

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49825; File No. SR-EMCC-2004-06)

June 8, 2004

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Form and Substance of Opinions of Counsel

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on April 2, 2004, the Emerging Markets Clearing Corporation (“EMCC”) filed a proposed rule change with the Securities and Exchange Commission (“Commission”) and on June 4, 2004, amended its 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 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 proposed rule change will amend Rule 2 (“Members”) and Annexes 1 and 2 of Addendum D (“Opinion”) of EMCC’s rules by clarifying the legal issues that the opinion of counsel that must be filed by EMCC applicants must address.

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

¹ 15 U.S.C. 78s(b)(1).

significant aspects of such statements.²

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

Prior to this rule change, EMCC Rule 2, Section 2(b) required each applicant for EMCC membership to provide EMCC an opinion of counsel that was “substantially to the effect of” Annex 1 (for non-US registered broker-dealers) or Annex 2 (for US registered broker-dealers) of Addendum D of EMCC’s rules. In each case, the opinion nevertheless had to be “acceptable” to EMCC.

Recently, there has been some question about whether EMCC’s rule require an applicant to obtain an opinion of counsel “in the form of” as opposed to “to the effect of” the annexes to Addendum D. There has also been some question about whether an opinion must be “clean” or if it can have exceptions because the annexes do not clearly indicate whether an opinion may set forth a reservation or exception. To clarify this, EMCC is replacing each annex with a list of items that set forth the legal issues that an opinion must address. As a result, the annexes will not contain any opinion of counsel forms, which forms EMCC had only intended to be used as examples. Additionally, in its revisions to Addendum D, EMCC is making clear which items in the lists of legal issues to be addressed may contain exceptions, restrictions, or limitations.

Annex 1 will now provide that for non-US applicants the opinion will be required to:

1. Address whether the applicant is duly organized, validly existing and in good standing and the jurisdiction in which this applies.
2. Address whether the applicant has full power and authority to enter into the agreements.

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

3. Confirm that the agreements are legal, binding and enforceable and specify the jurisdiction in which this applies or confirm that the courts in that jurisdiction would give effect to the choice of New York Law as the governing law and any exceptions that need to be noted.
4. Confirm that submission to the jurisdiction of the federal and state courts in New York is enforceable in the jurisdiction referenced in point 3 and any exceptions which must be noted.
5. Explain how netting and novation are treated in the jurisdiction referenced in point 3 and how this would impact the obligations of the applicant.
6. Explain the extent to which a court in the jurisdiction referenced in point 3 would apply New York law to perfected security interests under the agreements.
7. Explain how insolvency, liquidation or other similar actions affecting creditor's rights impact the obligations of the applicant.
8. Confirm that the agreements will not conflict with or be impeded by the laws or regulations issued in the jurisdiction referenced in point 3 or explain any exceptions to this statement.
9. Explain the degree to which EMCC may initiate an action against the applicant in the jurisdiction referenced in point 3 without having to first obtain a judgment against the applicant in the United States.
10. Explain whether there are any restrictions or limitations on the applicant's ability to provide information or documents that may be requested pursuant to EMCC's rules.
11. Confirm that no other authorizations or actions are required from any regulatory

authority in connection with the execution, delivery and performance of the agreements or specify those that are required to be obtained and the status of those actions.

Annex 2 will now provide that for domestic applicants the opinion will be required to:

1. Address whether the applicant is duly organized, validity existing and in good standing and the jurisdiction in which this applies.
2. Address whether the applicant has full power and authority to enter into the agreements.
3. Confirm that the execution, delivery and performance of the agreements are not in contravention of any authorizing document, rule or regulation or, to the extent that a blanket representation can not be given, an explanation of any limitations.
4. Confirm that no other authorizations or actions are required from any regulatory authority in connection with the execution, delivery and performance of the agreements or specify those that are required to be obtained and the status of those actions.
5. Indicate that the agreements are legal, valid, binding and enforceable obligations against the company and any exceptions that need to be noted.

All changes being made are to clarify or codify existing EMCC practices with respect to applicants' opinion of counsel. The rule will continue to provide that all opinions must still be acceptable to EMCC.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder, as the proposed rule change

³ 15 U.S.C. 78q-1.

eliminates the confusion with respect to the form of the opinion of counsel that EMCC requires its applicants to submit.

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

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

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)(i) of the Act⁴ and Rule 19b-4(f)(1)⁵ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes 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. Comments may be submitted by any of the following methods:

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).

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-2004-06 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-2004-06. 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 Web site 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-2004-06 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.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).