

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>4</sup> The proposed rule change will allocate EMCC's clearing fund requirement in a manner that more appropriately reflects the risks of its members' activities. The proposed rule change will also allow EMCC to use a more accurate calculation and more time to collect members' clearing fund requirements. Accordingly, the proposed rule change should help assure EMCC's ability to safeguard securities and funds.

### 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-2003-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-21824 Filed 8-25-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48367; File No. SR-EMCC-2003-03]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing a Temporary Rebate for IDB Members

August 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 6, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 4, 2003, amended 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 establishes a temporary reimbursement for Inter-Dealer Broker ("IDB") members or members whose only use of EMCC is to clear for IDBs of the costs associated with their deposits in excess of \$50 million.

#### 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

The Commission recently approved a proposed rule change filed by EMCC to modify its clearing fund requirements for IDB members or members whose only use of EMCC is to clear for IDBs.<sup>3</sup> That proposed rule change established a fixed amount of \$50 million to be deposited by members who are IDBs or whose only use of EMCC is to clear for IDBs. EMCC is concerned that if this modified requirement is not established, the IDBs will no longer submit their transactions to EMCC, and the dealer market will lose the benefits, such as the risk management and standardized, electronic processing, currently provided by EMCC. EMCC has decided to reimburse any such member the costs associated with its deposit requirements in excess of \$50 million. The rebate is retroactive to May 1, 2003, and will continue in effect until the modified clearing fund requirement for IDBs is effective.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to EMCC because

it will permit the equitable allocation of charges among participants.

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

EMCC does not believe that the proposed rule change will have any 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

Because the foregoing rule change establishes or changes fees to be imposed by EMCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and rule 19b-4(f)(2).<sup>5</sup> At any time within 60 days of the filing of the proposed 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 Fifth Street, NW., Washington, DC 20549-0609. 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-2003-03. This file number should be included on the subject line if e-mail is used. To help us process and review 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

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> Securities Exchange Act Release No. 48366 (August 19, 2003) (File No. SR-EMCC-2003-02).

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

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

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, 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 No. SR-EMCC-2003-03 and should be submitted by September 16, 2003.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-21825 Filed 8-25-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48374; File No. SR-NASD-2003-129]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for Trading and Compliance Data Available to NASD Member Firms Via NasdaqTrader.com

August 20, 2003.

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 August 15, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and rule 19b-4(f)(2) thereunder<sup>4</sup> as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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 modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

##### 7000. Charges for Services and Equipment

##### 7010. System Services

(a)-(m) No change.

(n) NasdaqTrader.com Trading and Compliance Data Package Fee.

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is \$100 [75] per month (monthly maximum of 25 Historical Research Reports) or \$130 [100] per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

- (1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only).
- (2) Monthly Compliance Report Cards (Member Firm's information only).
- (3) Monthly Summaries.
- (4) Historical Research Reports.
- (i) Market Maker Price Movement Report.
- (ii) Equity Trade Journal (Member Firm's information only).

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

(o)-(s) 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 is proposing to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com.

NasdaqTrader.com allows NASD member firms to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Specifically, NASD member firms that subscribe to Nasdaq's Trading and Compliance Data Package ("Data Package") can obtain the following reports: (1) Daily Share Volume Reports, which provide a member firm's own daily share volume for each security in which the firm reports volume; (2) Monthly Compliance Report Cards, which outline a firm's own compliance with various NASD rules; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (4) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates for a security on a specified date or trades reported through the Automated Confirmation Transaction Service ("ACT") by a NASD member firm for a selected security and date.

Use of this service is voluntary and NASD member firms have the option of subscribing to two different levels of the Data Package. The "basic" level, which has a fee of \$75 per month, allows access to a maximum of 25 Historical Research Reports per month. The "premium" level, which has a fee of \$100 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since the launch of the service in December 1998, even though several enhancements have been made since that time. Some of these enhancements include: (1) Various additional types of Monthly Compliance Report Card reports that show such things as compliance with the short sale bid test and ACT reporting; (2) detailed trade data specific to each Monthly Compliance Report Card; and (3) additional types of Historical Research Reports such as SuperMontage Activity Reports and Daily Security Position Data Reports.

In order to help cover the costs associated with the maintenance of the Data Package service as well as the

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

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

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

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

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