

thereunder,⁴ the Commission approved on a temporary basis until August 20, 1999, EMCC's application for registration as a clearing agency.⁵ By subsequent orders, the Commission has extended EMCC's registration as a clearing agency through March 31, 2004.⁶

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.⁷ EMCC began operating on April 6, 1998, with ten dealer members. Since it began operations, EMCC has added certain emerging market sovereign debt and corporate debt to the list of eligible securities that may be cleared and settled at EMCC.⁸

As part of EMCC's initial temporary registration, the Commission granted EMCC a temporary exemption from Section 17A(b)(3)(B) of the Act⁹ because EMCC did not provide for the admission of some of the categories of members required by that section.¹⁰ To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because to date no entity in a category not covered by EMCC's rules has expressed an interest in becoming a member.¹¹ Accordingly, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from Sections

17A(b)(3)(A)¹² and 17A(b)(3)(F)¹³ of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear used to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.¹⁴ The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2 and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.¹⁵ Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

In addition, because EMCC is currently in the process of revising its foreign member program, including its membership application process and ongoing financial requirements, the Commission is extending EMCC's temporary registration so that EMCC can complete its revisions and Commission staff has time to assess the revised foreign member program.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting permanent registration or in instituting proceedings to determine whether permanent registration should be denied in accordance with Section 19(a)(1) of the Act.¹⁶ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th 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. 600-30. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the amended

application for registration, all written statements with respect to the application that are filed with the Commission, all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600-30 and should be submitted by April 5, 2004.

It is therefore ordered, pursuant to Section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600-30) be and hereby is temporarily approved through March 31, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49376; File No. SR-NASD-2004-038]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Program for Nasdaq PostData and Fees Presently Available Under NASD Rule 7010(s)

March 9, 2004.

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 March 1, 2004, 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. Nasdaq filed this proposal pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴

⁴ 17 CFR 240.17Ab2-1.

⁵ Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) ("Registration Order").

⁶ Securities Exchange Act Release Nos. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999); 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000); and 44707 (Aug. 15, 2001), 66 FR 43941 (Aug. 21, 2001); 45648 (Mar. 26, 2002), 67 FR 15438 (Apr. 1, 2002); 47602 (March 31, 2003), 68 FR 16848 (April 7, 2003).

⁷ Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, U.S. Treasury zero-coupon bonds and other high-grade instruments collateralize the principal and certain interest of these bonds.

⁸ Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998); 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999); and 46714 (Oct. 23, 2002), 67 FR 66031 (Oct. 29, 2002).

⁹ 15 U.S.C. 78q-1(b)(3)(B).

¹⁰ Registration Order at 8716.

¹¹ EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.

¹² 15 U.S.C. 78q-1(b)(3)(A).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ Registration Order at 8720.

¹⁵ Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

¹⁶ 15 U.S.C. 78s(a)(1).

¹⁷ 17 CFR 200.30-3(a)(50)(i).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6). Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on February 23, 2004.

which renders the proposal effective upon filing with the Commission. 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 extend for one year the pilot program for Nasdaq PostData presently available under NASD Rule 7010(s). Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2005. The text of the proposed rule change is available at the NASD and at the Commission.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.⁵ Nasdaq extended this pilot on a number of occasions, most recently through March 31, 2004.⁶ Nasdaq hereby proposes to extend the pilot period for PostData for an additional year, through March 31, 2005.

At its launch on March 18, 2002, PostData consisted of three reports provided in a single package: (1) Daily

Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (e.g., block or total).

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.⁷ Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Under the pilot extension, Nasdaq would continue to make PostData accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com website. In addition, PostData would continue to consist of the same seven reports that are currently made available to subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)⁸ and 15A(b)(6)⁹ of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

⁷ See Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002) (SR-NASD-2002-90).

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78o-3(b)(6).

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

Nasdaq 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 Act.

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

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 proposal 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-NASD-2004-038. This file number should be included on the subject line if e-mail is used. To help the Commission 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

⁵ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

⁶ See Securities Exchange Act Release Nos. 48576 (September 30, 2003), 68 FR 57946 (October 7, 2003) (SR-NASD-2003-142); 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003) (SR-NASD-2003-60) (extending pilot through September 30, 2003); 47503 (March 14, 2003), 68 FR 13745 (March 20, 2003) (SR-NASD-2003-35) (extending pilot through March 31, 2003); and 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003) (SR-NASD-2003-02) (extending pilot through February 28, 2003).

¹⁰ 15 U.S.C. 78s(b)(3)(b)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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 NASD. All submissions should refer to file number SR-NASD-2004-038 and should be submitted by April 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49378; File No. SR-OCC-2003-11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Clearing Member Trade Assignment Processing

March 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on October 14, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on February 18, 2004, amended the proposed rule change, as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 would amend OCC's by-laws and rules to update the clearing member trade assignment ("CMTA") procedures, increase OCC's initial and minimum net capital requirements, and increase OCC's minimum clearing fund requirement.

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

In its filing with the Commission, OCC 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. OCC 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 purpose of this rule change is to amend OCC's by-laws and rules to update the description of the CMTA procedures, increase OCC's initial and minimum net capital requirements, and increase OCC's minimum clearing fund requirement for execution-only clearing members.

1. Background

CMTA processing permits one clearing member ("carrying clearing member") to authorize another clearing member ("executing clearing member") to direct that exchange transactions be transferred to an account of the carrying clearing member for clearance and settlement.³ The executing clearing member executes the transaction itself or guarantees the broker that executed the transaction and directs the transaction to be cleared into an account of the carrying clearing member via the options exchanges' systems for reporting matching trade information to OCC. A carrying clearing member does not have the ability to approve or reject such a direction before the transaction is entered into the exchanges' systems for reporting to OCC.

The matching trade information submitted by an exchange for a transaction that has been executed pursuant to a CMTA arrangement will identify both the carrying and executing clearing members by their assigned clearing numbers. OCC permits an executing clearing member to transfer transactions effected only on the exchange(s) designated by the carrying clearing member in a CMTA authorization filed with OCC.

² The Commission has modified the text of the summaries prepared by OCC.

³ The CMTA facility was developed to permit carrying clearing members to clear and settle transactions effected on an exchange where they are either not a member or do not maintain a presence for trade execution.

Accordingly, before a transaction is transferred to an account of the carrying clearing member for clearance, OCC's system confirms that (i) there is a valid CMTA arrangement between the carrying and executing clearing member and (ii) the exchange transaction was effected on a designated exchange. The carrying clearing member is then responsible for settling the trade and maintaining the resulting position. If their arrangement permits, a carrying clearing member may transfer the position back to the executing clearing member through OCC's systems to correct the execution member's good-faith error in identifying the carrying clearing member in the submitted trade information.⁴

OCC's CMTA facility supports two distinct types of business. First, clearing members that execute transactions for correspondent brokers use the process to transfer transactions to the correspondent brokers' clearing firms. Second, firms that execute trades for institutional and other customers with prime brokerage arrangements use the process to transfer the trades to the prime broker clearing member.

2. Discussion

(a) CMTA Rule Changes

Article VI, Sections 1 and 2, of OCC's by-laws and the term "authorized Exchange member" as defined in Article I, Section 1, of OCC's by-laws provide the current framework for OCC's CMTA facility. In response to clearing member requests, OCC has been working with the options exchanges and a group of clearing members that act as prime brokers to update the description of the CMTA facility in OCC's rules. In particular, the group's efforts focused on more closely defining the rights and obligations of the clearing members that are parties to a CMTA arrangement in order to remove their regulatory and legal uncertainties. Proposed Rule 403 is the result of that collaborative effort, and it would operate as follows.

Proposed Rule 403 will require clearing members that are parties to a CMTA arrangement to register and provide certain details of their arrangement with OCC. Such registration will be effective when the clearing members provide matching information regarding their arrangement.

⁴ This commonly occurs if the executing clearing member has transposed digits of a carrying clearing member's clearing number causing the transaction to clear in an account of a wrong clearing member (assuming a valid CMTA arrangement exists between the executing and misidentified carrying clearing member).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).