should encourage IDBs to become participants in EMCC, and therefore facilitate the prompt and accurate clearance and settlement of emerging market securities transactions. The proposed rule change is therefore consistent with the requirements of section 17A(b)(3)(F) of the Act, as amended, and the rules and regulations thereunder.

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

EMCC 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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

The Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, as amended, and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁴ The Commission believes that EMCC's proposal to exclude from the calculation of an IDB's minimum margin amount clearing fund deposits which are made by an IDB due to the failure of a contra-party dealer to submit a trade in a timely fashion is consistent with EMCC's safeguarding obligations because EMCC will be able to so adjust the minimum margin amount only (1) for an IDB and not a dealer member, (2) where the IDB has deposited the additional margin because of the untimely submission of trade(s) by one of its dealer counterparties, and (3)

⁴ 17 U.S.C. 78q-1(b)(3)(F).

where the trade(s) have been compared or settled.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication on the notice of filing. The Commission finds good cause to approve the rule change prior to the thirtieth day after publication of notice because so approving will permit EMCC to immediately exclude the additional margin requirement in the computation of the IDB's floor. This should encourage more IDBs to become participants in EMCC which should contribute to the safe and efficient clearance and settlement of emerging market debt securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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 change that are filed with the 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-00-3 and should be submitted by May 2, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-00-3) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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⁵ 17 CFR 200.30-3(a)(12).