

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48366; File No. SR-EMCC-2003-02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Modifying the Clearing Fund Calculation

August 19, 2003.

I. Introduction

On May 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on June 2, 2003, and June 5, 2003, amended proposed rule change SR-EMCC-2003-02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on June 30, 2003.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

One of the purposes of the proposed rule change is to modify the clearing fund deposit requirement for certain EMCC members. The proposed change adds Addendum I to EMCC's rules. Addendum I establishes \$50 million as the clearing fund deposit for members who are Inter-Dealer Brokers ("IDBs") or

whose only business with EMCC is to clear for IDBs. EMCC will continue to calculate the clearing fund requirements for each of these members. To the extent that the calculated amount exceeds the \$50 million fixed amount for any day, the difference will be required to be paid by all other EMCC members on a pro-rata basis based on their average clearing fund requirements over the previous 30 calendar day period. However, for the purpose of determining the pro-rata loss obligation of any member whose deposit is fixed at \$50 million, the member's calculated clearing fund requirement will continue to be used by EMCC. Similarly, the additional amounts paid by other EMCC members will not be used by EMCC in determining their pro-rata loss obligations.

The function of an IDB is to bring together principals in transactions on a matched anonymous basis while taking no principal risk themselves. If every dealer who interacted with an IDB were a member of EMCC, the IDB or its clearing firm would have to deposit only a minimal clearing fund amount. To the extent that one side of an IDB trade is not with an EMCC member, the clearing fund requirement for the IDB or its clearing firm is based only on one side of the matched transaction. This one sided calculation may create a clearing fund obligation of a significant amount for the IDB or its clearing firm. EMCC believes it is appropriate, given the role of IDBs in providing liquidity to the market place, to establish a fixed clearing fund requirement for such firms or their clearing firms and to have the difference between the fixed amount and the IDB's calculated clearing fund requirement deposited by the other EMCC members. EMCC is concerned that if this requirement is not established IDBs will stop submitting their transactions to EMCC, and as a result, the dealer market will lose the benefits, such as risk management and standardized, electronic processing, currently provided by EMCC.

While EMCC has determined that it is appropriate to set a fixed clearing fund amount of \$50 million for such members, it does not want this fixed amount to alter the status quo among members in the event that a pro-rata charge is imposed pursuant to section 11(c) of rule 4 (Clearing Fund, Margin and Loss Allocation). Consequently, the proposed rule change provides that the calculated clearing fund amount and not the fixed clearing fund amount will be used in determining the pro-rata liability of any affected members. Further, any amount that is required to be paid by other members because the

IDB's calculated clearing fund amount exceeds the fixed clearing fund amount similarly will not be taken into account when determining pro-rata charges.

A second purpose of the proposed rule change is to modify the time at which EMCC novates transactions and to change the clearing fund formula to eliminate the "look back" feature. Currently, EMCC novates transactions at different times depending on whether the trade is received and compared on trade date or thereafter. Since under the current rules EMCC novates transactions received on trade date before EMCC has the opportunity to collect any additional required clearing fund, the clearing fund required of members is the greater of the calculated requirement or the highest requirement over the previous two months. When the "look back" feature was adopted, EMCC believed that by "looking back" it would have sufficient clearing fund deposits so long as a member's current trades were similar to the trading that occurred over the prior two months. While this methodology provided EMCC with adequate collateral in most cases, EMCC could never be certain it was always fully protected. To remedy this, EMCC has determined to require members to submit trades earlier on trade date, to calculate clearing fund based on these trades, and to collect any additional required clearing fund on trade date. EMCC's rules are being changed to provide that novation of trades will not occur until after all margin requirements are received from both sides of the trade. This will apply to trades included in the afternoon calculation as well as trades covered by the morning calculation. As before, EMCC will do an afternoon and a morning clearing fund calculation, but now payments of required clearing fund will be due after each calculation and not just after the morning calculation. Because EMCC will be collecting margin to cover its exposure on a timely basis, it will no longer need to collect the highest margin calculation over the prior two months. Therefore, the "look back" feature of its clearing fund calculation will be eliminated.³

Because EMCC will now be collecting clearing fund deposits in the afternoon, there will no longer be an overnight exposure. Accordingly, EMCC is deleting from its rules all references to calculations based on the "overnight exposure cap."

³ EMCC expects that by removing the "look back" feature, its members' clearing fund requirements will decrease. This decrease in required clearing fund should help offset any additional clearing fund requirement that members will be required to make under new Addendum I.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 48081 (June 24, 2003), 68 FR 38733.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁴ The proposed rule change will allocate EMCC's clearing fund requirement in a manner that more appropriately reflects the risks of its members' activities. The proposed rule change will also allow EMCC to use a more accurate calculation and more time to collect members' clearing fund requirements. Accordingly, the proposed rule change should help assure EMCC's ability to safeguard securities and funds.

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-EMCC-2003-02) be and hereby is approved.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48367; File No. SR-EMCC-2003-03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing a Temporary Rebate for IDB Members

August 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 6, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 4, 2003, amended the proposed rule change as described in items I, II, and III below, which items have been prepared

primarily 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 establishes a temporary reimbursement for Inter-Dealer Broker ("IDB") members or members whose only use of EMCC is to clear for IDBs of the costs associated with their deposits in excess of \$50 million.

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 such statements.²

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

The Commission recently approved a proposed rule change filed by EMCC to modify its clearing fund requirements for IDB members or members whose only use of EMCC is to clear for IDBs.³ That proposed rule change established a fixed amount of \$50 million to be deposited by members who are IDBs or whose only use of EMCC is to clear for IDBs. EMCC is concerned that if this modified requirement is not established, the IDBs will no longer submit their transactions to EMCC, and the dealer market will lose the benefits, such as the risk management and standardized, electronic processing, currently provided by EMCC. EMCC has decided to reimburse any such member the costs associated with its deposit requirements in excess of \$50 million. The rebate is retroactive to May 1, 2003, and will continue in effect until the modified clearing fund requirement for IDBs is effective.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to EMCC because

it will permit the equitable allocation of charges among participants.

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

EMCC does not believe that the proposed rule change will have any 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

Because the foregoing rule change establishes or changes fees to be imposed by EMCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and rule 19b-4(f)(2).⁵ At any time within 60 days of the filing of the proposed 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, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-EMCC-2003-03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release No. 48366 (August 19, 2003) (File No. SR-EMCC-2003-02).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).