

thereafter discuss the request through one or more conference calls. The receiving exchange will collect input and comments from the Sub-Group members and if need be, contact the requesting member for additional information. If necessary, the Sub-Group members may participate in a conference call to pose their questions directly to the requesting member. Once a decision has been reached, the receiving exchange will draft the response letter and circulate it to the Sub-Group for comments.

## 2. Statutory Basis

The CBOE believes that the proposed rule change will assist Exchange members by providing guidance on how an Exchange member firm can rebut the presumption of control with respect to CBOE Rules 4.11 and 4.12 and is therefore consistent with section 6(b) of the Act<sup>15</sup> in general and furthers the objectives of section 6(b)(5)<sup>16</sup> in particular in that it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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 CBOE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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*. All comment letters should refer to File No. SR-CBOE-2003-35. 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, 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2003-35 and should be submitted by March 11, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49221; File No. SR-EMCC-2003-08]

### **Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fund Requirements for Special Members**

February 11, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> notice is hereby given that on December 22, 2003, 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change revises Addendum I (Clearing Fund Requirement for Special Member) of EMCC's Rules to establish a capped clearing fund requirement of \$50 million for "special members."

### **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*

In rule filing SR-EMCC-2003-02, EMCC created the membership category "special member."<sup>3</sup> A special member is either an inter-dealer broker ("IDB") or another entity that clears for entities that are IDB's. The function of an IDB is to bring principals together in transactions on a matched and anonymous basis while taking no principal risk themselves, so 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 requirement for the IDB or its clearing firm are based only on one side of the matched transaction. This one-sided calculation creates a clearing

<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.

<sup>3</sup> Securities Exchange Act Release No. 48366 (Aug. 19, 2003), 68 FR 51311 (Aug. 26, 2003) (EMCC-2003-02).

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

<sup>16</sup> 15 U.S.C 78f(b)(5).

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

fund obligation of a significant financial amount for the IDB or its clearing firm.

This proposed rule change modifies the rule language adoption in SR-EMCC-2003-02 to establish a capped, as opposed to a fixed clearing fund obligation of \$50 million to be deposited by special members. Under the proposed rule change, if the calculated clearing fund requirement were less than \$50 million, the special member would only deposit the calculated required amount. If the calculated amount exceeds the \$50 million cap for any day, the other EMCC members are required to deposit the difference between the calculated amount and the capped amount on a pro-rata basis based on their average clearing fund requirements over the previous thirty calendar day period. To have a capped clearing fund obligation of \$50 million for special members was EMCC's intent in File No. SR-EMCC-2003-02.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will permit a more equitable allocation of charges among participants since it will not require a participant to deposit funds greater than the calculated required amount.

#### *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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>4</sup> and Rule 19b-4(f)(1)<sup>5</sup> thereunder because it constitutes an interpretation with respect to the meaning of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

### **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-2003-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments your 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 and on EMCC's Web site at <http://www.e-m-c-c.com/legal/index.html>. All submissions should refer to File No. SR-EMCC-2003-08 and should be submitted within March 11, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49224; File No. SR-NASD-2003-192]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Section 4 of Schedule A to the NASD By-Laws**

February 11, 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 December 22, 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. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> 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**

NASD is proposing to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository ("CRD®" or "Web CRDSM").<sup>6</sup> The

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

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

<sup>3</sup> See letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 29, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD amended the discussion of the purpose of the proposed rule change (i) to correct a reference to the NASD By-Laws and (ii) to include a discussion of NASD's multi-pronged program to help ensure that members make required disclosures on Forms U4 and U5 in a timely manner.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> The Commission notes that NASD filed the proposed rule change with an incorrect reference to section 4(b) of the Schedule A to the NASD By-Laws. In this instance, because the error was technical in nature, the Commission did not require NASD to file an amendment to the proposed rule

Continued

<sup>4</sup> 15 U.S.C. 78S(b)(3)(a)(i).

<sup>5</sup> 17 CFR 240.19b-4(f)(1).

<sup>6</sup> 17 CFR 200.30-3(a)(12).