



Emerging Markets Clearing Corporation Rulemaking

SECURITIES AND EXCHANGE COMMISSION (Release No. 34-46164; File No. SR-EMCC-2000-01)

July 3, 2002

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Relating to Financial Statements Prepared in Accordance with International Accounting Standards or United Kingdom Generally Accepted Accounting Principles

On February 29, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and on October 26, 2000, and on November 13, 2000, amended its proposed rule change. Notice of the proposal was published in the *Federal Register* on December 13, 2000.² One comment letter was received.³ For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

EMCC's rule change will modify EMCC Rule 2, Section 3(b) to permit EMCC to accept financial statements from an applicant prepared in accordance with International Accounting Standards ("IAS") or United Kingdom Generally Accepted Accounting Principles ("UK GAAP") without requiring the applicant to provide a discussion of the material variations of such accounting principles from United States Generally Accepted Accounting Principles ("US GAAP") unless EMCC determines that circumstances warrant the applicant's providing such discussion. For financial statements prepared in accordance with any other accounting standard, the applicant must still provide EMCC with a discussion of the material variations of the accounting principles used from US GAAP.⁴

When membership requirements were initially established in 1996, EMCC's staff had minimal experience in analyzing non-U.S. financial statements. Therefore, EMCC deemed it prudent to require applicants submitting audited financial statements prepared on a basis other than US GAAP to provide a discussion of the material differences. Since that time, EMCC's staff's familiarity with, understanding of, and expertise in evaluating financial statements not prepared in accordance with US GAAP has significantly increased.⁵

When assessing an applicant's qualifications for EMCC membership, the audited financial statements comprise only a portion of the materials provided to and reviewed by EMCC. Such additional materials include, but are not limited to, reports filed with the applicant's primary regulator, interim financials, and a detailed risk management questionnaire. To assure itself that the applicant's financial responsibility and operational capability is sufficient for membership, EMCC might also require an applicant to make its books and records available to EMCC. Thus, EMCC has the ability to seek

information it deems necessary or relevant to sufficiently assess and review an applicant's qualifications and capability for membership.

II. Comments

Edmund L. Jenkins, Chairman of the Financial Accounting Standards Board, suggested that the Commission delay approval of EMCC's proposed rule change until the Commission passes judgment on the suitability of financial statements prepared according to non-U.S. accounting standards without supplemental information in the context of an SEC concept release.⁶

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act's requirements and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F) of the Act.⁷ Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By enabling EMCC to accept financial statements from prospective members that are prepared in accordance with IAS or UK GAAP without a discussion of the material variations of these accounting principles from US GAAP should facilitate the timely review and processing of an applicant's membership application and should encourage additional applicants to seek EMCC membership, which should have the effect of increasing EMCC's membership. Expanded EMCC membership would result in more firms availing themselves of the efficiencies obtained through use of a registered clearing agency, which should promote the prompt and accurate clearance and settlement of securities transactions eligible for processing at EMCC. Furthermore, because of EMCC's staff's familiarity with, understanding of, and expertise in evaluating financial statements prepared in accordance with IAS or UK GAAP, EMCC can dispose of the requirement of a statement of material differences from US GAAP for these two accounting principles without any lessening of its ability to provide safe clearance and settlement services.

In response to the one commenter, EMCC's rule change differs from the Commission's consideration of potential changes to the filing requirements for securities issued to the general public by foreign issuers. EMCC's rule change deals only with EMCC's requirements for the financial reports of its own members and prospective members, which are sophisticated and highly regulated banks and broker-dealers that are engaged in the business of trading emerging market securities. This rule change has no effect on any financial statements filed with the Commission (financial statements filed with the Commission must be prepared in accordance with US GAAP) and has no effect on the ability of U.S. public investors' access to financial information of the underlying emerging market securities.

IV. 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 Act 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-2000-01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act [Release No. 43675](#) (Dec. 5, 2000), 65 FR 77948.

³ Letter from Edmund L. Jenkins, Chairman, Financial Accounting Standards Board (Jan. 3, 2001).

⁴ Pursuant to EMCC's rules, EMCC requires its members to submit audited financial statements and other interim periodic financial statements. EMCC will also allow its members to provide these financial statements prepared in accordance with IAS or UK GAAP without requiring the member to provide a discussion of the material variations of such accounting principles from US GAAP unless EMCC determines that circumstances warrant the applicant's providing such discussion.

⁵ EMCC has stated that its staff responsible for reviewing financial statements not prepared in accordance with US GAAP will remain informed of the material variations between US GAAP and IAS and between US GAAP and UK GAAP.

⁶ Securities Exchange Act Release No. 42430 (Feb. 16, 2000), 65 FR 8896 (Feb. 23, 2000). This concept release sought public comment on the subject of whether and under what conditions the Commission should accept foreign private issuers' financial statements that are prepared according to IAS.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 200.30-3(a)(12).

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