

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

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50202; File No. SR-EMCC-2004-12]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Processing Transactions in Ineligible Instruments

August 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 2, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 and to grant accelerated approval.

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

The proposed rule change will amend EMCC Rule 3, Section 1 (Lists to be Maintained) to specify that EMCC will no longer process transactions in ineligible instruments where transactions in such ineligible instruments were accepted by EMCC at a time when the instruments were eligible instruments.

#### 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.

#### 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 eliminate the risk to EMCC and its members posed by the processing of value recovery rights, also known as warrant transactions, because EMCC cannot obtain accurate prices of such instruments.<sup>2</sup>

Prior to this rule change, EMCC Rule 3, Section 1 provided that transactions in instruments that became ineligible but were currently in the system would continue to be processed and would be deemed to be transactions in EMCC eligible instruments. EMCC is changing this rule to specify that it will no longer continue to process transactions in ineligible instruments, will exit pending transactions in ineligible instruments from its system, and will issue receive and deliver instructions by naming members as contra-parties to such instructions. However, the legal obligations of the parties to such instructions will continue to be subject to EMCC's rules even though such instruments will no longer settle at EMCC. Finally, EMCC will net all open fail warrant positions before exiting the positions. These net positions will be assigned to members on a random basis in quantities that meet Euroclear delivery requirements.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because eliminating unsettled warrant positions will eliminate risks that EMCC can no longer effectively manage.

#### B. Self-Regulatory Organizations Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an 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 it receives.

<sup>2</sup> As part of the margining process, EMCC marks to market all open positions. When warrants traded at zero value as part of the associated bond deal, this did not present a problem. However, when warrants are detached and trade at value, which they occasionally do, the zero mark is not appropriate. Due to the lack of readily available prices for the warrants, this component of margining cannot be accurately measured and, thus, presents risk to EMCC and ultimately its members.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)<sup>3</sup> of the Act, which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control. By eliminating the risk posed by EMCC's inability to accurately mark to market its participants' open warrant positions, the proposed rule change will enhance EMCC's ability to safeguard the securities and funds which are in its custody or control.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving EMCC will be able to expeditiously eliminate the risk posed by unsettled warrant instruments that compromises its ability to safeguard the securities and funds that are in its custody or control.

#### 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. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMCC-2004-12 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-EMCC-2004-12. 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, please use only one method. The Commission will

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

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

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

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at <http://www.e-m-c-c.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMCC-2004-12 and should be submitted on or before September 13, 2004.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2004-12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-19247 Filed 8-20-04; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50199; File No. SR-NASD-2004-079]

#### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., To Provide for the Web Publication of Summaries of Interpretations Issued Under NASD Rule 4550

August 13, 2004.

On May 14, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the web publication of summaries of interpretations issued under NASD Rule 4550. On June 18, 2004, the Nasdaq submitted Amendment No. 1 to the proposal.<sup>3</sup> One June 25, 2004, the Nasdaq submitted Amendment No. 2 to the proposal.<sup>4</sup>

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 6, 2004.<sup>5</sup> The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association<sup>6</sup> and, in particular, the requirements of Section 15A(b)(6) of the Act.<sup>7</sup> Section 15A(b)(6) requires, among other things, that the rules of an association be designed to promote just and equitable principles of trade, 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.

The Commission notes that the proposal is seeking to codify Nasdaq's current practice of publishing anonymous summaries of its written interpretations of NASD listing rules on the NASD website. The Commission believes that publishing these summaries of Nasdaq's interpretations will provide Nasdaq issuers with additional guidance to help them comply with NASD listing rules. The Commission also believes that publishing the summaries of Nasdaq's

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, Nasdaq added the 90-day publication date requirements and changed the filing from one under Section 19(b)(3)(A) of the Act to one under Section 19(b)(2) of the Act.

<sup>4</sup> See letter from T. Eric Lai, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed a sentenced relating to the timing for the implementation of the proposal.

<sup>5</sup> See Securities Exchange Act Release No. 49935 (June 29, 2004), 69 FR 40699.

<sup>6</sup> In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

written interpretations should reduce the number of requests from listed issuers who might be seeking guidance on identical or similar previously interpreted matters. As a result, the Commission believes that the proposed rule change could significantly reduce the burden on Nasdaq of producing superfluous written interpretations on NASD listing rules. Therefore, the Commission finds that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASD-2004-079), as amended by Amendment Nos. 1 and 2, be hereby approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50204; File No. SR-NASD-2004-098]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments To Eliminate Exemptions From the Continuing Education Regulatory Element Requirements

August 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 25, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On July 23, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 22, 2004. In Amendment No. 1, the NASD replaced in its entirety the original rule filing.

<sup>4</sup> 17 CFR 200.30-3(a)(12).