

each requiring approximately 4.23 hours to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

The statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 14, 2004.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49859]

Order Temporarily Exempting Standardized Options and Security Futures From Rule 12d2-2 Under the Securities Exchange Act of 1934

June 15, 2004.

I. Background

Section 12(a) of the Securities Exchange Act of 1934 ("Exchange Act") makes it unlawful for any member, broker, or dealer to affect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security on that exchange in accordance with the provisions of the Exchange Act and the rules thereunder.¹ Section 12(d) of the Exchange Act provides that a security registered with a national securities exchange may be withdrawn or stricken from listing and registration on an exchange in accordance with the rules of the exchange, and upon such terms as the Commission may deem necessary, upon application by the issuer of the security or by the exchange to the Commission.

Section 12(a) of the Exchange Act does not apply to security futures products.² In addition, the Commission exempted by rule security futures products from section 12(g) of the Exchange Act if traded on a national securities exchange and cleared by a clearing agency that is registered as a clearing agency under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7).³ There is no similar exemption, however, for security futures products from section 12(d) of the Exchange Act. In addition, the Commission, by rule, exempted standardized options⁴ from the provisions of section 12(a) of the Exchange Act,⁵ but was silent as to whether standardized options are exempt from section 12(d). Moreover, the options exchanges have continued to file applications under Rule 12d2-2 to delist options since the Commission exempted them from the provisions of section 12(a) of the Exchange Act and the Commission has issued orders approving such delistings.

The Commission, however, does not believe that the requirements of Rule

12d2-2 provide investors in options with any protections and has never applied the requirements of this rule to security futures products. For this reason, as part of its proposal issued today to streamline the procedures for delisting and deregistration of securities under section 12(d) of the Exchange Act,⁶ the Commission is proposing to amend Rule 12d2-2 to exempt standardized options that are issued by a clearing agency and traded on a national securities exchange, and to exempt security futures products that are traded on a national securities exchange, from section 12(d) of the Exchange Act and, thus, also the requirements of Rule 12d2-2.

II. Temporary Exemption for Standardized Options and Security Futures

Section 36 of the Exchange Act gives the Commission the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation, or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.⁷ The Commission believes it is consistent with the protection of investors and appropriate in the public interest to temporarily exempt certain standardized options and security futures products from Rule 12d2-2 under the Exchange Act.⁸

The temporary exemption for standardized options and security futures products from Rule 12d2-2 will provide clarity to market participants while the proposal, as noted above, to permanently exempt standardized options and security futures products traded on a national securities exchange from section 12(d) of the Exchange Act, is pending. The Commission believes there is little practical benefit to requiring the delisting of standardized options and security futures to comply with Rule 12d2-2. Standardized options and security futures products are derivatives, and thus holders of such products have no ownership interest in the underlying security or index, unless the option is physically settled and the holder chooses to exercise the standardized option or hold the security future until expiration. For this reason, when a standardized option or security futures product fails to meet an exchange's maintenance standards, the exchange may not add new options

¹ 15 U.S.C. 78l(a).

² 15 U.S.C. 78c(a)(56).

³ See Securities Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).

⁴ 17 CFR 240.9b-1.

⁵ See *supra* note 3.

⁶ See Securities Exchange Act Release No. 49858 (June 15, 2004).

⁷ 15 U.S.C. 78mm.

⁸ The temporary exemption would be in effect until October 31, 2004.

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,⁹ 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.

[FR Doc. 04-13968 Filed 6-18-04; 8:45 am]

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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"),¹ 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.²

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.³ 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:

⁹ 15 U.S.C. 78mm.

¹ 15 U.S.C. 78s(b)(1).

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

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