

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48615; File No. SR-EMCC-2003-05]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Return of Clearing Fund Deposits

October 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 29, 2003, 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 and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change consists of changes to EMCC's rules relating to the return of clearing fund deposits.

#### 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

In File No. SR-EMCC-2003-02, EMCC sought Commission approval (1) to establish a fixed clearing fund requirement for inter-dealer brokers ("IDBs") or members who clear for IDBs and (2) to have the difference between an IDB's calculated clearing fund requirement and the fixed amount be paid by other members on a pro rata basis. As part of that filing, EMCC also sought Commission approval to eliminate the "look back" feature from its clearing fund formula. EMCC expected that the elimination of the look back feature would offset its non-IDB members' obligation to deposit additional clearing fund to cover the difference between the IDB's calculated clearing fund requirement and the fixed amount. On August 19, 2003, the Commission approved the proposed rule change.<sup>3</sup>

In connection with its members' depositing additional clearing fund to cover the difference between the IDB's calculated clearing fund requirement and the fixed amount, EMCC had planned on allowing its members to receive upon request the return of excess clearing fund deposits on a daily basis instead of on a monthly basis. The appropriate change to EMCC's rules to accomplish the daily return of excess clearing fund deposits was inadvertently omitted from that filing. Accordingly, the purpose of this filing is to modify EMCC Rule to provide for a daily return upon request of excess clearing fund deposits and to provide that EMCC will begin honoring such requests concurrent with the implementation of the changes covered by File No. SR-EMCC-2003-02.

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

Section 17A(b)(3)(F) 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> Approval of File No. SR-EMCC-2003-02 resulted in a more accurate clearing fund calculation and a more timely collection of members' required clearing fund deposits. It also resulted in EMCC's members having to pay the difference between the calculated clearing fund requirement and the fixed clearing fund amount for each IDB or member who clears for IDBs. Under EMCC's existing rule, if a member had on deposit clearing fund in excess of its required deposit, the excess could be returned to the member no more frequently than once a month. By providing that members are entitled to have their excess clearing fund deposits returned to them upon request on a daily basis, the proposed rule change allows EMCC to implement the changes in File No. SR-EMCC-2003-02 in a way that accommodates the needs of EMCC's members while not affecting EMCC's ability to safeguard securities and funds which are in its custody or control or for which it is responsible.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because accelerated approval will facilitate the implementation of File No. SR-EMCC-2003-02 which the Commission previously determined met the requirements of Section 17A(b)(3)(F) 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.

<sup>9</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, 68 FR 51311 (August 26, 2003).

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

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*. All comment letters should refer to File No. SR-EMCC-2003-05. 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 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-2003-05 and should be submitted by November 7, 2003.

## V. 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-2003-05) be and hereby is approved on an accelerated basis.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48619; File No. SR-NASD-2003-137]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. To Extend a Pilot Relating to the Issuance of Market Participant Identifiers

October 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 28, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 and II below, which Items have been prepared by Nasdaq. On September 29, 2003, Nasdaq amended the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

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

Nasdaq is proposing to extend retroactively to September 1, 2003, and prospectively to March 1, 2004, a pilot program that enables members that are registered as market makers or electronic communications networks ("ECNs") to request and receive a second market participant identifier ("MMID") with which to enter a second Attributable Quote/Order in the Nasdaq Quotation Montage.<sup>4</sup> The text of the

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

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

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the proposed rule change in its entirety. In Amendment No. 1, Nasdaq corrected a statement in its initial proposal regarding the use of second MMIDs by market participants. Because Amendment No. 1 was filed after the pilot program had lapsed, Amendment No. 1 also revised the proposed rule change to convert it from a filing pursuant to Rule 19(b)(3)(A) under the Act to a filing pursuant to Rule 19(b)(2) under the Act, with a request for retroactive effectiveness.

<sup>4</sup> Nasdaq originally filed the proposed rule change on August 28, 2003, designating it as a non-controversial proposed rule change suitable for

proposed rule change is set forth below. Proposed deletions are in [brackets]; proposed new language is in *italics*.

\* \* \* \* \*

#### 4613.Character of Quotations

(a) Quotation Requirements and Obligations

(1) No Change.  
(2) For a [two] *six-month* pilot period *beginning September 1, 2003*, market makers and ECNs may request the use of a second MMID. A market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its first MMID in any security shall not be permitted to use the second MMID for any purpose in that security.

(3) No Change.  
(b)-(e) 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, as amended, 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 III 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

An NASD member that registers as a market maker or ECN is permitted to enter one two-sided quotation per security in the Nasdaq Quotation

immediate effectiveness pursuant to Section 19(b)(3) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b-4(f)(6). On September 29, 2003, Nasdaq submitted Amendment No. 1, which replaces the original proposed rule change in its entirety, and requested that the proposed rule change be approved retroactive to September 1, 2003.

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