

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41431; File No. SR-EMCC-99-5]

### Self-Regulatory Organizations; The Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Revision of EMCC's Fee Schedule

May 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 19, 1999, Emerging Markets Clearing Corporation ("EMCC") 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 primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change corrects a typographical error in EMCC's fee schedule.

#### 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 proposed rule change corrects a typographical error in the monthly account maintenance fee EMCC charges members. Since the inception of EMCC's operations, EMCC members have been charged an account maintenance fee of \$500. This fee is in conformity with the monthly account maintenance fee approved by EMCC's Board of Directors at its September 15,

1997, meeting. However, Addendum F to EMCC's Rules erroneously lists the account maintenance fee to be \$200. The proposed rule change corrects this error by changing the listed fee from \$200 to \$500.

##### (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 that is not necessary or appropriate in furtherance of the purposes of the Act.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and pursuant to Rule 19b-4(f)(2)<sup>4</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. At any time within sixty days of the filing of such 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 purpose 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, 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. 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-99-5 and should be submitted by June 14, 1999.

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

Jonathan G. Katz,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41421; File No. SR-NYSE-98-10]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change To Amend Exchange Rule 115 Regarding Disclosure of Specialists' Orders

May 18, 1999.

#### I. Introduction

On March 17, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Rule 115 regarding disclosure of specialists' orders. On June 23, 1998, the NYSE filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 8, 1998.<sup>4</sup> On February 25, 1999, the NYSE filed Amendment No. 2 to the proposal.<sup>5</sup> The Commission received two comment letters regarding the proposal. This notice and order approves the proposed rule change, as

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

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

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

<sup>3</sup> See letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 1998 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 40146 (June 30, 1998), 63 FR 36985.

<sup>5</sup> See Amended 19b-4 Filing ("Amendment No. 2"). In Amendment No. 2, the Exchange proposes to withdraw the provision of the proposal that would have permitted specialists to disclose information about buying and selling interest, but not stop orders, to a listed company in the company's stock.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

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

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

amended, and solicits comments from interested persons on Amendment No. 2.

## II. Description of the Proposal

The Exchange is proposing to amend NYSE Rule 115 to permit a specialist, acting solely in his or her capacity as a market maker (*i.e.*, while on the Floor), and responding to a market probe by a member, to give any information concerning buying and selling interest of orders the specialist holds on the Specialist's Book ("Book") in a stock.<sup>6</sup> This proposal would delete the existing limitation that such disclosed interest be "at or near the prevailing quote." However, with respect to stop orders on the Book for a stock,<sup>7</sup> the Exchange proposes to allow a specialist to disclose this information when the specialist judges that the member conducting the market probe intends to trade in the stock at a price at which such stop orders would be relevant. The Exchange believes that the additional restriction on the disclosure of stop orders will permit disclosure in legitimate circumstances, *e.g.*, when a proposed trade would be effected at a price that would trigger stop orders.

The proposal would also permit the specialist to disclose the identity of any buyer or seller represented on his Book without being required to have express authorization from the member who entered the order (as is currently the case), *i.e.*, the members or member organizations who are representing the buying and selling interest. Nevertheless, a member may request that the identity of a buyer or seller *not* be disclosed at any time, or with respect to a particular order left with a specialist. The rule will continue to require a specialist to make any information available in a fair and impartial manner.

<sup>6</sup> The proposal includes not only orders on the Book, but also any percentage orders held by the specialist. Under the amended NYSE Rule 115, percentage orders will be disclosed similarly to other orders, other than stop orders. See Amendment No. 1, *supra* note 3. A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a "live" order capable of execution in one of two ways: (i) all or part of the order can be "elected" as a limit order on the Book based on trades in the market; or (ii) all or part of the order can be "converted" into a limit order to make a bid or offer or to participate directly in a trade. See NYSE Rule 13.

<sup>7</sup> A stop order is an order to buy or sell at the market when a definite price is reached either above (on a buy) or below (on a sell) the price that prevailed when the order was given. A stop order becomes a market order after a transaction at the stop price occurs. A stop-limit order is a stop order that designates a price limit. A stop-limit order becomes a limit order when a transaction takes place at the stop price. See NYSE Rule 13.

## III. Comments

The Commission received two comment letters on the proposal.<sup>8</sup> The comment letters generally supported the proposed rule change's increased disclosure of information on the specialist's book to members but raised concerns about the issuer-specialist contact provision. One commenter believed that the issuer-specialist contact provision, unless it was extended to all market participants, would give issuers an unfair advantage over others.<sup>9</sup> The other commenter asserted that the provision would provide "[o]ne class of equity market participant (the issuing companies) \* \* \* a significant, non-competitive and arbitrary economic advantage over other investors."<sup>10</sup>

In Amendment No. 1, which was filed before the Commission received the two comment letters, the Exchange explained its belief that the issuer-specialist contact provision of the proposal was consistent with other Exchange initiatives designed to foster and enhance positive issuer-specialist relations.<sup>11</sup> The Exchange also explained its belief that the issuer-specialist contact provision was not unfairly discriminatory because "[t]he information which a specialist [could] provide [under the proposal] is the same type of information available to all market participants through a member's probe, namely, buying and selling interest in a stock."<sup>12</sup> Nevertheless, in Amendment No. 2 the Exchange withdrew this provision.<sup>13</sup>

## IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>14</sup> and, in particular, with the requirements of Section 6(b)(5),<sup>15</sup> 11A(a)(1)(C)(iii),<sup>16</sup> and 11(b) of the

<sup>8</sup> See letters from Peter Jenkins, Director of Global Equity Trading, Scudder Kemper Investments and Mike Cormack, Manager, Equity Trading, American Century Investment Management to Richard Strasser, Assistant Director, Division, Commission, respectively dated November 24, 1998 and December 15, 1998. (The "Scudder Kemper Letter" and the "American Century Letter," respectively).

<sup>9</sup> See Scudder Kemper Letter.

<sup>10</sup> See American Century Letter.

<sup>11</sup> See Amendment No. 1, note 3, *supra*.

<sup>12</sup> See *id.*

<sup>13</sup> See note 5, *supra*.

<sup>14</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

Act.<sup>17</sup> Section 6(b)(5) of the Act<sup>18</sup> requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C)(iii) of the Act<sup>19</sup> Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for the transactions in securities. Section 11(b) of the Act,<sup>20</sup> among other things, prohibits a specialist or Exchange official from disclosing information with respect to orders that is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist.

Presently Exchange Rule 115 prohibits specialists from disclosing Book information to other exchange members who are probing the market, unless the market probe is made at or near the prevailing quote. The proposed rule change would liberalize the specialist disclosure provisions by permitting specialists, in response to a market probe by a member, to give any information concerning buying and selling interest or orders the specialist holds on the Book in a stock. All market participants, including individual investors and issuers, will be able to obtain the Book information through a member's probe. The Commission believes that this provision should promote the objectives of Sections 6(b)(5) and 11A of the Act<sup>21</sup> by increasing price transparency, broadening the public dissemination of market information, and enhancing the ability of investors to develop strategies and make informed investment decisions. Moreover, because the proposed amendments to NYSE Rule 115 will make Book information available to all member organizations on a non-exclusive basis and requires a specialist to disclose information in a fair and impartial manner, the proposal is consistent with Section 11(b) of the Act.<sup>22</sup>

<sup>17</sup> 15 U.S.C. 78k(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>20</sup> 15 U.S.C. 78k(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k-1.

<sup>22</sup> 15 U.S.C. 78k(b).

Stop orders, however, are treated differently than orders that are not price-triggered under the proposed rule change. Under the proposed rule change, specialists may disclose information about stop orders when the specialist judges that the member conducting the market probe has the intention to trade in the stock at a price at which such stop orders would be relevant. Orders other than stop orders may be disclosed without restriction in response to a member's probe. The Commission believes that because stop orders held on the book may be far away from the market the proposal's special treatment of top orders is reasonable. The Commission believes that it is reasonable that specialists only disclose stop order information when a member's market probe reasonably indicates an intention to trade at a price at which the stop orders would be relevant. This restriction should help safeguard against potential market manipulation and provide investors who place stop orders with a level of protection and confidence that Exchange members will not be permitted to obtain information regarding stop orders unless they have a legitimate market interest in that information.

The proposed rule change also alters the presumption for the non-disclosure of an investor's identity. Under the proposal, a specialist may disclose to a member the identity of any buyer or seller on the Book, unless the buyer or seller expressly requests that his or her investment anonymity be maintained at all times or with respect to a specific order. The Commission believes that this provision strikes a reasonable balance between the public interest in the broad dissemination of market information and the private interest of a specific investor to have his or her identity withheld from the public for legitimate and strategic investment purposes.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 withdraws from the proposed rule change the provision that appeared in the proposal as originally filed which would have permitted specialists to disclose information about orders, but not stop orders, to listed companies. Both comment letters received by the Commission raised concerns that the proposal would allow direct specialist-issuer contact, but did not provide for similar specialist access for other non-

member market participants.<sup>23</sup> The Commission believes that by withdrawing the issuer-specialist contact provision the Exchange has helped to ensure that the proposal complies with Section 6(b)(5) of the Act<sup>24</sup> which prohibits exchange rules from unfairly discriminating between customers, issuers, brokers or dealers. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>25</sup> to approve Amendment No. 2 to the proposal on an accelerated basis.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-98-10 and should be submitted by June 21, 1999.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSE-98-10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Jonathan G. Katz,**  
Secretary.

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<sup>23</sup> See note 8, *supra*.

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41430; File No. SR-PCX-99-12]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending PCX Rule 15—"PCX Application of the OptiMark System"

May 20, 1999.

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 April 22, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 the Exchange. 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 Exchange is proposing to adopt a stated policy and practice with respect to the meaning and administration of Rule 15 of the Exchange's Board of Governors—"PCX Application of the OptiMark System." The Exchange's proposed policy and practice clarifies the meaning and administration of the PCX Application of the OptiMark System ("PCX Application") and makes a few technical amendments to Rule 15.

The text of the proposed rule change is available at the PCX and at the Commission.

#### 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.

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

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