

received, or better, or at the best available price in another marketplace. The Exchange believes that violations of this rule are objective in nature and easily verifiable. Therefore, the Exchange believes that violations of this rule in inadvertent or isolated circumstances should be handled under the Plan and not pursuant to the Exchange's formal disciplinary procedures. The Exchange proposes that the recommended fines for the above violations be \$100, \$500 and \$1,000 for first, second and third and subsequent violations, respectively.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believes the proposed rule is consistent with Sections 6(b)(1),<sup>4</sup> 6(b)(6),<sup>5</sup> 6(b)(7),<sup>6</sup> and 19(d)<sup>7</sup> of the Act. The CHX believes the proposal is consistent with the Section 6(b)(6)<sup>8</sup> requirement that the rules of an Exchange provide that its members and persons associated with its members shall be disciplined appropriately for violations of the rules of the exchange. The CHX believes the proposal provides an efficient procedure for the appropriate disciplining of members for a rule violation that is objective in nature. In addition, because CHX Article XII, Rule 9 provides procedural rights to a person fined under the Plan to contest the fine and permit a hearing on the matter, the Exchange believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>3</sup> The Exchange staff would not recommend that a violation of this rule proceed under the Plan if a specialist had not already adjusted the execution price of an order that was the basis of the rule violation.

<sup>4</sup> 15 U.S.C. 78f(b)(1).

<sup>5</sup> 15 U.S.C. 78f(b)(6).

<sup>6</sup> 15 U.S.C. 78f(b)(7).

<sup>7</sup> 15 U.S.C. 78s(d).

<sup>8</sup> 15 U.S.C. 78f(b)(6).

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

No written comments were either solicited or received.

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

Within 35 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 90 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 CHX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change 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 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2001-08 and should be submitted by October 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-25381 Filed 10-9-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44896; File No. SR-EMCC-2001-03]

### **Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Proposed Rule Change Relating to Arrangements To Integrate Emerging Markets Clearing Corporation and The Depository Trust & Clearing Corporation**

October 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act"),<sup>1</sup> notice is hereby given that on August 22, 2001, the Emerging Markets Clearing Corporation ("EMCC") 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 EMCC. 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**

The proposed rule change involves the initial arrangements for the integration of EMCC with The Depository Trust & Clearing Corporation ("DTCC").<sup>2</sup>

#### **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 the statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>3</sup>

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

The proposed rule change is the first formal regulatory step to effect the integration of EMCC with DTCC. Specifically, the rule change would implement certain changes in EMCC's organizational documents to facilitate

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

<sup>2</sup> DTCC is a holding company for The Depository Trust Company and the National Securities Clearing Corporation, which are registered clearing agencies.

<sup>3</sup> The Commission has modified the text of the summaries prepared by EMCC.

the integration with DTCC and the subsequent exchange offer.

### 1. Background

At its meeting on July 25, 2001, EMCC's Board of Directors voted to proceed with a plan for the integration of EMCC with DTCC ("Plan"). Such integration is expected to take place concurrently with the integration of the Government Securities Clearing Corporation ("GSCC") and MBS Clearing Corporation ("MBSCC") with DTCC.<sup>4</sup> EMCC has been advised that the Board of Directors of DTCC has also agreed to proceed with the Plan.

A principal goal of the Plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at EMCC, MBSCC, GSCC, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") (collectively, the "Operating Subsidiaries") for the clearance and settlement of both institutional and broker transactions. Harmonized processing should help to accommodate shortened settlement cycles, address increasing volumes, improve risk management, and lower transaction processing costs.

### 2. The Plan

#### a. Exchange Offer and Valuation

Under the Plan, DTCC will form a wholly-owned subsidiary ("Acquisition Company") for the purpose of making an exchange offer ("Exchange Offer") for EMCC shares. After receiving all regulatory approvals, Acquisition Company will conduct the Exchange Offer where eligible EMCC Class A shareholders will have the opportunity to exchange their EMCC shares for DTCC common stock.<sup>5</sup> Concurrent with and subject to the effectiveness of the Exchange Offer, EMCC will repurchase the Class A and Class B common shares held by its trade association shareholders. Subject to the effectiveness of the Exchange Offer, EMCC's trade association shareholders will receive from EMCC in exchange for their Class A and Class B common

<sup>4</sup> Pursuant to separate plans for the integration of GSCC and MBSCC with DTCC, it is contemplated that GSCC and MBSCC will become operating subsidiaries of DTCC at the same time that EMCC becomes an operating subsidiary of DTCC. However, the integration of EMCC with DTCC is not contingent on the integration of GSCC and MBSCC with DTCC and vice versa. Securities and Exchange Act Release Nos. 44985 (Oct. 2, 2001) [File No. SR-GSCC-2001-11] and 44838 (Sept. 24, 2001) [File No. SR-MBSCC-2001-01].

<sup>5</sup> EMCC Class A shareholders eligible to participate in the Exchange Offer include EMCC Class A shareholders that are members or affiliates of members of EMCC, MBSCC, DTC, or NSCC.

shares cash in an amount equal to the lesser of (a) their acquisition cost or (b) the adjusted book value of their shares. EMCC's Class B shareholders will retain their Class B shares (other than the trade association shareholders who will be paid out as provided above) with the same rights to have their shares repurchased for cash as currently provided in EMCC's Amended and Restated Shareholder Agreement ("EMCC Shareholder Agreement").<sup>6</sup>

The EMCC-DTCC share exchange will be valued on the basis of the adjusted book value of such EMCC and DTCC shares. Adjusted book value of the EMCC shares will equal book values less the retained earnings of EMCC at the time of (or as of the end of the last full calendar month preceding) the integration of EMCC with DTCC. Adjusted book value of the DTCC shares will equal book value less the smaller of (i) the retained earnings of DTCC attributable to NSCC's retained earnings at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full calendar month preceding) the integration of EMCC with DTCC.<sup>7</sup>

Following a successful Exchange Offer, Acquisition Company will be the majority shareholder of EMCC and the Class B and any non-eligible and/or non-tendering Class A EMCC shareholders will remain as minority shareholders in EMCC.

#### b. Changes to EMCC's Shareholder Agreement

EMCC's Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on transferring EMCC shares to Acquisition Company. Following a successful Exchange Offer, the EMCC Shareholder Agreement will be terminated.

#### c. Selection of EMCC's Directors and EMCC Activities

DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of EMCC the persons elected by the shareholders of DTCC to be the directors of DTCC.<sup>8</sup> EMCC will

<sup>6</sup> In addition and subject to the effectiveness of the Exchange Offer, holders of Class B shares will be provided with the limited right to vote for the election of EMCC Directors.

<sup>7</sup> Such retained earnings are dedicated to NSCC's business.

<sup>8</sup> Given that EMCC's initial post-integration board would be elected upon the effectiveness of the integration plan, EMCC has determined to postpone its 2001 annual election of directors, which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is

continue to exist as a separate registered clearing agency and will operate essentially as it currently does by offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures. As a matter of DTCC policy, EMCC's retained earnings at the time of (or as of the end of the last full calendar month preceding) the integration of EMCC with DTCC will be dedicated to supporting EMCC's business. EMCC will be sufficiently capitalized for its activities as a clearing agency.

#### d. DTCC's Role

Neither Acquisition Company nor DTCC will engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration, and corporate communications will continue to be centralized in DTCC and be provided by DTCC through NSCC to EMCC pursuant to service contracts.

#### e. Fair Representation

As part of the proposed integrations, a structure will be implemented in order that the Operating Subsidiaries will satisfy their fair representation requirement of Section 17A of the Act. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of EMCC, MBSCC, and GSCC, which become shareholders of DTCC as a result of the Plan, will elect the persons to serve on DTCC's Board of Directors. These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board, rights to purchase DTCC common stock will be reallocated to shareholders using the services of any one or more of the Operating Subsidiaries based upon their usage. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

#### f. Committees

In addition, DTCC's existing International Operations and Planning Committee will include representatives of members of EMCC. The International Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the

effectuated. Should the Plan not become effective by March 31, 2002, then EMCC will call an annual meeting for the election of directors pursuant to its current procedures.

international products and/or services of the Operating Subsidiaries, including EMCC, and will have certain other responsibilities to be assigned to the Committee.

Furthermore, EMCC will continue to have a Membership and Risk Committee that will include representatives of EMCC's members. The EMCC Membership and Risk Committee will advise EMCC's Board of Directors and management with respect to membership, credit matters, and risk matters and will have certain other responsibilities to be assigned to it.

#### g. Changes to DTCC's and EMCC's Governing Documents

DTCC's Certificate of Incorporation, By-Laws and Shareholders Agreement ("Basic Documents") will be amended to extend to the shareholders of EMCC, MBSCC, and GSCC that become shareholders of DTCC as a result of the Exchange Offer the rights that the shareholders of DTCC currently have and, in particular, to satisfy the Fair Representation Requirement of the Exchange Act. The Basic Documents will provide the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including EMCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc., as an owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.
- The rights to purchase DTCC common stock will be reallocated to the users of each of the Operating Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by DTCC's Board and in accordance with the DTCC Shareholders Agreement.
- DTCC common stock owners will be able to exercise voting in the election of DTCC's directors.
- Each year the DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of DTCC common stock for

election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

In addition, EMCC's Certificate of Incorporation and By-Laws will be revised to reflect the changes in EMCC's corporate governance structure and to include certain other changes so that these documents conform to the Certificates of Incorporation and By-Laws of GSCC and MBSCC, so as to promote efficiency in the governance of the Operating Subsidiaries upon completion of the Plan.<sup>9</sup> EMCC's Certificate of Incorporation shall be amended as follows:

- Its operative provision, which currently is contained in the original Certificate and several amendments, will be restated into a single composite Amended and Restated Certificate of Incorporation and recorded and renumbered as appropriate.
- In Article 3 (as renumbered), the provisions relating to the Class B common shares will be modified to provide such shares with limited voting rights. These shares will have the right to vote, with the Class A common shares voting together as a single Class, for the election of directors.
- A new Article 4 will be inserted to provide that, in accordance with New York Business Corporation Law, EMCC shareholders may take action by written consent without a meeting and without unanimity as long as such consent is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- The supermajority voting provisions currently contained in Article 6 will be deleted since they will be unnecessary because DTCC, through its wholly-owned subsidiary, Acquisition Company, will be the controlling shareholder of EMCC.
- A new Article 6 will be added to limit the liability of the directors to EMCC and its shareholders for any breach of duty provided such limitation is consistent with the provisions of the New York Business Corporation Law.

<sup>9</sup>The full text of the proposed changes to the Certificate of Incorporation and to the By-Laws is set forth in Exhibit A of EMCC's rule filing.

• Since after the proposed integration DTCC through its wholly-owned subsidiary, Acquisition Company, will be the majority shareholder of EMCC, the current By-Laws of EMCC will be replaced with a set of By-Laws that generally conform to NSCC's By-Laws.<sup>10</sup>

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder applicable to EMCC because it is designed to coordinate further the activities of each of the Operating Subsidiaries in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry. The proposed rule change will not affect and is therefore consistent with EMCC's duty to safeguard securities and funds in its custody or control or for which it is responsible.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. EMCC, as well as each of the other Operating Subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

#### 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.

### III. Date of Effectiveness of the Proposed Rule Change 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

<sup>10</sup>EMCC's By-Laws will differ from NSCC's By-Laws in that (i) all references will be gender-neutral, (ii) the requirement in Section 3.3 that the President shall be the Chief Executive Officer will be deleted, (iii) the number of directors shall be between fifteen and twenty-five as determined by the Board, and (iv) Sections 1.2 and Article VIII will provide that a majority of the outstanding shares may call a special shareholders meeting and may amend EMCC's By-Laws.

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change 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 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, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File Number SR-EMCC-2001-03 and should be submitted by October 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-25380 Filed 10-1-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44895; File No. SR-GSCC-2001-11]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Relating to Arrangements To Integrate Government Securities Clearing Corporation and The Depository Trust & Clearing Corporation

October 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act"),<sup>1</sup> notice is hereby given that on August 22, 2001,

the Government Securities Clearing Corporation ("GSCC") 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 GSCC. 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

The proposed rule change involves the initial arrangements for the integration of GSCC with The Depository Trust & Clearing Corporation ("DTCC").<sup>2</sup>

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

In its filing with the Commission, GSCC 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 the statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>3</sup>

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

The proposed rule change is the first formal regulatory step to effect the integration of GSCC with DTCC. Specifically, the rule change would implement certain changes in GSCC's organizational documents to facilitate the integration with DTCC and the subsequent exchange offer.

##### 1. Background

At its meeting on July 24, 2001, GSCC's Board of Directors voted to proceed with a plan for the integration of GSCC and MBS Clearing Corporation ("MBSCC") with DTCC ("Plan").<sup>4</sup> Such integration is expected to take place concurrently with the integration of Emerging Markets Clearing Corporation

("EMCC") with DTCC.<sup>5</sup> GSCC has been advised that the Board of Directors of DTCC has also agreed to proceed with the Plan.

A principal goal of the Plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at GSCC, MBSCC, EMCC, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") (collectively, the "Operating Subsidiaries") for the clearance and settlement of both institutional and broker transactions. Harmonized processing should help to accommodate shortened settlement cycles, address increasing volumes, improve risk management, and lower transaction processing costs.

##### 2. The Plan

##### a. Exchange Offer and Valuation

Under the Plan, DTCC will form a wholly-owned subsidiary ("Acquisition Company") for the purpose of making an exchange offer ("Exchange Offer") for GSCC shares. After receiving all regulatory approvals, Acquisition Company will conduct the Exchange Offer where GSCC shareholders will have the opportunity to exchange their GSCC common stock for DTCC common stock on the basis of the adjusted book value of such GSCC and DTCC shares. Adjusted book value of the GSCC shares will equal book value less the retained earnings of GSCC at the time of (or as of the end of the last full calendar month preceding) the integration of GSCC with DTCC.<sup>6</sup> Adjusted book value of the DTCC shares will equal book value less the smaller of (i) the retained earnings of DTCC attributable to NSCC's retained earnings at the time of the integration of NSCC and DTC with DTCC in 1999 or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of (or as of the last full calendar month preceding) the integration of GSCC with DTCC.<sup>7</sup> Following a successful Exchange Offer, the GSCC Shareholder Agreement will be terminated. Acquisition Company will be the majority or sole (depending on whether all GSCC shareholders agree to tender

<sup>2</sup> DTCC is a holding company for The Depository Trust Company and the National Securities Clearing Corporation, which are registered clearing agencies.

<sup>3</sup> The Commission has modified the text of the summaries prepared by GSCC.

<sup>4</sup> Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release No. 44838 (Sept. 24, 2001) [File No. SR-MBSCC-2001-01].

<sup>5</sup> Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the integration of GSCC and MBSCC with DTCC is not contingent on the integration of EMCC with DTCC and vice versa. Securities Exchange Act Release No. 44896 (Oct. 2, 2001) [File No. SR-EMCC-2001-03].

<sup>6</sup> Such retained earnings are dedicated to GSCC's business.

<sup>7</sup> Such retained earnings are dedicated to NSCC's business.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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