

intends to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),¹ canceling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Staff Attorney, at 202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

Background

On August 12, 1998, the Commission adopted Rule 17Ad-18 under Sections 17(a) of the Exchange Act, which requires non-bank transfer agents to file Form TA-Y2K with the Commission.² Under Rule 17Ad-18, every transfer agent was required to complete and file by August 31, 1998, Part I of Form TA-Y2K reflecting its Year 2000 compliance effort as of July 15, 1998. Certain larger transfer agents were also required to complete Part II of Form TA-Y2K.

In August 1998, the Commission mailed copies of Form TA-Y2K to all non-bank transfer agents then registered with the Commission.³ In September 1998, the Commission mailed letters to the transfer agents, including the transfer agents listed in the Appendix, that had not filed Form TA-Y2K warning them of the possibility of the institution of an administrative proceeding by the Commission. Subsequently, the Commission made additional efforts to locate and determine the status of transfer agents, including the transfer agents listed in the Appendix, that did not file Form TA-Y2K. In some cases the Commission was unable to locate the transfer agent and in other cases the Commission received notification that the transfer agent was no longer in existence or had ceased doing business.

To date, the 14 registered transfer agents listed in the Appendix have neither filed Form TA-Y2K nor responded to Commission inquiries. Based on the facts it has, the

Commission believes that these transfer agents are no longer in existence or have ceased doing business as a transfer agent. Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall be order cancel that transfer agent's registration. Accordingly, at any time after June 21, 1999, the Commission intends to issue an order cancelling the registrations of any or all of the transfer agents listed in the Appendix.

Any transfer agent listed in the Appendix that believes its name has been included in the Appendix in error must notify the Commission in writing prior to June 21, 1999 objecting to the cancellation of its registration. Written notifications must be mailed to: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001, or be sent via facsimile to (202) 942-9695, Attention: Gregory J. Dumark.

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

Margaret H. McFarland,
Deputy Secretary.

Appendix—Registration Number and Name

84-1758, Corporate Strategic Services, Inc.
84-1997, DC Trading & Development Corp.
84-5406, First Federal Savings Bank Byran Texas
84-1945, Hawthorne Shareholder Services, Inc.
84-5553, The Herman Group, Inc.
84-5522, Keller Financial Services, Inc.
84-1766, Kinlaw Energy Partners Corp.
84-5615, NRG Incorporated
84-5560, Partnership Services, Inc.
84-0047, Penn Square Management Corporation
84-5412, Schuster, Jill Lauren
84-998, Silver Crescent, Inc.
84-5614, Wisconsin Real Estate Investment Trust
84-1566, Yreka United, Inc.

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⁴ 17 CFR 200.30-3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41415; International Series Release No. 1197; File No. SR-EMCC-98-10]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Netting Services

May 17, 1999.

On November 2, 1998, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-EMCC-98-10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 28, 1998.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Currently, EMCC processes its members' transactions on a trade for trade basis. The rule change enables EMCC to offer its members the ability to have their transactions processed on a netted basis through EMCC's netting services.

Under EMCC's netting services, transactions between two netting members that have been reported on EMCC's "accepted trade report," which is made available to members no later than two days prior to settlement date ("SD-2"), will be eligible for settlement netting. The accepted trade report will indicate trades that are to be processed on a netted basis.

Both trade for transactions and netted transactions will be novated and guaranteed at the same time. Receive and deliver obligations for netting trades will be established when the accepted trade report is made available to members. On the scheduled settlement date, these receive and deliver obligations will be extinguished and replaced with new receive obligations or deliver obligations relating to the net position. In order to meet the delivery parameters of the applicable qualified securities depository ("QSD"), EMCC may establish one or more receive and deliver obligations with respect to any one net position.

The value at which receive and deliver obligations will be settled at a

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 40810, International Series Release No. 1174 (December 18, 1998), 63 FR 71532.

¹ 15 U.S.C. 78q-1(c)(4)(B).

² Release No. 34-40163 (July 2, 1998), 63 FR 37688 (July 13, 1998) ("Adopting Release"). See also Release No. 34-39726 (March 5, 1998), 63 FR 12062 (March 12, 1998) ("Proposing Release"). Rule 17Ad-18 specifically applies to non-bank transfer agents. The term "non-bank transfer agent" means a transfer agent whose regulatory agency is the Commission and who also is not a savings association regulated by the Office of Thrift Supervision. 17 C.F.R. § 240.17Ad-18(e).

³ The Commission mailed the Form TA-Y2K to the address provided by each non-bank transfer agent on their Form TA-1. These addresses should be current, as non-bank transfer agents are required to update Form TA-1 promptly for any address changes.

QSD will be fixed by EMCC based on an average of the prices of all transactions in the ISIN³ underlying such receive and deliver obligations. In order to compensate netting members for the difference between the value at which the netted receive and deliver obligations are settled and the actual consideration for the transactions underlying the receive and deliver obligations, EMCC will debit or credit members with the difference between the value at which such obligations settle and the actual consideration. This credit or debit will be referred to as the "transaction adjustment payment."

As described below, the rule change makes specific changes to EMCC's rules.

Rule 1—Definitions

The rule change adds definitions of "netting member," "netting services," and "netting trade" to Rule 1. The term "netting member" is defined as a member that is a participant in the netting services. The definition of "netting trade" sets forth the requirements that must be met in order for a trade to be eligible as a netting trade. Specifically, the trade must (a) be a compared trade between two netting members and (b) have been reported on an accepted trade report made available to members no later than SD-2. The definition also states that EMCC may treat any trade either by netting member or by ISIN as ineligible to be a netting trade. The rule change also amends the definition of "final net settlement obligation" to include any unpaid transaction adjustment payment.

The rule change makes technical corrections to the definitions of "fail long position," "fail short position," and "net settlement obligation," all of which incorrectly refer to the "settlement day" rather than the "scheduled settlement date." In addition, the rule change modifies the definition of "contract value" to state that this value is calculated by EMCC.

Rule 4—Clearing Fund, Margin, and Loss Allocation

The rule change amends Rule 4 with respect to the expiration date of the paragraph in Section 10 of Rule 4 that permits EMCC to use clearing fund deposits for intraday financing. The amendment postpones this expiration date to the earlier of (i) the first anniversary of the date on which EMCC commenced operation as a registered

clearing agency⁴ or (ii) the date on which all members are netting members (as opposed to the date on which netting services are available).

In addition, the rule change amends Section 5 of Rule 4 with respect to the use of the term "value of position." The term is currently used with respect to the calculations of both the mark to market amount and volatility amount. However, the current definition applies only to the mark to market calculation. As a result, the rule change moves the current definition from the text of Section 5 to a footnote to the mark to market formula. In addition, the rule change adds a different definition of "value of position" as a footnote to the volatility amount formula.

Rule 6—Receipt of Data

The rule change amends Rule 6 to state that accepted trade reports will indicate whether a transaction is a netting trade or whether it will be settled on a trade for trade basis. EMCC members will receive a "netting detail report" from EMCC with respect to netting trades scheduled to settle on the following business day. The netting detail report will indicate a net settlement position for a given settlement date for each ISIN in which a netting member has a netting trade. The net settlement position will equal the net amount of EMCC eligible instruments in a particular ISIN that a netting member has purchased from or sold to all other netting members. The rule change also adds language to Rule 6 to indicate that cutoff times for submission of data to EMCC may be different for netting trades and trades to be settled on a trade for trade basis.

Rule 7—Novation and Guaranty of Obligations and Receive, Deliver and Settlement Obligations and Rule 8—Settlement Instructions Only Report

The rule change amends Section 1 of Rule 7 so that it applies to the guaranty and novation of all trades submitted to EMCC. Specifically, the rule change amends Section 2(a) Rule 7 so that it applies to the creation of a member's receive and deliver obligations. With respect to netting trades, on the scheduled settlement date the receive and deliver obligations that are established in accordance with Section 2(a) will be extinguished and replaced with one or more new receive and deliver obligations with respect to each net position. In addition, the rule

change amends Section 2(c) of Rule 7 to state that receive and deliver obligations are to be settled at the settlement value set forth on the accepted trade report for trades to be settled on a trade for trade basis and as set forth on the netting detail report with respect to netting trades.

The rule change amends Section 3 of Rule 7 so that it applies to the transaction adjustment payment. In addition the rule change makes the following technical changes so that (i) all rules pertaining to receive, deliver, and settlement obligations appear under one rule, Rule 7, and (ii) Rule 8 pertains solely to EMCC's settlement instructions only report. Specifically, the rule change makes the following changes:

(1) "Fail settlement positions" is moved from Section 2 of Rule 8 to Section 12 of Rule 7;

(2) "Partial deliveries" is moved from Section 3 of Rule 8 to Section 13 of Rule 7;

(3) "Financing costs/obligation to receive securities" is moved from Section 4 of Rule 8 to Section 14 of Rule 7 (a paragraph is added to this section that will enable EMCC to charge interest to or fine a member for failure to make a transaction adjustment payment);

(4) "Obligation to facilitate financing" is moved from Section 5 of Rule 8 to Section 15 of Rule 7; and

(5) "Relationship with qualified securities depository" is moved from Section 6 of Rule 8 to rule 25.

Rule 25—Qualified Securities Depositories

The rule change adds a section to Rule 25 to prohibit a member from canceling or otherwise modifying instructions previously transmitted by EMCC to a QSD.

Addendum C—Statements of Policy With Respect to Additional Clearing Fund Deposits

The rule change amends Addendum C to refer to contract values rather than settlement values.

Addendum F—Fee Schedule

The rule change modifies the reference to trade date (T) in EMCC's fee schedule to Settlement Day (SD) so that the reference is consistent with the timetables contained elsewhere in EMCC's rules and because members may submit trades that were done on a forward basis so long as such trades are submitted to EMCC no earlier than SD-3.

³ EMCC Rule 1 defines ISIN to mean the International Securities Identification Number as defined by International Organization for Standardization 6166.

⁴ On February 13, 1998, the Commission granted EMCC temporary registration as a clearing agency until August 20, 1999. Securities Exchange Act Release No. 39661, International Series Release No. 117 (February 13, 1998), 63 FR 8711.

II. Discussion

Section 17A(b)(3)(F) of the Act⁵ 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. The Commission believes that the proposed rule change is consistent with EMCC's obligations under Section 17A(b)(3)(F) because it should reduce the number of settlement payments and the size of delivery obligations among EMCC netting members and therefore should increase the speed and accuracy of the settlement process with regard to those members. In addition, the Commission believes that the arrangements for EMCC's netting services have been designed so that they help EMCC to assure the safeguarding of securities and funds that are under EMCC's control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-98-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Policy Statement on the Use of Alternative Dispute Resolution and Case Selection Criteria for Alternative Dispute Resolution

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This notice publishes the Alternative Dispute Resolution Policy Statement of the U.S. Small Business Administration and sets forth criteria for identifying cases as potentially suitable for dispute resolution. SBA is

publishing this notice to make clear its firm commitment to the greater use of alternative dispute resolution techniques. Nothing in this notice or these guidelines, however, creates any right or benefit by a party against the United States. No person or entity should construe this notice as requiring or suggesting that any employee act in a manner contrary to law.

ADDRESSES: Submit Comments to Eric S. Benderson, Associate General Counsel for Litigation, Office of General Counsel, U.S. Small Business Administration, 409 3rd St., SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, (202) 205-6643.

Throughout the past decade, the litigation caseload, both in the courts and before administrative tribunals, which the Small Business Administration ("SBA") and its participant lenders have carried has placed an increasing strain on SBA's resources, both in terms of personnel and expense. Other federal agencies have also faced this growing problem. To address these problems, the 101st Congress enacted the Administrative Dispute Resolution Act of 1990, Pub. L. 101-552, 104 Stat. 2736-37. This legislation with some modifications was permanently reenacted as the Administrative Dispute Act and Negotiated Rulemaking Act of 1996, Pub. L. 104-320, 110 Stat. 3870 (1996). This Act, as amended, codified at 5 U.S.C. 571 *et seq.*, authorizes federal agencies to use various dispute resolution techniques outside of litigation to resolve controversies related to administrative programs if the disputing parties agree to such a proceeding. 5 U.S.C. 572. Under the Act, a dispute resolution proceeding can include any process involving the disputants in which a neutral party participates. See 5 U.S.C. 571.

The National Performance Review, chaired by Vice President Gore, recommended in 1993 that all federal agencies establish methods for Alternative Dispute Resolution ("ADR") and encourage the use of ADR when enforcing regulations. More recently, in 1996, President Clinton issued Executive Order 12988 dealing with Civil Justice Reform. This Order directed federal agencies to consider whether alternate methods might resolve a civil dispute both before suit is filed and again after litigation is instituted. The Order further authorized the Department of Justice to issue model guidelines for the use of ADR. The Justice Department published these guidelines at 61 FR. 36906 (July 15, 1996).

The SBA recognizes the inherent value of using various formal and informal dispute resolution techniques. ADR techniques may be appropriate to resolve a variety of disputes which regularly involve SBA. Several programmatic areas and activities at SBA afford fertile ground for the adoption of ADR techniques. These include proceedings before the Office of Hearings and Appeals, EEO proceedings, personnel actions, government contract disputes, and disputes with participating lenders and surety companies.

SBA routinely undertakes informal negotiations to settle delinquent loan accounts and other types of disputes before and after suit is initiated. At the same time, however, the Agency recognizes the need to do still more to promote the fair and efficient resolution of disputes arising in all areas of operations. Often, the use of ADR will be a more cost effective and efficient means of achieving a satisfactory resolution of a dispute than litigation or administrative procedures. To that end, SBA has adopted the guidelines outlined below.

The ADR Coordinator, the Associate General Counsel for Litigation, will work with program heads in implementing these ADR policies to develop specific procedures with respect to their particular programs to the greatest extent possible. This notice identifies factors which increase the value of ADR and other factors which diminish its benefit. The criteria below, however, are by no means exclusive, and are not intended to remove discretion from the employees of SBA. The determination of whether a particular case, claim or issue is appropriate for an ADR proceeding is often very fact specific. ADR will not be an appropriate means of resolving every dispute, but in this era of reduced resources, a commitment to the use of ADR procedures will allow SBA to maximize the resources devoted to dispute resolution.

Definitions

Alternative Dispute Resolution—An umbrella term that encompasses many different processes and procedures for dispute resolution. Those processes and procedures include, but are not limited to, arbitration, early neutral evaluation, facilitation, mediation, mini-trials and summary jury trials.

Arbitration—A non-judicial proceeding in which the disputants select a neutral person or panel of persons to act as arbiters of a dispute. The arbitrator hears evidence and, in many respects, acts like a judge. The

⁵ 15 U.S.C. 78q-1(b)(3)(D).

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 200.30-3(a)(12).