

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50202; File No. SR-EMCC-2004-12)

August 16, 2004

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Processing Transactions in Ineligible Instruments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August 2, 2004, the Emerging Markets Clearing Corporation (“EMCC”) filed with the Securities and Exchange Commission (“Commission”) the 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 to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

The proposed rule change will amend EMCC Rule 3, Section 1 (Lists to be Maintained) to specify that EMCC will no longer process transactions in ineligible instruments where transactions in such ineligible instruments were accepted by EMCC at a time when the instruments were eligible instruments.

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

¹ 15 U.S.C. 78s(b)(1).

significant aspects of such statements.

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

The purpose of the proposed rule change is to eliminate the risk to EMCC and its members posed by the processing of value recovery rights, also known as warrant transactions, because EMCC cannot obtain accurate prices of such instruments.²

Prior to this rule change, EMCC Rule 3, Section 1 provided that transactions in instruments that became ineligible but were currently in the system would continue to be processed and would be deemed to be transactions in EMCC eligible instruments. EMCC is changing this rule to specify that it will no longer continue to process transactions in ineligible instruments, will exit pending transactions in ineligible instruments from its system, and will issue receive and deliver instructions by naming members as contra-parties to such instructions. However, the legal obligations of the parties to such instructions will continue to be subject to EMCC's rules even though such instruments will no longer settle at EMCC. Finally, EMCC will net all open fail warrant positions before exiting the positions. These net positions will be assigned to members on a random basis in quantities that meet Euroclear delivery requirements.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because eliminating unsettled warrant positions will eliminate risks that EMCC can no longer effectively manage.

² As part of the margining process, EMCC marks to market all open positions. When warrants traded at zero value as part of the associated bond deal, this did not present a problem. However, when warrants are detached and trade at value, which they occasionally do, the zero mark is not appropriate. Due to the lack of readily available prices for the warrants, this component of margining cannot be accurately measured and, thus, presents risk to EMCC and ultimately its members.

B. Self-Regulatory Organizations 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 it receives.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)³ of the Act, which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control. By eliminating the risk posed by EMCC's inability to accurately mark to market its participants' open warrant positions, the proposed rule change will enhance EMCC's ability to safeguard the securities and funds which are in its custody or control.

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 filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving EMCC will be able to expeditiously eliminate the risk posed by unsettled warrant instruments that compromises its ability to safeguard the securities and funds that are in its custody or control.

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMCC-2004-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-EMCC-2004-12. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at www.e-m-c-c.com. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMCC-2004-12 and should be submitted on or before [insert 21 days after the date of this publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2004-12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland
Deputy Secretary

⁴ 17 CFR 200.30-3(a)(12).