

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46714; File No. SR-EMCC-2002-01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Expanding the Types of Instruments Eligible for Processing

October 23, 2002.

I. Introduction

On January 10, 2002, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-EMCC-2001-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on August 9, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC to include emerging market corporate debt that meets certain criteria. EMCC will accomplish this by adding a new definition, "eligible corporate debt," to Rule 1. "Eligible corporate debt" will be defined as those instruments which:

1. Are issued by or on behalf of an issuer domiciled in an emerging markets jurisdiction;

2. The minimum amount of the debt issue outstanding or to be issued at the time of determination is \$200,000,000, and the issuer has cumulatively issued at least \$750,000,000 (or equivalent currency) of debt securities; and

3. EMCC does or would include the sovereign debt of the jurisdiction where the issuer is domiciled in the list of EMCC eligible instruments.

As with all instruments that are EMCC eligible, such instruments will

also have to meet the existing criteria set forth in Rule 3 in that they will have to be eligible for settlement at a "qualified securities depository"³ and must be U.S. dollar denominated. Accordingly, Section 1 of Rule 3 will be amended to include a reference to "eligible corporate debt."

EMCC believes that the inclusion of dollar denominated emerging market corporate debt meeting the foregoing criteria will be beneficial to its members because it will help eliminate counterparty risk in these instruments when EMCC becomes the central counterparty. EMCC also believes that its current clearing fund formula will allow it to collect appropriate amounts of collateral to cover the risks posed by this class of securities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.⁴ By expanding the types of instruments available for processing by EMCC, the proposed rule change will allow more of EMCC's members' trades to be processed through the facilities of EMCC which should promote the prompt and accurate clearance and settlement of such securities transactions. Furthermore, the Commission finds that EMCC's current risk management procedures, including its clearing fund formula, have been designed and are operated in such a manner that EMCC will be able to provide clearance and settlement services for eligible corporate debt in a manner that will provide for the safeguarding of securities and funds in its possession or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

EMCC-2002-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46712; File No. SR-NASD-2002-149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Program for Exchange-Listed Securities

October 23, 2002.

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 October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 by Nasdaq. 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

Nasdaq proposes to amend NASD Rule 7010 to codify on a permanent basis Nasdaq's InterMarket³ Transaction Credit Pilot Program ("Program"), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.⁴

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000)(SR-NASD-00-32).

⁴ The text is marked to show changes from the language of the rule as proposed to be amended by SR-NASD-2002-115, and assumes that the Commission will approve SR-NASD-2002-115 before approving this proposal. If the Commission determines that SR-NASD-2002-115 should not be approved, Nasdaq will submit an amendment to this filing to reflect the disposition of SR-NASD-2002-115.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46311 (August 5, 2002), 67 FR 51906.

³ A qualified securities depository is defined by EMCC Rules to be a securities depository which has entered into an agreement with EMCC pursuant to which it will effect book-entry transfers of EMCC Eligible Instruments to and by EMCC.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

7010. System Services

(a)—(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit.

[For a pilot period,] NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing [4]50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter[, ending with the calendar quarter starting on October 1, 2002].

(d)—(r) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). The InterMarket competes with regional

exchanges like the Chicago Stock Exchange ("CHX"), the Boston Stock Exchange ("BSE"), and the Cincinnati Stock Exchange ("CSE"), for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and the Intermarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.⁵

Nasdaq proposes to modify the Program. Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD), from the Consolidated Tape Association ("CTA"), by providing a transaction credit to members who engage in over-the-counter trading activity in CTA-eligible securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also enables Nasdaq to compete against other exchanges that offer similar programs, including CHX, CSE, and BSE.⁶

Under the current Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (Tape A), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (Tape B). Eligibility for transaction credits is based on concurrent quarterly trading activity.⁷ Under the current Program, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade,⁸

although Nasdaq has filed a proposed rule change to allocate trades to the party that provides liquidity in a given transaction.⁹

Nasdaq believes that it is important to establish the transaction credit program as a permanent part of the InterMarket. The Program has been in place for three years, and has proved to be successful. The InterMarket has emerged as a viable competitive option to trading on the primary market and, along with other exchanges that trade CTA-eligible securities, has helped to reduce the cost of trading those issues. The Program has been a critical aspect of the InterMarket's ability to compete effectively with other exchanges.

To maintain that competitiveness, Nasdaq believes it is necessary to raise the percentage of revenue available for distribution under the Program from 40% to 50%. Currently, the CSE and CHX both distribute 50% of revenue under the formulae contained in their programs, and the BSE has filed a proposal with the Commission to distribute 50% of revenue as well.¹⁰

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,¹¹ which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change will lower the cost of conducting business through the InterMarket for members that provide liquidity through ITS or CAES. Nasdaq also believes that encouraging members to provide liquidity will enhance the efficiency of the InterMarket, and will benefit investors whose trades are routed to the InterMarket by increasing

⁵ See CAES/ITS User Guide, p.5, at www.intermarket.nasdaqtrader.com.

⁶ See Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997)(SR-CHX-97-01); 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997)(SR-CSE-97-12); 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR-BSE-2002-10).

⁷ The Commission recently approved an amendment to the Program that made all members eligible to receive the transaction credit. See Securities Exchange Act Release No. 46549 (September 25, 2002), 67 FR 61705 (October 1, 2002)(SR-NASD-2002-111). Prior to that, a member had to print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing, and an average of 500 daily trades of Tape B securities during a quarter to qualify for Tape B sharing.

⁸ Non-ITS/CAES trades that are reported to Nasdaq are attributed to the member identified in

the trade report as the executing party, which is either the reporting party or a "give up" on whose behalf the trade is reported. The crediting of non-ITS/CAES trades remains unchanged.

⁹ On August 16, 2002, Nasdaq filed SR-NASD-2002-115 to modify the current Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy, or that buys in response to an order to sell). Nasdaq has incorporated that proposal in the permanent Program because it believes that encouraging InterMarket participants to provide liquidity will increase the efficiency of InterMarket transactions and enhance the competitiveness of InterMarket vis-à-vis the exchanges with which it competes.

¹⁰ See Securities Exchange Act Release No. 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR-BSE-2002-10).

¹¹ 15 U.S.C. 78o-3(b)(5).

the likelihood that they will be promptly executed.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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 NASD 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

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.¹² In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on this proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

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 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-149 and should be submitted by November 19, 2002.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46713; File No. SR-NYSE-2002-48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot With Respect to Exceptions to NYSE Rule 123(e) for Orders in Exchange-Traded Funds

October 23, 2002.

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 October 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change

pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

This proposal is to extend until January 5, 2004 the effectiveness of the amendment to NYSE Rule 123(e) which provides that orders in Exchange-Traded Funds ("ETFs") may be entered into an electronic system on the Floor (Front-End Systemic Capture or "FESC") within 90 seconds of execution. This amendment was approved by the Commission on a pilot basis for one year (the "Pilot") on January 7, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On December 21, 2001, the Exchange filed a proposed rule change to amend NYSE Rule 123(e) to provide that orders in ETFs may be entered within 90 seconds of execution.⁶ NYSE Rule 123(e) ordinarily requires that all orders in any security traded on the Exchange be entered into an electronic data base before they can be represented in the Exchange's auction market. This exception to NYSE Rule 123(e) for ETFs was filed as a one-year pilot, and

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NYSE asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ See SR-NYSE-2001-52 (December 21, 2001).

¹² Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.