

series or expiration months in security futures products, but market participants are still allowed to do closing transactions in open series of options until expiration or until the settlement date of the security futures product.

Accordingly, it is ordered, pursuant to section 36 of the Exchange Act,<sup>9</sup> that any standardized option issued by a clearing agency and traded on a national securities exchange, and any security futures product that is traded on a national securities exchange, is exempted from Rule 12d2-2 under the Exchange Act until October 31, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49851; File No. SR-EMCC-2004-04]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Buy-In and Sell-Out Procedures

June 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 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, 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 Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would (a) permanently amend Sections 18 ("Buy-Ins") and 19 ("Sell-Outs") of EMCC Rule 7 ("Novation and Guaranty of Obligations and Receive, Deliver, and Settlement Obligations") to shorten the time periods when buy-ins and sell-outs may be initiated and executed and (b) make conforming, technical changes to EMCC Rule 1 ("Definitions and Descriptions") and Rule 7.

#### 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.<sup>2</sup>

##### A. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When EMCC was formed, it was recognized that its buy-in and sell-out procedures should be similar to those of the International Securities Market Association ("ISMA") because of EMCC's understanding that ISMA's procedures are generally followed by emerging market trading parties for transactions settled outside EMCC. The reason for having similar buy-in and sell-out procedures was to preclude EMCC members from being subject to a buy-in or sell-out by a non-EMCC member and not be able to retransmit the buy-in or sell-out to an EMCC member in the same time frame. Accordingly, the time periods for buy-ins and sell-outs in EMCC rules followed the time periods that would be used by non-EMCC members for buy-ins and sell-outs.

In December 2003, EMCC learned that effective January 1, 2004, ISMA was changing its buy-in and sell-out time frames for non-EMCC transactions. ISMA's changes had the effect of shortening the time period when a buy-in or sell-out could be initiated and when it could be executed. If EMCC had not made a corresponding change to its buy-in and sell-out rules at that time, it was possible that many EMCC members would have stopped submitting transactions to EMCC because they potentially could face buy-in and sell-out exposure due to the differences in EMCC's and ISMA's time frames. Accordingly, in order not to jeopardize the usage of EMCC for trade processing, or expose its members to risk, EMCC filed a proposed rule change with the Commission to conform its buy-in and sell-out time frames to those of ISMA. On December 30, 2003, the Commission approved on a temporary basis through June 30, 2004, EMCC's proposed rule

change.<sup>3</sup> Because the industry has not taken any action to date to rescind the changes ISMA made effective on January 1, 2004, EMCC is now seeking to have its buy-in and sell-out rules approved on a permanent basis.

In addition to these proposed rule changes, EMCC also seeks to make technical corrections to Rule 1 and Rule 7 regarding several rule and section references regarding its buy-in and sell-out provisions that inadvertently were not made in the past. This filing will correct that oversight.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

##### B. Self-Regulatory Organization's 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

EMCC has not received any written comments from its members with regard to the proposed rule change.

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

Within thirty-five 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 ninety 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 self-regulatory organization 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. Comments may be submitted by any of the following methods:

<sup>3</sup> Securities Exchange Act Release No. 49011 (Dec. 30, 2003), 69 FR 711 (Jan. 6, 2004) [File No. SR-EMCC-2003-07].

<sup>9</sup> 15 U.S.C. 78mm.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

*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-2004-04 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-2004-04. 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 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 the principal office of EMCC 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-2004-04 and should be submitted on or before July 12, 2004.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49856; File No. SR-Phlx-2004-32]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Permit Holder Fees**

June 15, 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 May 3, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") 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 the Phlx. On June 3, 2004, the Phlx submitted an amendment to the proposed rule change.<sup>3</sup> On June 14, 2004, the Phlx submitted via facsimile a second amendment to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to amend its schedule of fees and charges to adopt a new category of permit holders for billing purposes to address situations where permit holders do not fall under one of the existing permit fee categories. These permit holders, delineated as "other", will be assessed a fee of \$200 per month. The text of the proposed rule

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

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

<sup>3</sup> See letter from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 2, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the proposed rule change in its entirety.

<sup>4</sup> See facsimile from Murray Ross, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 14, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified the categories of permit holders to which the proposed new permit fee category would be applicable. Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

change is available at the Exchange and at the Commission.

*Current Permit Fees*

Monthly permit fees are assessed based on how each permit is used. Current permit fees are as follows:<sup>7</sup>

Order Flow Provider Permit Fee:<sup>8</sup>

a. Permits used only to submit orders to the equity, foreign currency options or options trading floor (one floor only)—\$200 per month.

b. Permits used only to submit orders to more than one trading floor—\$300 per month.

Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader Permit Fee:

a. First permit—\$1,200 per month.

b. Additional permits for members in the same organization—\$1,000 per month.

Permit holders may also be designated as "excess" permit holders in cases where permit holders in the same organization, other than the permit holder who qualifies the member organization, are either: (1) not Floor Brokers, Specialists or ROTs (on any trading floor) or Off-Floor Traders; or (2) not associated with a member organization that meets the definition of an order flow provider.<sup>9</sup> Member organizations that have excess permit holders are assessed \$200 for each "excess permit."

*Permit Fee Changes*

The Exchange is proposing to adopt a permit fee category to address the limited situations where a permit holder does not fit within any of the existing permit fee categories. The Exchange represents that it has found that a few permit holders have not fit in the other permit fee categories, and, consequently, no permit fee was applicable. For example, a member organization may determine to have a permit holder in order to be a Phlx member organization and reflect such status on its letterhead, which is common in the securities industry. The Exchange states that, if such member

<sup>7</sup> See Securities Exchange Act Release No. 49157 (January 30, 2004), 69 FR 5883 (February 6, 2004) (SR-Phlx-2004-02).

<sup>8</sup> This fee applies to a permit held by a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or Registered Options Trader ("ROT") (on any trading floor) or Off-Floor Trader, and whose member organization submits orders to the Exchange. Phlx Rule 620(a) requires such registration.

<sup>9</sup> See Securities Exchange Act Release No. 49320 (February 25, 2004), 69 FR 10091 (March 3, 2004) (SR-Phlx-2004-09).

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