

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41247; File No. SR-EMCC-99-2]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Allowing EMCC To Conduct Trade Data Comparisons

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 8, 1999, as amended on March 18, 1999, and March 26, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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 from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will allow EMCC (1) to accept trade data directly from either members or service bureaus and (2) to compare trades.

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 to conduct trade data comparisons.² 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.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, EMCC members submit transaction data for trades that will settle at EMCC to a "locked-in trade source." The locked-in trade source (currently Match-Em or Trax) compares the trade data and sends a locked-in trade to EMCC. The proposed rule change eliminates the procedures for submitting locked-in trades. Instead, EMCC will accept trade data directly from members or "service bureaus" and will compare the trades.⁴ Members will be required to notify EMCC whether they will be submitting trade data directly or through a service bureau. EMCC will accept trade data only from the member's designated source.

The following paragraphs describe the changes to EMCC's Rules to allow trade data to be accepted directly from members or service bureaus and to allow EMCC to provide trade data comparisons.⁵

Rule 1—Definitions

The proposed rule change adds the terms "comparison operation," "conditional matching field," and "service bureau" to Rule 1.⁶ The terms "locked-in trade" and "locked-in trade source" will be deleted because they will no longer be relevant.

The proposed rule change modifies the definition of "compared trade" to reflect that trade data will not be transmitted to EMCC by a locked-in trade source and that EMCC will compare the trade data. The definitions of Match-EM and Trax is modified to reflect that they will no longer be locked-in trade sources but "service bureaus."

Rule 4—Clearing Fund, Margin and Loss Allocation

The proposed rule change amends footnote 2 in Rule 4 to reflect that EMCC will no longer be accepting trade data from a locked-in trade source.

⁴ The term service bureau is defined in EMCC's Rules as an entity designated by EMCC to submit trade data to EMCC on behalf of EMCC's members. At this time Match-Em and Trax are the two entities EMCC has designated as service bureaus.

⁵ References to EMCC's rule numbers in this filing reflect numbering changes proposed in File No. SR-EMCC-99-10, Securities Exchange Act Release No. 40810, International Series Release No. 1174 (December 18, 1998), 63 FR 71532.

⁶ The term comparison operation is defined in EMCC rules as the operations having to do with EMCC eligible instruments to which EMCC's Rules apply. The term conditional matching field is defined as a trade data field designated by EMCC as such. For the definition of service bureau, refer to footnote 4.

Rule 5—General Provisions and Rule 6—Receipt of Data

The proposed rule change deletes the portions of Rule 6 pertaining to the receipt of trade data from a locked-in trade source and moves Sections 2 and 3 of old Rule 6 to Sections 4 and 5 of Rule 5.

Rule 6—Comparison Operation

New Rule 6 governs EMCC's comparison operation. Rule 6 authorizes members to submit trade data concerning an EMCC eligible instrument transaction with another member to EMCC. EMCC members can submit trade data directly to EMCC or through a service bureau. If a member submits trade data to EMCC using a service bureau, the trade will be reported when EMCC accepts the trade data and not when the service bureau accepts the data.

Rule 6, Section 3 provides that trade data submitted to EMCC must (i) be in such formats, (ii) be submitted by such times, (iii) include such identifying details, and (iv) meet such operational parameters as established by EMCC or a qualified securities depository.⁷ Once trade data is accepted by EMCC, EMCC will compare the trade data and will match it based on established criteria. The actual times, formats, and other details are set forth in EMCC's functional specifications. If trade data does not satisfy the EMCC's requirements, then EMCC will reject such trade data and notify the member. This section also states that if the trade data submitted by a member contains a field which has been identified as a conditional matching field and the trade data submitted by the counterparty also contains such conditional matching field, EMCC will not match the trade unless the conditional matching fields match.

Rule 6, Section 3 also contains three footnotes. Footnote 1 indicates that the formats for submission of trade data may vary depending upon whether a member submits trade data to EMCC directly or through a service bureau. Footnote 2 indicates that trade data that EMCC does not accept because of an ineligible ISIN, counterparty member, or interdealer broker field will not be reflected in any report. Footnote 3 indicates that, for the purposes of comparing a trade, a difference in net consideration amounts submitted by the counterparties to a transcript of less

⁷ The term qualified securities depository is defined in EMCC's Rules as a securities depository which has entered into an agreement with EMCC to effect book-entry transfers of EMCC eligible instruments to and by EMCC.

¹ 15 U.S.C. 78s(b)(1).

² The complete text of the proposed rule change is attached as Exhibit A to EMCC's filing, which is available for inspection and copying at the Commission's public reference room and through EMCC.

³ The Commission has modified the text of the summaries prepared by EMCC.

than or equal to \$25 will be considered a match. In addition, prices submitted by the counterparties to a transaction will be considered to match if the difference between the two price amounts is less than or equal to either price multiplied by .0001.

Rule 6, Section 4 governs the reporting of the results of the comparison operation.⁸ Under the proposed rule change, trade data will be categorized as compared, uncomparated, alleged, or rejected. These terms are defined as follows:

- (1) Compared trades will be those trades for which a comparison has been effected;
- (2) Uncomparated will be those items which a member submitted but no corresponding data was received from a counterparty;
- (3) Alleged will be those trades submitted by another member against the member and for which the member either did not submit any trade data or did not submit trade data which matched in all required respects;
- (4) Rejected will be those items which did not meet the required operational parameters.

In addition to the reports described above, EMCC will continue producing "accepting trade reports" with respect to compared trades. The accepted trade reports will continue to indicate whether a trade is a "netting trade" or is to be settled on a trade-for-trade basis.⁹ Footnote 4 of Section 4 provides that compared trades which are matched after the established cut-off time on SD-2 will settle on a trade-for-trade basis.

Pursuant to the proposed rule change, members will be able to modify a previously submitted uncomparated trade by submitting new trade data so long as the new trade data includes the reference number previously assigned by the member to the uncomparated trade. Members will not be able to modify the ISIN, trade date, or settlement date of an uncomparated trade, and EMCC will reject any such modification. Modifications will be required to be submitted to EMCC in such form and by such time as EMCC establishes from time to time.

EMCC will continue to process alleged trades until the earlier of (1) the submission of matching trade data by the member against whom the trade is alleged or (2) the cut-off time for inclusion of compared trades on the SD-1 accepted trade report.

⁸ Appendix B sets forth the information that will be contained in EMCC's reports indicating the results of its comparison operation. The categories of information contained in the reports will vary depending on the method by which a member submits data to EMCC.

⁹ Rule 7 will continue to govern, receive, deliver, and settlement obligations relating to compared trades.

Each uncomparated trade, including modified uncomparated trades, will be included in the comparison operation until the earlier of (1) its designation as a compared trade and the reflection as such on an accepted trade report or (2) the cut-off time for inclusion of compared trades on the SD-1 accepted trade report. All trades remaining uncomparated after such time will be processed in accordance with the provisions of Rule 8.

Proposed Rule 6, Section 6 will govern the submission of cancellation instructions. According to the proposal, EMCC will prohibit partial cancellations and will not cancel a compared trade unless it receives matching instructions from the counterparty. The accepted trade report will indicate whether a cancellation of a compared trade has been processed by EMCC.

Rule 7—Novation and Guaranty of Obligations and Receive, Deliver and Settlement Obligations

The proposed rule change amends Rule 7, Section 2 to explicitly state that transactions reported as canceled on an accepted trade report will result in the extinguishing of the related receive and deliver obligations previously created by EMCC.

Rule 8—Settlement Instructions Only Report

The production of the "settlement instructions only report" by EMCC and the effect of such reports will remain the same. The proposed changes to Rule 8 reflects the elimination of the locked-in trade source and the offering of comparison processing by EMCC.

Rule 15—Ceasing To Act for a Member; Rule 17—Insolvency of a Member; and Addendum B—Statement of Policy With Respect to Interdealer Broker Required Fund Deposits

The language referring to a locked-in trade source is being eliminated, and where appropriate, a reference to service bureau is being inserted.

Addendum A—Statement of Policy Pertaining to Inter-Dealer brokers Who Do Not Qualify Under the Provisions of Rule 2

Addendum A has expired and therefore is being eliminated.

In addition, the proposed rule change amends footnote 6 of Rule 4, Section 10 to provide that the limited use of clearing fund deposits as collateral for intraday financing proposes, as described in Section 10(2)(B), will expire on the date on which all members are netting members. There will no longer be a reference to

expiration on EMCC's first anniversary as a registered clearing agency.

EMCC believes that the proposed rule change is consistent with the requirements Section 17A of the Act¹⁰ and the rules and regulations thereunder because the ability to accept trade data directly from members and to offer comparison services will facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any 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)(F) of the Act¹¹ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that allowing EMCC to accept trade data directly from members should promote the prompt and accurate clearance and settlement of securities transactions by providing EMCC members with a choice of how they can best provide EMCC with trade data. Also, by allowing EMCC to conduct the comparison of trade data EMCC will be better able to make sure that the comparison of trades is conducted timely and accurately.

EMCC has requested that the Commission find good cause for 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 such approval will allow EMCC and its members to realize the benefits of having EMCC provide the additional services as soon as possible.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

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, N.W., Washington, D.C. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-99-2 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-EMCC-99-2) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-9016 Filed 4-9-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41248; File No. SR-NASD-99-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc.; Relating to the Filing Fees Under the Corporate Financing Rule

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 11, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities

and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On March 18, 1999, and March 23, 1999, NASD Regulation submitted to the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.³ 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 Regulation is proposing to amend Section 6 of Schedule A to the NASD By-Laws and NASD Conduct Rule 2710 to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1-Section 5

No change.

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] *There shall be a fee imposed for the filing of initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to \$500 plus .01% of the [gross dollar amount of the offering,] proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not [to] exceed [a fee of] \$30,500. The amount of filing fee may be rounded to the nearest dollar.*

(b) [Amendments] *There shall be an additional fee imposed for the filing of any amendment or other change to the*

³ NASD Regulation filed Amendment No. 1 which superseded the original rule filing in its entirety. See Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 17, 1999; Amendment No. 2 also superseded Amendment No. 1 and the original rule filing in its entirety. See Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 22, 1999.

[initially filed documents which increase the number of securities being offered] *documents initially filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related SEC Rule 462(b) registration statement, or reflected on any SEC Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not [to] exceed \$30,500 [when aggregated with all fees previously paid].*

[(c) the provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

Section 7-Section 15

No change.

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2710. Corporate Financing Rule—Underwriting Terms and Arrangements
(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

(2)–(6) renumbered (1)–(5)

(b) Filing Requirements

(1)–(9)

No change.

[(10) Filing Fees]

[(A) The initial documents relating to any offering filed with the Association pursuant to this Rule shall be accompanied by a filing fee equal to \$500 plus .01% of the gross dollar amount of the offering, not to exceed a fee of \$30,500. The amount of filing fee may be rounded to the nearest dollar.]

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.