

market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>20</sup> In any event, financial information regarding CSFB in addition to the information on the 500 common stocks comprising the Index will be publicly available.<sup>21</sup>

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,<sup>22</sup> the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing

access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.<sup>23</sup> The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>24</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-Amex-2003-74), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48463; File No. SR-EMCC-2003-04]

#### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Creating an Inactive Member Category

September 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 7, 2003, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would create a new "inactive member" membership category in EMCC's rules.

#### 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 of 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

The purpose of the proposed rule change is to create a new category of inactive membership. 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 active membership status because of the amount of time, effort, and cost that would be required to provide EMCC with the membership documents required to regain their active status should they later choose to take advantage of EMCC's services. To accommodate this need, EMCC proposes to add a category of inactive membership to its rules.

In order to be eligible to be an inactive member, the participant must have no pending or fail positions or unpaid obligations. After a participant requests that they be placed in inactive status, management will act upon its request. It will not require the Membership and Risk Management Committee's approval (although those entities will be notified).

A participant that requests to be placed on inactive status will be entitled to a refund of its clearing fund deposit thirty calendar days after it is placed on

<sup>20</sup> See Company Guide Section 107A.

<sup>21</sup> The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

<sup>22</sup> See Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

<sup>23</sup> See supra note 17.

<sup>24</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<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.

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 to 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.

At the time 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 membership approval must be granted 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 eighteen months, EMCC will require an opinion of the participant's counsel in a form satisfactory to EMCC that affirms that there is not substantive change in the opinion(s) previously given as part of the member's original application for membership.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>3</sup> 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 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*

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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0069. 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-2003-04. 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing 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, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC-2003-04 and should be submitted by October 9, 2003.

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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**BILLING CODE 8010-01-M**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48488; File No. SR-NASD-2003-138]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Territorial Boundaries of Certain NASD District Offices**

September 12, 2003.

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 September 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), submitted to 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 NASD. 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**

NASD is proposing to amend Schedule B to the NASD By-Laws to change the territorial boundaries of certain NASD District Offices. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### **Schedule B to the NASD By-Laws**

The number and territorial boundaries of the several districts established as provided in Section 1 of Article VIII are as follows:

District No. 1 through District No. 4: No change.

District No. 5: States of Alabama, Arkansas, [Kentucky,] Louisiana, Mississippi, Oklahoma and Tennessee.

District No. 6 through District No. 7: No change.

District No. 8: States of Illinois, Indiana, *Kentucky*, Michigan, Ohio and Wisconsin[, and, in the State of New York, the Counties of Monroe, Livingston and Steuben, and the remainder of the State West of such Counties].

District No. 9: The District of Columbia, and the States of Delaware, Maryland, *New Jersey*, Pennsylvania, Virginia, [and] West Virginia, and *New York (except for the Counties of Nassau,*

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

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

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 17 CFR 200.030-3(a)(12).