

trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.²⁵

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities to meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, L.P., or

though Web sites such as <http://www.investinbonds.com> (for Underlying Corporate Bonds) and <http://publicdebt.treas.gov> and <http://www.govpx.com> (for Treasury Securities).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.²⁶ The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act²⁷ to approve the proposal, on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-Amex-2003-72) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48465; File No. SR-EMCC-2003-01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to EMCC's Capital Requirements for Members

September 9, 2003.

I. Introduction

On April 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change SR-EMCC-2003-01 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 July 29, 2003.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

EMCC's Rule 2 ("Members"), Section 6 ("Admission Criteria for Members"), provides that if an applicant does not meet the minimum capital requirements set forth in Section 6, EMCC's Board of Directors may include for such purposes the capital of an affiliate of the applicant if the affiliate delivers to EMCC a satisfactory guaranty. The purpose of the proposed rule change is to permit any existing member of EMCC that no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

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 safekeeping of securities and funds which are in its possession or control or for which it is responsible.³ The proposed rule change eliminates an inconsistency in EMCC's rules that prevented an existing member who did not use the guaranty of an affiliate as an applicant from using such a guaranty, but an existing member who did use the guaranty of an affiliate as an applicant could continue to include the affiliate's capital for purposes of satisfying its capital requirement as a continuing EMCC member. Allowing an existing member that was admitted to EMCC membership without using an affiliate's capital to include the capital of an affiliate to satisfy its EMCC capital requirement with an appropriate guaranty, similarly as can other members, should not adversely affect EMCC's ability to safeguard securities and funds. As such the Commission finds the proposed rule change is consistent with EMCC's requirements under Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the

²⁶ See *supra* note 20.

²⁷ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁸ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 48209 (July 22, 2003), 68 FR 44554.

³ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ The ABS Securities will be registered under Section 12 of the Act.

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-2003-01) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48472; File No. SR-PHLX-2002-86]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 4 and 5 Thereto Relating to the Automatic Execution of Booked Customer Limit Orders

September 10, 2003.

On December 20, 2002, the Philadelphia Stock Exchange ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to automatic execution of booked customer limited orders. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.⁵ The

proposed rule change, as modified by Amendments No. 1, 2, and 3, was published in the **Federal Register** on April 16, 2003.⁶ The Commission received one comment letter with respect to the proposal.⁷ The Exchange submitted a letter in response to ISE Letter on May 20, 2003.⁸ On July 9, 2003 and August 15, 2003, the Exchange submitted Amendments No. 4⁹ and 5¹⁰ to the proposed rule change, respectively. This order approves the proposed rule change and Amendments No. 1, 2, and 3, accelerates approval of Amendments No. 4 and 5, and solicits comments from interested persons on Amendments No. 4 and 5.

I. Description of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO-X"),¹¹ to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer

limit orders¹² against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX Rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO-X may be a booked customer limit order.

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.¹³ The proposal represents the first phase ("Phase I") of the Exchange's "Book Match" system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book ("booked limit orders").¹⁴

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO-X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated

Assistant Director, Division, Commission, dated April 9, 2003 ("Amendment No. 3"). In Amendment No. 3, the PHLX incorporates changes to the text of the PHLX Rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

⁶ See Securities Exchange Act Release No. 47657 (April 10, 2003), 68 FR 18717.

⁷ See Letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE") to Jonathan G. Katz, Secretary, Commission, dated May 7, 2003 ("ISE Letter").

⁸ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Jonathan G. Katz, Secretary, Commission, dated May 20, 2003 ("PHLX Letter").

⁹ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated July 8, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange propose to adopt new rule texts to clarify the scope of the application of the exposure requirement, and provides clarifying language to the proposal relating to the definition of the term "off-floor broker-dealers" and the internalization of orders delivered to the Exchange.

¹⁰ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated August 15, 2003 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposes deleting the 10-second timer provision and implementing Book Match, on an issue-by-issue basis, no later than October 1, 2003.

¹¹ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See PHLX Rule 1080.

¹² In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the "pilot"). See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-PHLX-2001-40). In the pilot, the Exchange defined "off-floor broker-dealer" as (a) a broker-dealer that delivers orders from "upstairs" for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-PHLX-2002-50).

¹³ The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See PHLX Rule 1080, Commentary .02.

¹⁴ The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader ("ROT") limit orders entered onto the limit order book through an electronic interface system known as "ROT Access" under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3-10282 (the "Order"). See also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR-PHLX-2002-04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2003 ("Amendment No. 1"). In Amendment No. 1, the PHLX replaces in its entirety the original proposed rule change.

⁴ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 ("Amendment No. 2"). In Amendment No. 2, the PHLX replaces in its entirety Amendment No. 1.

⁵ See Letter from Richard S. Rudolph, Director and Counsel, PHLX to Deborah Lassman Flynn,