

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

The CBOE has filed<sup>14</sup> the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) is not proposed to become operative for 30 days, or such shorter time as the Commission may designate, and the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay to allow the CBOE to implement its pilot program, which is similar to the ISE Pilot, without delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>17</sup> Specifically, the Commission believes that allowing the CBOE to establish a pilot program that is similar to the ISE Pilot will help the CBOE to compete with the ISE. In addition, the Commission notes that the CBOE's pilot program is substantially similar to the ISE Pilot, which the Commission approved previously on a six-month pilot basis and subsequently extended through January 31, 2004.<sup>18</sup> The Commission believes that the CBOE's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE Pilot. For these reasons, the Commission designates that the proposal become operative

immediately, with the pilot program to extend through June 29, 2004.

At any time within 60 days of the filing of such proposed rule change,<sup>19</sup> 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, as amended, 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-CBOE-2003-50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, your 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 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2003-50 and should be submitted by February 26 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49150; File No. SR-EMCC-2003-04]

#### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Creating an Inactive Member Category

January 29, 2004.

On August 7, 2003, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> (File No. SR-EMCC-2003-04). Notice of the proposal was published in the **Federal Register** on September 18, 2003.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The proposed rule change will create a new membership category for inactive members. From time to time, participants find that their activity level in EMCC-cleared instruments does not warrant active membership status and the costs and risks associated with such status. At the same time, however, they are reluctant to terminate their membership because of the amount of time, effort, and cost that would be required to provide EMCC with the membership documents required to regain their membership status should they later choose to take advantage of EMCC's services. To accommodate this need, EMCC proposes to add to its rules a new section for "inactive status" and a new definition for the term "inactive member."<sup>3</sup>

In order to be eligible to be an inactive member, the participant must have no pending or fail positions and no unpaid money obligations. After a participant requests that it be placed in inactive status, management will act upon its request. Management's decision to grant a participant's request for inactive status will not require approval by EMCC's Membership and Risk Management Committee, but this committee will be notified.

A participant that requests to be placed on inactive status will be entitled to a refund of its clearing fund deposit

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

<sup>2</sup> Securities Exchange Act Release No. 48463 (Sept. 9, 2003), 68 FR 54761.

<sup>3</sup> EMCC Rule 2 (Members), sec. 10 (Inactive Status); EMCC Rule 1 (Definitions).

<sup>14</sup> See *supra* note 6.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> See *supra* notes 8 and 9, and accompanying text.

<sup>19</sup> See *supra* note 6.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

30 calendar days after it is placed on inactive status. A participant that requests that it be placed on inactive status will no longer be assessable pursuant to Rule 4 for losses due to other members.

While in inactive status, the participant must continue to provide the same financial reports that are required of active members and also must comply with all other reporting obligations. A participant that fails to do so will be subject to the same terms and conditions as active members (*e.g.* fines, disciplinary action, termination, *etc.*). An inactive member will also be responsible for a reduced monthly account maintenance fee of \$200.

If the participant determines to reactivate its membership status, an initial clearing fund deposit will be determined in the same manner as for a new applicant, and active membership status must be approved by the Membership and Risk Management Committee. Inactive members will not be required to reexecute membership agreements or provide other documentation to the extent EMCC determines that it already has the required documentation or information (*e.g.* financials) necessary to make a determination on the reactivation request. If the participant is inactive for longer than 18 months, EMCC will require an opinion of the participant's counsel in a form satisfactory to EMCC that affirms that there is no substantive change in the opinion(s) previously given as part of the member's original application for membership.

## II. Discussion

Section 17A(b)(3)(F) of the Act<sup>4</sup> requires that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency for which it is responsible. The Commission finds that the proposed rule change is consistent with EMCC's obligations under section 17A(b)(3)(F) because creating a new inactive membership category should provide efficiencies and cost reductions to certain low-volume EMCC members without compromising EMCC's risk management safeguards.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act<sup>5</sup>

and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2003-04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49142; File No. SR-FICC-2004-02]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove From FICC's Rules the Cross-Margining Agreement With BrokerTec Clearing Company and the Cross-Margining Agreement With The Clearing Corporation

January 28, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 12, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to remove from FICC's Rules the cross-margining agreement with BrokerTec Clearing Company ("BCC")<sup>2</sup> and to remove from FICC's Rules the cross-margining agreement with The Clearing Corporation ("TCC").<sup>3</sup>

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 45656 (March 27, 2002), 67 FR 15646 (April 2, 2002) [File No. SR-GSCC-2002-01].

<sup>3</sup> Securities Exchange Act Release No. 45335 (January 25, 2002), 67 FR 4768 (January 31, 2001) [File No. SR-GSCC-2001-03]. FICC entered into the cross-margining agreement with the Board of Trade Clearing Corporation, predecessor to The Clearing Corporation.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

The purpose of the proposed rule change is to remove from FICC's Rules the cross-margining agreement with BCC and the cross-margining agreement with TCC. Termination of the cross-margining agreement with BCC was necessitated by the fact that BCC ceased clearing operations on November 26, 2003, as a result of the suspension of business by the exchange for which BCC was the clearing corporation, BrokerTec Futures Exchange. Termination of the cross-margining agreement with TCC was necessitated by the fact that on January 2, 2004, TCC ceased clearing the Chicago Board of Trade products that were the subject of the cross-margining arrangement.<sup>5</sup>

The proposed rule change is consistent with section 17A(a)(2)(A)(ii) of the Act<sup>6</sup> and the rules and regulations thereunder because it facilitates the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities.

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

FICC does not believe that the proposed rule change will have any impact on or impose any 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

<sup>4</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>5</sup> TCC recently announced that it will become the clearing corporation for another exchange and has approached FICC regarding establishing a new cross-margining arrangement. Upon the parties' agreement on the details of the new arrangement, FICC will submit a proposed rule change to the Commission covering the proposed arrangement.

<sup>6</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q-1.