

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49623; File No. SR-EMCC-2004-01)

April 27, 2004

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change to Amend the Emerging Markets Clearing Corporation's Rules with Regard to the Imposition of Fines upon its Members

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 4, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 on the proposed rule change from interested parties.

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

EMCC is seeking to amend its rules with regard to the imposition of fines upon its members.

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 these statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by EMCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand EMCC's rules with regard to the imposition of fines upon its members and to more specifically identify the actions or inactions of members that will result in the imposition of fines.

Rule 35, "Disciplinary Proceedings," permits EMCC to impose fines upon members for violations of any provision of EMCC's rules or member's agreements with EMCC, for any error, delay, or other conduct that is determined by EMCC to be detrimental to the EMCC's operations or for not providing adequate facilities for members' business with EMCC.³

Section 3 of Rule 13, "Financial Responsibility and Operational Capability," permits EMCC to request that members furnish to EMCC such adequate assurances of their financial responsibility and operational capability as EMCC may at any time deem necessary. Pursuant to Rule 13 and in furtherance of EMCC's responsibilities, EMCC may periodically request that its members provide financial and operational information about their business.⁴ Failure to timely receive requested information could create risk to EMCC. To address this concern, EMCC

³ Previously, EMCC did not impose fines upon members for violations of its rules. It has, however, charged members a fee for late margin payments in the amount of \$500.00. If the fine schedule contemplated by the proposed rule change is approved, the late margin payment fee will be eliminated from EMCC's Fee Schedule and will be replaced with a specified fine.

⁴ In this regard, EMCC will notify all members that it will require members to provide certain information on an ongoing basis and that failure to provide the information will result in a fine being imposed. Imposition of fines would commence not earlier than three months after effectiveness of this proposed rule change.

intends to fine members who fail to timely respond to requests for information. Additional fines will be imposed in the event a member fails to respond to subsequent requests for information.

In addition to the obligation to provide adequate assurances described above, members have an ongoing responsibility as stated in Rule 2, “Members,” Section 7, “General Continuance Standards,” to notify EMCC both in writing and orally of certain conditions, including, but not limited to, material changes in control or financial condition. It is EMCC’s intent to fine members that fail to comply with these notification requirements with each failure considered a separate finable event.

To implement the changes described above, EMCC will create Addendum J, “Fine Schedule,” to its rules,⁵ which will list all finable offenses and their associated fines. In addition, EMCC will: (1) modify Rule 35, “Disciplinary Proceedings,” Section 1 to increase the maximum fine for any single offense from \$5,000 to \$10,000, which is the new maximum fine under Addendum J; (2) make a corresponding change to Rule 31, “Hearing Procedures;” and (3) modify Addendum F, “Fee Schedule,” to eliminate the fee for late margin payments described above. EMCC will collect fines imposed on members through a miscellaneous charge in the member’s monthly statement of charges, and in order to comply with Section 19(d)(1) of the Act,⁶ EMCC will provide the Commission with pertinent information regarding each fine imposed.

⁵ While Rule 2, “Members,” and Rule 13, “Financial Responsibility and Operational Capability,” are specifically noted within this filing, they are not the only rules under which a fine may be imposed by EMCC.

⁶ 15 U.S.C. 78s(d)(1).

The proposed rule change to impose fines upon members for conduct detrimental to the operations of EMCC will further ensure that EMCC may appropriately discipline its members for violation of its Rules, as well as improve EMCC's ability to enforce compliance with its Rules. Therefore, EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an 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

Written comments from EMCC members have not been solicited or received on the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMCC-2004-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-EMCC-2004-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of EMCC and on EMCC's website at www.e-m-c-c.com. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMCC-2004-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).