

7. The Board of FMB Funds considered a number of factors in authorizing the Reorganization, including: (a) the investment advisory and other fees paid by the Monitor Portfolios and the lower historical and projected expense ratios of the Monitor Portfolios as compared to the historical expense ratios of the FMB Portfolio; (b) the potential economies of scale that may result from the Reorganization and the potential related cost-savings; (c) the historical investment performance records of the Monitor Portfolios and the FMB Portfolios; (d) the sales load structure applicable to the Investment Shares of the Monitor Portfolios as compared to the higher sales load structure of the Consumer Service Shares of FMB Portfolios; (e) the greater number of investment portfolio options that would be available to shareholders of FMB Portfolios after the Reorganization due to the exchange privileges available within the family of Monitor Funds; (f) the fact that the Reorganization will constitute a tax-free reorganization and that the interests of shareholders will not be diluted as a result of the Reorganization; and (g) the Bank's agreement to pay all expenses in connection with the Reorganization.

8. The Reorganization is subject to a number of conditions precedent, including requirements that: (a) the Reorganization Agreement has been approved by the shareholders of each FMB Portfolio; (b) the FMB Funds and the Monitor Funds have received opinions of counsel stating, among other things, that the Reorganization will constitute a "reorganization" under section 368 of the Internal Revenue Code of 1986, as amended, and, as a consequence, the Reorganization will not result in federal income taxes for the FMB Funds or their shareholders; and (c) the FMB Portfolios and the Monitor Portfolios have received from the SEC an order exempting the Reorganization from the provisions of the Act as requested in the application. Applicants agree not to make any material changes to the proposed Reorganization that affect the applicant without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly: (a) to sell any security or other property to such registered company; or (b) to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to

include: (a) any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser of the person.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that the proposed transactions may not be exempt under rule 17a-8 because the Monitor Funds and FMB Funds may be affiliated for reasons other than those set forth in the rule. The FMB Portfolios may be affiliated persons of the Bank because the Bank, as fiduciary for its customers, owns of record or controls or holds with the power to vote 5% or more of the outstanding securities of each FMB Portfolio. The Bank, in turn, is an affiliated person of the Monitor Portfolios because the Bank serves as investment adviser to the Monitor Funds and also owns more than 5% of the outstanding voting shares of Monitor Growth Fund and Monitor Money Market Fund. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the Reorganization satisfies the provisions of section 17(b) of the Act. The Boards, including the independent directors/trustees, have determined that the Reorganization is in the best interests of the shareholders of the Monitor Funds

and the FMB Funds. In approving the Reorganization Agreement, the Boards considered: (a) that the interests of shareholders will not be diluted; (b) that the Funds' investment objectives and policies are generally substantially identical; (c) that no sales charges will be imposed; (d) that the conditions and policies of rule 17a-8 will be followed; and (e) that no overreaching by any affiliated person is occurring.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-5205 Filed 2-27-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39694; File No. SR-EMCC-98-01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Offering of Shares of Common Stock

February 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 18, 1998, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-EMCC-98-01) as described in Items I and II below, which items have been prepared primarily by EMCC. The commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

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

The proposed rule change relates to the sale of common stock of EMCC.

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 that it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

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

On May 30, 1997, EMCC filed with the Commission an application on Form CA-1 for registration as a clearing agency. On February 13, 1998, the Commission approved EMCC's application for registration ("registration order").³ As described in the registration order, EMCC is owned by the International Securities Markets Association ("ISMA"), the National Securities Clearing Corporation ("NSCC"), and the Emerging Markets Traders Association ("EMTA"). The registration order noted EMCC's intention to issue shares to those entities that have participated in an contributed to EMCC's development fund to finance EMCC's initial operations ("general shareholders"). EMCC has determined to issue these shares at the present time so that funds will be available to pay expenses related to its development. The purpose of this proposed rule change is to obtain authorization for the share issuance.⁴ After the issuance and sale of these EMCC shares, no entity will be qualified to become EMCC member unless, in addition to satisfying the other criteria for membership set forth in the rules, such applicant becomes a shareholder of EMCC (participant shareholder") or an affiliate of a shareholder of EMCC.

Each shareholder, both general and participant, will be required to sign the shareholder agreement, which sets forth provisions regarding the election of directors, restrictions on issuance and transfer of shares, and voting requirements.⁵ The shareholder agreement provides that no dividends will be paid on the shares. Pursuant to the shareholder agreement, shareholders may sell or may transfer their shares only in compliance with the shareholder agreement. There is a fixed price of \$5,000 per share for the

issuance, sale, or transfer of EMCC shares by a participant shareholder. Although no assurance is given that a transferee will be available to purchase EMCC shares at the time of any proposed transfer. Any sale or transfer by a participant shareholder may only be to entities that are already general or participant shareholder of EMCC and that agree to execute the shareholder agreement. In addition, any such sale may only occur if prior to such sale or transfer EMCC receives a legal opinion, in a form acceptable to it, to the effect that such sale or transfer is exempt under the Securities Act of 1933.⁶

As described in the registration order, EMCC's board of directors is classified into four classes. The first three classes are each composed of five participant directors. Only officers or partners of a participant shareholder or of an affiliate or subsidiary of a participant shareholder are eligible to serve as a participant director. Shareholders are obligated to vote their shares for participant directors selected by the nominating committee if no participant nominees are submitted or for the participant directors selected by a vote of the participants if there is a contested election. The fourth class of directors ("Class IV") consists of one EMTA director, one ISMA director, two NSCC directors, and two directors selected by the EMCC board. Shareholders are required to vote their shares to elect the directors selected by ISMA, EMTA, NSCC, and EMCC's board.

Except upon written agreement of the holders of two-thirds of the outstanding EMCC shares, shareholders may not vote (1) to amend or change the EMCC certificate of incorporation, the by-laws of EMCC, or the shareholder agreement or (2) to repurchase or to issue any EMCC shares. However, if directed by a board resolution, shareholders must vote (1) to amend or change the certificate of incorporation relating to the establishment of a greater than majority requirement of quorum and voting at meetings of the board of directors, the establishment of a cumulative voting system for the election of directors, the classification of directors, shareholder rights to fix consideration for no par shares, shareholder rights to fix compensation of directors, and shareholder rights to elect and to remove officers and (2) to adopt, to amend, or to repeal any by-law except those which the board is prohibited from adopting, amending, or repealing pursuant to the by-laws. Shareholders may not vote to change the manner in which a Class IV director is

elected or to reduce the number of Class IV directors except with the unanimous consent of ISMA, EMTA, and NSCC.

In conjunction with this issuance of shares, EMCC is amending its articles of incorporation in order to permit certain actions to be taken upon a two-thirds vote of the shareholders rather than upon unanimous vote. A two-thirds vote will be required for: (1) any amendment or change of the certificate of incorporation; (2) any adoption, amendment, or repeal by the shareholders of by-laws of EMCC; (3) any repurchase of any securities issued by EMCC; and (4) any issuance of any securities by EMCC.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and specifically with the fair representation requirement of Section 17A(b)(3)(C).

(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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors.⁷ The Commission believes that EMCC's proposal is consistent with its obligations under the Act. EMCC's procedures for the election of directors, which the Commission approved in the registration order, provides that other than Class IV directors only participant shareholders may serve on the board of directors. The rule change allows for participants to become shareholders and thus enhance their ability to participate in the governance of EMCC. Therefore, the Commission believes that EMCC's proposal is consistent with its obligations to assure the fair representation of participants.

EMCC has requested that the Commission find good cause for

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

³ Securities Exchange Act Release No. 39661 (February 13, 1998), 62 FR 8711 (order granting temporary registration as a clearing agency).

⁴ The thirty entities that will receive shares in this issuance are listed on Exhibit A, Annex 1 to EMCC's rule filing. All of these entities are either U.S. broker-dealers, U.K. broker-dealers, U.S. banks, or non-U.S. banks.

⁵ A vote of eighty percent of the outstanding shares is required to terminate the shareholder agreement.

⁶ 15 U.S.C. 77a.

⁷ 15 U.S.C. 78q-1(b)(3)(C).

approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because it will permit EMCC to proceed with its issuance of shares to general shareholders scheduled for February 24, 1998.

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. 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, 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 number SR-EMCC-98-01 and should be submitted by March 23, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-98-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-5254 Filed 2-27-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39696; File No. 600-23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Application for Extension of Temporary Registration as a Clearing Agency

February 24, 1998.

Pursuant to Sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"),¹ on October 2, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") an application requesting that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.² Notice of GSCC's request for permanent registration or for extension of temporary registration appeared in the **Federal Register** on January 15, 1998.³ No comments were received. This order extends GSCC's registration as a clearing agency until February 28, 1999.

On May 24, 1988, the Commission approved pursuant to Sections 17A and 19(a) of the Act and Rule 17Ab2-1(c) promulgated thereunder⁴ the application of GSCC for registration as a clearing agency for a period of three years.⁵ The Commission subsequently has extended GSCC's registration until February 28, 1998.⁶

GSCC provides clearance and settlement services for its members' transactions in government securities. GSCC offers its members services for next-day settling trades, forward settling trades, auction takedown activity, and repurchase agreement transactions. In connection with GSCC's clearance and settlement services, GSCC provides a centralized loss allocation procedure and maintains margin to offset netting and settlement risks.

At the time of GSCC's initial registration, the Commission granted

¹ 15 U.S.C. 78q-1, 78s(a).

² Letter from Sal Ricca, President and Chief Operating Officer, GSCC (September 25, 1997).

³ Securities Exchange Act Release No. 39526 (January 8, 1998), 63 FR 2435.

⁴ 17 CFR 240.17Ab2-1(c).

⁵ Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

⁶ Securities Exchange Act Release Nos. 29067 (April 22, 1991), 56 FR 14542; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; and 39698 (May 30, 1997), 62 FR 30911.

GSCC exemptions from the financial responsibility and operational capability standards of Sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act and from the fair representation requirements of Section 17A(b)(3)(C) of the Act.⁷ The Commission has since determined that GSCC is in compliance with these sections and has eliminated the exemption.⁸ In the order initially granting GSCC temporary registration, the Commission also discussed the need for GSCC to amend its standard of care with respect to functions affecting the settlement of government securities.

The Commission believes that several issues need to be resolved prior to GSCC obtaining permanent registration. In particular, the Commission is reviewing the appropriate standard(s) of liability of a clearing agency to its members. Therefore, the Commission believes that GSCC's temporary registration should be extended for an additional twelve months.⁹

It is therefore ordered that GSCC's temporary registration as a clearing agency be and hereby is extended through February 28, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-5255 Filed 2-27-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington,

⁷ 15 U.S.C. 78q-1(b)(3)(B), 78q-1(b)(4)(B), and 78q-1(b)(3)(C).

⁸ Securities Exchange Act Release Nos. 36508 (November 27, 1995), 60 FR 61719 (order extending registration as a clearing agency) and 39372 (November 28, 1997), 62 FR 64415 (order approving GSCC's procedures for election of directors).

⁹ The Commission expects to continue to process GSCC's request for permanent registration during this temporary registration period.

¹⁰ 17 CFR 200.30-3(a)(50)(i).

⁸ 17 CFR 200.30-3(a)(12).