

Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c-1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a-7 under the 1940 Act. To the extent that the In-Kind Transactions do not comply with the provisions of paragraphs (a) and (b) of Rule 17a-7, the section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a-7. The section 17 Applicants also assert that the proposed In-Kind Transactions by the section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the section 26 Applicants and the section 17 Applicants respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of section 26(c) of the 1940 Act and section 17(b) of the 1940 Act and respectfully request that the Commission issue an order of approval pursuant to section 26(c) of the 1940 Act and section 17(b) of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46705; File No. SR-BSE-2002-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. to Amend its Minor Rule Violation Plan

October 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 17, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 23, 2002, the BSE amended the proposed rule change.³ The BSE again amended the proposal on October 9, 2002.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Minor Rule Violation Plan ("Plan"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Chapter XXXIV Minor Rule Violations Rule Violations

Sec. 1 No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See August 21, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original filing.

⁴ See October 8, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the BSE added language to set a standard by which violations of certain provisions of the Minor Rule Violation Plan will be determined.

Sec. 2(a) No change.

(b) [Failure to Confirm Open Orders (Ch. II, Sec. 15). Initial Offense—Written Warning; Second Offense—\$100; Subsequent Offenses—\$250.]

Failure to Maintain Proper Records (Ch. II, Sec. 15; Ch. XV, Sec. 8; Ch. XXII, Sec. 1):

Failure to maintain required records for annual examinations, surveillance, and other purposes. Initial offense—\$500; Subsequent Offenses—\$1,000

(c)—(e) No change

(f) Floor Order Facilitation (Ch. II, Sec. 3; Ch. XV, Sec. 2; Ch. XV, Sec. 3; Ch. XVIII, Sec. 1):

Conduct which may cause delays or interruptions in the orderly facilitation and/or confirmation of orders received on the Floor such as failure to record proper post locations or dilatory practices in handling orders received on the Floor[.], *as measured by the Exchange and in excess of three (3) instances over the preceding rolling thirty-day period.*

Initial Offense—Written Warning; Second Offense—\$100; Subsequent Offenses—\$250.

(g)—(j) No change.

(k) Trading in an Inactive Alternate and/or Trading Account (Ch. XXII, Sec. 2(m)):

Patterns of trading indicating abuse of inactive accounts, as measured by the Exchange, and in excess of three (3) instances over the preceding thirty-day period.

Initial Offense—\$500; Subsequent Offenses—\$2,500

(l)—(n) No change.

(o) *Dealings Outside of Exchange Operating Hours (Ch. I-B, Sec. 2):*

First offense—Written Warning; Second Offense—\$50; Subsequent Offenses—\$100

Policy Violations

Sec. 3 (a)—(g) No change.

(h) Floor Conduct:

Unprofessional or Disruptive Behavior.

Initial Offense—\$100; Subsequent Offenses—\$500

Extremely unprofessional or disruptive behavior, as determined by two floor officials.

All offenses—\$1,000

(i)—(o) No change.

* * * * *

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Plan, which is located in Chapter XXXIV, "Minor Rule Violations" of the Rules of the Board of Governors of the Exchange.

The first proposed change is to delete Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders. This Rule was originally intended to address the manual obligations of specialists to confirm their open orders at the end of the day. This has become an automated process, and the Rule is therefore unnecessary.

The second proposed change is to replace Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders, with a new Paragraph (b) entitled "Failure to Maintain Proper Records (Chapter II, Dealings on the Exchange, Section 15, Records of Orders from Offices to Floor; Chapter XV, Dealer Specialists, Section 8, Records; Chapter XXII, Financial Reports and Requirements, Section 1, Member and Member-Organization's Statement of Financial Condition)". The explanatory sentence for this rule violation will read: "Failure to maintain required records for annual examinations, surveillance, and other purposes." Due to the potentially serious nature of record keeping violations, the Exchange seeks to prescribe a \$500 fine for initial offenses, and a \$1,000 fine for subsequent violations of this paragraph. Furthermore, as to form, inserting this rule into this paragraph will obviate the need to renumber subsequent paragraphs.

The third proposed change is to alter Section 2, Rule Violations, Paragraph (f), Floor Order Facilitation (Ch. XVIII, Sec. 1), so that it more fully addresses practices of specialists that may have a dilatory effect on the handling of orders

submitted to the floor for execution. The wording of the Section will not be changed, but several rule references will be added to the title of the section, to enable the BSE to more accurately identify which section(s) of its rules are the focus of the violation. The following rule references will be added into the title of the paragraph: Chapter II, Dealings on the Exchange, Sec. 3, Execution Guarantee; Chapter XV, Dealer Specialists, Sec. 2, Responsibilities, and Sec. 3, Code of Acceptable Business Practices for Specialists.

The fourth proposed change is to add an explanatory sentence to Section 2, Rule Violations, Paragraph (k) Trading in an Inactive Alternate and/or Trading Account, to address a change in focus to identify patterns in trading in these accounts, as opposed to individual trades. Due to volume increases in the marketplace, the BSE feels that trading patterns are a more efficient way to identify abuses of inactive accounts. Accordingly, an explanatory sentence will read: "Patterns of trading indicating abuse of inactive accounts." The fine structure will remain the same.

The fifth proposed change is to add a new paragraph to Section 2, Rule Violations. New paragraph (o) will be entitled "Dealings Outside of Exchange Operating Hours (Chapter I-B, Business Hours, Section 2, Dealings on the Floor, Hours)". No explanatory sentence is needed. A written warning will be given for first offenses. Second offenses will result in a \$50 fine, and subsequent offenses will result in \$100 fines.

The final proposed change is to Section 3, Policy Violations, Paragraph (h), Floor Conduct, and is designed to address egregious behavior. A third fine category will be added, with a brief explanation, which will read: "Extremely unprofessional or disruptive behavior, as determined by two floor officials." The fine will be \$1,000 per offense.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and is not designed to

permit unfair discrimination between customers, issuers, brokers or dealers.

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

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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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 BSE 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 BSE. All submissions should refer to file number SR-BSE-2002-04 and should be submitted by November 19, 2002.

⁵ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46714; File No. SR-EMCC-2002-01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Expanding the Types of Instruments Eligible for Processing

October 23, 2002.

I. Introduction

On January 10, 2002, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-EMCC-2001-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on August 9, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC to include emerging market corporate debt that meets certain criteria. EMCC will accomplish this by adding a new definition, "eligible corporate debt," to Rule 1. "Eligible corporate debt" will be defined as those instruments which:

1. Are issued by or on behalf of an issuer domiciled in an emerging markets jurisdiction;

2. The minimum amount of the debt issue outstanding or to be issued at the time of determination is \$200,000,000, and the issuer has cumulatively issued at least \$750,000,000 (or equivalent currency) of debt securities; and

3. EMCC does or would include the sovereign debt of the jurisdiction where the issuer is domiciled in the list of EMCC eligible instruments.

As with all instruments that are EMCC eligible, such instruments will

also have to meet the existing criteria set forth in Rule 3 in that they will have to be eligible for settlement at a "qualified securities depository"³ and must be U.S. dollar denominated. Accordingly, Section 1 of Rule 3 will be amended to include a reference to "eligible corporate debt."

EMCC believes that the inclusion of dollar denominated emerging market corporate debt meeting the foregoing criteria will be beneficial to its members because it will help eliminate counterparty risk in these instruments when EMCC becomes the central counterparty. EMCC also believes that its current clearing fund formula will allow it to collect appropriate amounts of collateral to cover the risks posed by this class of securities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and 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 By expanding the types of instruments available for processing by EMCC, the proposed rule change will allow more of EMCC's members' trades to be processed through the facilities of EMCC which should promote the prompt and accurate clearance and settlement of such securities transactions. Furthermore, the Commission finds that EMCC's current risk management procedures, including its clearing fund formula, have been designed and are operated in such a manner that EMCC will be able to provide clearance and settlement services for eligible corporate debt in a manner that will provide for the safeguarding of securities and funds in its possession 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 applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

³ A qualified securities depository is defined by EMCC Rules to be a securities depository which has entered into an agreement with EMCC pursuant to which it will effect book-entry transfers of EMCC Eligible Instruments to and by EMCC.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

EMCC-2002-01) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46712; File No. SR-NASD-2002-149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Program for Exchange-Listed Securities

October 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq proposes to amend NASD Rule 7010 to codify on a permanent basis Nasdaq's InterMarket³ Transaction Credit Pilot Program ("Program"), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.⁴

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000)(SR-NASD-00-32).

⁴ The text is marked to show changes from the language of the rule as proposed to be amended by SR-NASD-2002-115, and assumes that the Commission will approve SR-NASD-2002-115 before approving this proposal. If the Commission determines that SR-NASD-2002-115 should not be approved, Nasdaq will submit an amendment to this filing to reflect the disposition of SR-NASD-2002-115.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46311 (August 5, 2002), 67 FR 51906.