

of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

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

Within 35 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 90 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 CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.<sup>6</sup> In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the CHX's proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

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. 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2003-15 and should be submitted by July 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48081; File No. SR-EMCC-2003-02]

### **Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying the Clearing Fund Calculation**

June 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that 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 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.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

The proposed rule change would modify the way in which EMCC calculates its members' clearing fund requirements.

### **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 Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

One of the purposes of the proposed rule change is to modify the clearing fund deposit requirement for certain EMCC members. The proposed change would add Addendum I to EMCC's rules that would establish a fixed amount of \$50 million to be deposited by members who are Inter-Dealer Brokers ("IDBs") or whose only business with EMCC is to clear for IDBs. EMCC would continue to calculate the clearing fund requirements for each of these members. To the extent that the calculated amount exceeds the fixed amount for any day, the difference would be required to be paid by the other EMCC members pro-rata based on their average clearing fund requirements over the previous 30 calendar day period. The calculated amount, however, would continue to be used by EMCC for the purpose of determining pro-rata loss obligations of any member whose deposit is fixed at \$50 million, and the different amounts paid by other members would not be included 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 an EMCC member, the clearing fund requirements for the IDB

<sup>2</sup> The Commission has modified parts of these statements.

<sup>6</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

or its clearing firm are based only on one side of the matched transaction. This one sided calculation may create a clearing fund obligation of a significant financial 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 calculated amount deposited by the other EMCC members. EMCC is concerned that if this requirement is not established IDBs will no longer submit their transactions to EMCC, and as a result, the dealer market will lose the benefits of the risk management process currently provided by EMCC.

While EMCC has determined that it is appropriate to set a fixed clearing fund amount 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. Consequently, the proposed rule change would provide that the calculated amount and not the fixed amount would 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 calculated amount exceeds the fixed amount would similarly 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 margin, the clearing fund required of members is the greater of the calculated requirement or the highest requirement over the previous two months. 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 which occurred over the prior two months. While this methodology provides EMCC with adequate collateral in most cases, EMCC can never be certain it is always fully protected. To remedy this, EMCC has determined to require members to submit trades earlier on trade date, calculate margin based on these trades, and collect any additional required margin on trade date. EMCC's rules will

be changed to provide that novation of trades will not occur until after any 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 margin will be due after each calculation. Since 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.

It is expected that by removing the "look back" feature, members' requirements will decrease. This decrease will help offset any additional requirement any member may be required to make under proposed Addendum I. Because EMCC will now be collecting fund deposits in the afternoon, there will no longer be an overnight exposure. Accordingly, all references to calculations based on the "overnight exposure cap" are also being deleted.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder 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 would 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*

Written comments from EMCC members have not been solicited or received on 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 the 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. 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-EMCC-2003-02. 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 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 EMCC. All submissions should refer to the File No. SR-EMCC-2003-02 and should be submitted by July 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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