

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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Form 19b-4

Proposed Rule Change

by

EMERGING MARKETS CLEARING CORPORATION

Pursuant to Rule 19b-4 under  
the Securities Exchange Act of 1934

June 25, 2001

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Exhibit Index on page 17

**1. Text of the Proposed Rule Change**

The proposed rule change consists of (i) a Netting Contract and Limited Cross- Guaranty among The Depository Trust Company (“DTC”), Emerging Markets Clearing Corporation (“EMCC”), Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), National Securities Clearing Corporation (“NSCC”) and The Options Clearing Corporation (“OCC”) in the form annexed hereto as Exhibit 2 (the “Multilateral Agreement”), and (ii) Termination Agreements between EMCC and each of NSCC and GSCC, each in the form annexed hereto as Exhibit 3 (collectively, the “Termination Agreements”). The Termination Agreements would terminate the two-party or “bilateral” Limited Cross-Guaranty Agreements entered into by EMCC and each of NSCC (in 1999, the “EMCC-NSCC Bilateral Agreement”) and GSCC (in 1999, the “EMCC-GSCC Bilateral Agreement”), each such termination to be effective as of the effective date of the Multilateral Agreement.

**2. Procedures of the Self-Regulatory Organization**

- (a) EMCC’s Board of Directors has authorized the execution of the Multilateral Agreement and the Termination Agreements.
  
- (b) The following persons at EMCC are prepared to respond to questions and comments on the proposed rule change:

Karen L. Saperstein, General Counsel and Secretary	(212) 855-3203
Merrie Faye Witkin, Assistant Secretary	(212) 855-3208

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

At the present time, there are limited cross-guaranty agreements (“Bilateral Agreements”) in effect between:

- (1) DTC and NSCC (forming part of an agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Release No. 34-36867 (February 21, 1996), File No. SR-DTC-96-06, and Release No. 34-36866 (February 21, 1996), File No. SR-NSCC-96-03;
- (2) MBSCC and Participants Trust Company,<sup>1</sup> Release No. 34-38604 (May 9, 1997), File No. SR-PTC-97-01;
- (3) NSCC and each of MBSCC and GSCC, Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02 and SR-GSCC-96-03, and Release No. 34-39020 (September 4, 1997), File No. SR-NSCC-97-11;
- (4) NSCC and OCC, Release No. 34-39022 (September 4, 1997), File Nos. SR-OCC-97-17 and SR-NSCC-97-12; and

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<sup>1</sup> Participants Trust Company has been merged into DTC.

- (5) EMCC and each of NSCC and GSCC, Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7.

In general, each clearing agency that is a party to a Bilateral Agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies, so that if a common member fails and one clearing agency winds up its business with the common member with an excess of the assets of the common member and the other clearing agency winds up its business with the common member with a deficiency of such assets, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess, which the clearing agency with the excess may satisfy, if necessary, (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way -- through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation -- the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency.

The Commission has encouraged the use of limited cross-guaranty agreements and other similar arrangements among clearing agencies. Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7 (order approving limited cross-guaranty agreements between EMCC and each of NSCC,

GSCC and International Securities Clearing Corporation (“ISCC”)<sup>2</sup>, Release No. 34-38410 (March 17, 1997), File No. SR-OCC-96-18 (order approving changes in the rules of OCC to authorize OCC to enter into limited cross-guaranty agreements) and Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02, SR-GSCC-96-03 and SR-ISCC-96-04 (order approving changes in the rules of MBSCC, GSCC and ISCC to authorize them to enter into limited cross-guaranty agreements).

The Commission has also noted that the Collateral Management Service (“CMS”) operated by NSCC is especially beneficial to clearing agencies which enter into limited cross-guaranty agreements, because CMS enables such clearing agencies to provide and receive the information on common members needed to implement the sharing procedures contained in such limited cross-guaranty agreements.<sup>3</sup>

- (a) The proposed Multilateral Agreement is similar in purpose to the existing Bilateral Agreements but different in form, scope and operation because (i) all of the parties to the several Bilateral Agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the parties to the several Bilateral Agreements will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the several Bilateral Agreements will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank pari passu in

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<sup>2</sup> ISCC has ceased to be a registered clearing agency and all of its Bilateral Agreements have been terminated.

<sup>3</sup> Release No. 34-36091 (August 10, 1995), File No. SR-NSCC-95-06 (order approving establishment of CMS by NSCC), Release No. 34-36431 (October 27, 1995), File No. SR-MBSCC-95-05 (order approving release of clearing data relating to members by MBSCC), Release No. 34-36597 (December 15, 1995), File No. SR-GSCC-95-03 (order approving release of clearing data relating to members by GSCC) and Release No. 34-37608 (August 26, 1996), File No. SR-DTC-96-11 (order approving release of clearing data relating to members by DTC).

terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement, and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a party to the Multilateral Agreement (a “Clearing Agency”) ceases to act for or suspends a person (“Ceases to Act” for such person) and if such person is a member or participant of two or more Clearing Agencies (a “Common Member”), such Clearing Agency must give each other Clearing Agency a notice (a “Default Notice”) that it has Ceased to Act for such Common Member (thereafter, a “Defaulting Member”). Each such other Clearing Agency that also Ceases to Act for the Defaulting Member within a period of 10 business days after the Default Notice is given (a “Participating Clearing Agency”) then has a further period of 15 business days to deliver to each other Participating Clearing Agency a statement (an “Information Statement”) which sets forth the sum (positive or negative) derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the Participating Clearing Agency to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such

Defaulting Member and subtracting the amounts (specified in the Multilateral Agreement) owed by the Defaulting Member to the Participating Clearing Agency as of the close of business on such date (the “Available Net Resources” of such Participating Clearing Agency with respect to such Defaulting Member).

Each Participating Clearing Agency with positive Available Net Resources (a “Payor Clearing Agency”) has an obligation to make a payment (a “Guaranty Obligation”) to each Participating Clearing Agency with negative Available Net Resources, and each Participating Clearing Agency with negative Available Net Resources (a “Payee Clearing Agency”) has an entitlement to receive a payment (a “Guaranty Entitlement”) from each Participating Clearing Agency with positive Available Net Resources, in an amount determined by a formula which (i) limits the aggregate Guaranty Obligation of any Payor Clearing Agency to the amount of its positive available Net Resources and prorates the aggregate Guaranty Obligations of all Payor Clearing Agencies (based on their Available Net Resources) if all positive Available Net Resources of all Payor Clearing Agencies exceeds all negative Available Net Resources of all Payee Clearing Agencies, and (ii) limits the aggregate Guaranty Entitlement of any Payee Clearing Agency to the amount of its negative Available Net Resources and prorates the aggregate Guaranty Entitlements of all Payee Clearing Agencies (based on their Available Net Resources) if the negative Available Net Resources of all Payee Clearing Agencies exceeds the positive Available Net Resources of all Payor Clearing Agencies.

Within two business days after the end of the period for submitting Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to any particular claim under the Multilateral Agreement), and using only the information on Available Net Resources contained in the Information Statements, calculates the Guaranty Obligations and the Guaranty Entitlements of the Participating Clearing Agencies in accordance with the formula set forth in the Multilateral Agreement and delivers a report thereon to the Participating Clearing Agencies. Two business days after that, DTC, acting on appropriate payment instructions from the Payor Clearing Agencies, debits their settlement accounts at DTC the amounts of their Guaranty Obligations and credits the settlement accounts of the Payee Clearing Agencies at DTC the amounts of their Guaranty Entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement. All of the Clearing Agencies are (or prior to the execution of the Multilateral Agreement will be) participants of DTC.

It is important to note that a Clearing Agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it Ceases to Act for a Defaulting Member. Each Clearing Agency determines, on the basis of its own rules,

whether or not to Cease to Act for a Defaulting Member. A Clearing Agency may Cease to Act for a Defaulting Member -- to protect the interests of the Clearing Agency, its other members or participants and the national system for the clearance and settlement of securities transactions -- because, among other things, the Defaulting Member has failed to pay a settlement debit or has failed to pay or perform any other obligation to the Clearing Agency or because the Defaulting Member has become the subject of an insolvency proceeding or has become a “failed member” within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991, e.g., it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding. Ceasing to Act for a member or participant is a serious measure which a Clearing Agency does not take lightly or for minor defaults.

Accordingly, by requiring that a Clearing Agency must Cease to Act for a Defaulting Member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of Payor Clearing Agencies and the reimbursement obligations of Defaulting Participants to Payor Clearing Agencies will not be triggered by minor defaults which do not pose a threat to the interests of the Clearing Agencies, their members or participants or the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no Clearing Agency would ever be required under

the Multilateral Agreement to deliver assets or the proceeds of assets of a Defaulting Member to another Clearing Agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the Defaulting Member to the first Clearing Agency, and then only up to the amount needed to discharge the liabilities and obligations of the Defaulting Member to the second Clearing Agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any Clearing Agency to secure the obligations and liabilities of such member or participant, first, to such Clearing Agency and, second, to other Clearing Agencies to the extent of any excess assets. The Multilateral Agreement therefore should reduce risk to the Clearing Agencies (and to the national system for the clearance and settlement of securities transactions) because a Defaulting Common Member may have positions spread across the Clearing Agencies in such manner as to cause its Available Net Resources at one or more Clearing Agencies to be positive even though its Available Net Resources at one or more other Clearing Agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in Guaranty Obligations and Guaranty Entitlements among Participating Clearing Agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such Guaranty Obligations and Guaranty Entitlements, subject to certain conditions and limitations as described below.

If, at any time within four years after any payment is made in respect of a Guaranty Obligation, any Participating Clearing Agency has any information that could result in a change in the calculation of such payment, such Participating Clearing Agency must give each other Participating Clearing Agency a notice thereof (an “Adjustment Notice”).

Within a period of 10 business days after the Adjustment Notice is given, each Participating Clearing Agency must deliver to each other Participating Clearing Agency (and to DTC if DTC is not a Participating Clearing Agency with respect to such default) a statement (a “Supplemental Information Statement”) which sets forth (i) the amount of the Available Net Resources of such Participating Clearing Agency with respect to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such Defaulting Member but taking into account the effect (if any) of the information in the Adjustment Notice, and (ii) the amount of its Available Net Resources (if any) as of the close of business on the day it received the Adjustment Notice.

Within two business days after the end of the period for submitting Supplemental Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to such default), and using only the information on Available Net Resources contained in the

Supplemental Information Statements, recalculates the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies in accordance with the same formula originally used to calculate the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies and delivers a report thereon to the Participating Clearing Agencies; provided, however, that no Participating Clearing Agency that is required to make a payment as a result of any recalculation of Guaranty Obligations and Guaranty Entitlements with respect to a prior default is required to make any payment in excess of the positive amount of its Available Net Resources on the date it received the Adjustment Notice plus or minus any cash payments it previously received or paid, respectively, pursuant to the terms of the Multilateral Agreement in respect of the same default. Two business days after that, DTC, acting on appropriate instructions from the Participating Clearing Agencies required to make adjustment payments as a result of the recalculation of Guaranty Obligations and Guaranty Entitlements described above, debits their settlement accounts the amounts they are obligated to pay and credits the settlement accounts of the Participating Clearing Agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement.

As the foregoing description of the process for adjusting Guaranty Obligations and Guaranty Entitlements under the Multilateral Agreement indicates, a Clearing Agency is never required to use its own assets to pay the claim of any other Clearing Agency against a Defaulting Member. Only the available net assets of the Defaulting Member are ever used for this purpose, so, if as a result of a recalculation of Guaranty Obligations and Guaranty Entitlements, the obligation of a Participating Clearing Agency which was a Payor Clearing Agency to make a payment is increased or a Participating Clearing Agency which was a Payee Clearing Agency is now required to make a payment, the amount of that payment is nevertheless limited to the net assets of the Defaulting Member then in the possession of the Participating Clearing Agency required to make the payment plus the net amount of any payments it previously received from other Participating Clearing Agencies on account of the same claim.

Any Clearing Agency other than DTC may withdraw from the Multilateral Agreement on ten days' advance written notice, any Clearing Agency which resigns as a participant of DTC ceases to be a party to the Multilateral Agreement effective upon such resignation, and DTC may terminate the Multilateral Agreement entirely on one year's advance written notice; provided, however, that any such withdrawal or resignation does not effect the obligations of a withdrawing or resigning Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such withdrawal or resignation and any such termination does not effect the obligations of any Clearing

Agency with respect to a claim for which a Default Notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC and each of EMCC, GSCC, MBSCC and OCC will be terminating the Bilateral Agreements so that there will be no conflict or priority issue with the limited cross-guaranty provisions of the Multilateral Agreement.

- (b) Section 17A(a)(2)(A) of the Securities Exchange Act of 1934 (the “Act”) directs the Securities and Exchange Commission (the “Commission”) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions. 15 U.S.C. §78q-1(a)(2)(A). Section 17A(b)(3)(F) of the Act requires 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. 15 U.S.C. §78q-1(b)(3)(F).

The proposed rule change -- comprising the Multilateral Agreement and the Termination Agreements -- is consistent with the requirements of the Act and the rules and regulations promulgated thereunder because it will (i) reduce the risk of loss to Clearing Agencies resulting from the failure or default of a Common Member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and

the impact of such failure or default on Clearing Agencies and their other members or participants, (iii) foster cooperation and coordination among Clearing Agencies and other persons involved in the clearance and settlement of securities transactions and (iv) assist Clearing Agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

EMCC perceives no impact on competition by reason of the proposed rule change.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

EMCC has not solicited nor received written comments on the proposed rule change.

**6. Extension of Time Period for Commission Action**

EMCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

**9. Exhibits**

1. Completed Notice of the Proposed Rule Change for publication in the Federal Register.
2. Form of Proposed Netting Contract and Limited Cross-Guaranty among the Clearing Agencies.
3. Form of Termination Agreement.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

**Emerging Markets Clearing Corporation**

**By:** \_\_\_\_\_

Karen L. Saperstein  
General Counsel and Secretary

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-EMCC-2001-02)

SELF REGULATORY ORGANIZATIONS

Proposed Rule Change by

Emerging Markets Clearing Corporation

Relating to a Multilateral Agreement among DTC, EMCC, GSCC, MBSCC, NSCC and OCC.

Comments requested within \_\_\_\_ days after the date of this publication.

\_\_\_\_\_

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78s(b)(1), notice is hereby given that on, \_\_\_\_\_, Emerging Markets Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 consists of (i) a Netting Contract and Limited Cross- Guaranty among The Depository Trust Company (“DTC”), Emerging Markets Clearing Corporation (“EMCC”), Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), National Securities Clearing Corporation (“NSCC”) and The Options Clearing Corporation (“OCC”), the form of which is annexed to the proposed rule change (the “Multilateral Agreement”), and (ii) Termination Agreements between EMCC and each of NSCC and GSCC, each in the form which is also annexed to the proposed rule change (collectively, the “Termination Agreements”). The Termination Agreements would terminate the two-party or “bilateral” Limited Cross-Guaranty Agreements entered into by EMCC and each of NSCC (in 1999, the “EMCC-NSCC Bilateral Agreement”) and GSCC (in 1999, the “EMCC-GSCC Bilateral Agreement”), each such termination to be effective as of the effective date of the Multilateral Agreement.

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change**

At the present time, there are limited cross-guaranty agreements (“Bilateral Agreements”) in effect between:

- (1) DTC and NSCC (forming part of an agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Release No. 34-36867 (February 21, 1996), File No. SR-DTC-96-06, and Release No. 34-36866 (February 21, 1996), File No. SR-NSCC-96-03;
- (2) MBSCC and Participants Trust Company,<sup>1</sup> Release No. 34-38604 (May 9, 1997), File No. SR-PTC-97-01;
- (3) NSCC and each of MBSCC and GSCC, Release No. 34-37616 (August 28, 1996), File Nos. SR-MBSCC-96-02 and SR-GSCC-96-03, and Release No. 34-39020 (September 4, 1997), File No. SR-NSCC-97-11;
- (4) NSCC and OCC, Release No. 34-39022 (September 4, 1997), File Nos. SR-OCC-97-17 and SR-NSCC-97-12; and

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<sup>1</sup> Participants Trust Company has been merged into DTC.

- (5) EMCC and each of NSCC and GSCC, Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7.

In general, each clearing agency that is a party to a Bilateral Agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies, so that if a common member fails and one clearing agency winds up its business with the common member with an excess of the assets of the common member and the other clearing agency winds up its business with the common member with a deficiency of such assets, (i) the clearing agency with the excess pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency, and (ii) the amount paid by the clearing agency with the excess to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess, which the clearing agency with the excess may satisfy, if necessary, (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way -- through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation -- the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency.

The Commission has encouraged the use of limited cross-guaranty agreements and other similar arrangements among clearing agencies. Release No. 34-42180 (November 29, 1999), File No. SR-EMCC-99-7 (order approving limited cross-guaranty agreements between EMCC and each of NSCC,

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The Commission has also noted that the Collateral Management Service (“CMS”) operated by NSCC is especially beneficial to clearing agencies which enter into limited cross-guaranty agreements, because CMS enables such clearing agencies to provide and receive the information on common members needed to implement the sharing procedures contained in such limited cross-guaranty agreements.<sup>3</sup>

- (c) The proposed Multilateral Agreement is similar in purpose to the existing Bilateral Agreements but different in form, scope and operation because (i) all of the parties to the several Bilateral Agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the parties to the several Bilateral Agreements will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the several Bilateral Agreements will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank pari passu in

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<sup>2</sup> ISCC has ceased to be a registered clearing agency and all of its Bilateral Agreements have been terminated.

<sup>3</sup> Release No. 34-36091 (August 10, 1995), File No. SR-NSCC-95-06 (order approving establishment of CMS by NSCC), Release No. 34-36431 (October 27, 1995), File No. SR-MBSCC-95-05 (order approving release of clearing data relating to members by MBSCC), Release No. 34-36597 (December 15, 1995), File No. SR-GSCC-95-03 (order approving release of clearing data relating to members by GSCC) and Release No. 34-37608 (August 26, 1996), File No. SR-DTC-96-11 (order approving release of clearing data relating to members by DTC).

terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement, and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a party to the Multilateral Agreement (a “Clearing Agency”) ceases to act for or suspends a person (“Ceases to Act” for such person) and if such person is a member or participant of two or more Clearing Agencies (a “Common Member”), such Clearing Agency must give each other Clearing Agency a notice (a “Default Notice”) that it has Ceased to Act for such Common Member (thereafter, a “Defaulting Member”). Each such other Clearing Agency that also Ceases to Act for the Defaulting Member within a period of 10 business days after the Default Notice is given (a “Participating Clearing Agency”) then has a further period of 15 business days to deliver to each other Participating Clearing Agency a statement (an “Information Statement”) which sets forth the sum (positive or negative) derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the Participating Clearing Agency to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such

Defaulting Member and subtracting the amounts (specified in the Multilateral Agreement) owed by the Defaulting Member to the Participating Clearing Agency as of the close of business on such date (the “Available Net Resources” of such Participating Clearing Agency with respect to such Defaulting Member).

Each Participating Clearing Agency with positive Available Net Resources (a “Payor Clearing Agency”) has an obligation to make a payment (a “Guaranty Obligation”) to each Participating Clearing Agency with negative Available Net Resources, and each Participating Clearing Agency with negative Available Net Resources (a “Payee Clearing Agency”) has an entitlement to receive a payment (a “Guaranty Entitlement”) from each Participating Clearing Agency with positive Available Net Resources, in an amount determined by a formula which (i) limits the aggregate Guaranty Obligation of any Payor Clearing Agency to the amount of its positive available Net Resources and prorates the aggregate Guaranty Obligations of all Payor Clearing Agencies (based on their Available Net Resources) if all positive Available Net Resources of all Payor Clearing Agencies exceeds all negative Available Net Resources of all Payee Clearing Agencies, and (ii) limits the aggregate Guaranty Entitlement of any Payee Clearing Agency to the amount of its negative Available Net Resources and prorates the aggregate Guaranty Entitlements of all Payee Clearing Agencies (based on their Available Net Resources) if the negative Available Net Resources of all Payee Clearing Agencies exceeds the positive Available Net Resources of all Payor Clearing Agencies.

Within two business days after the end of the period for submitting Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to any particular claim under the Multilateral Agreement), and using only the information on Available Net Resources contained in the Information Statements, calculates the Guaranty Obligations and the Guaranty Entitlements of the Participating Clearing Agencies in accordance with the formula set forth in the Multilateral Agreement and delivers a report thereon to the Participating Clearing Agencies. Two business days after that, DTC, acting on appropriate payment instructions from the Payor Clearing Agencies, debits their settlement accounts at DTC the amounts of their Guaranty Obligations and credits the settlement accounts of the Payee Clearing Agencies at DTC the amounts of their Guaranty Entitlements. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement. All of the Clearing Agencies are (or prior to the execution of the Multilateral Agreement will be) participants of DTC.

It is important to note that a Clearing Agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it Ceases to Act for a Defaulting Member. Each Clearing Agency determines, on the basis of its own rules,

whether or not to Cease to Act for a Defaulting Member. A Clearing Agency may Cease to Act for a Defaulting Member -- to protect the interests of the Clearing Agency, its other members or participants and the national system for the clearance and settlement of securities transactions -- because, among other things, the Defaulting Member has failed to pay a settlement debit or has failed to pay or perform any other obligation to the Clearing Agency or because the Defaulting Member has become the subject of an insolvency proceeding or has become a “failed member” within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991, e.g., it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding. Ceasing to Act for a member or participant is a serious measure which a Clearing Agency does not take lightly or for minor defaults.

Accordingly, by requiring that a Clearing Agency must Cease to Act for a Defaulting Member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of Payor Clearing Agencies and the reimbursement obligations of Defaulting Participants to Payor Clearing Agencies will not be triggered by minor defaults which do not pose a threat to the interests of the Clearing Agencies, their members or participants or the national system for the clearance and settlement of securities transactions.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no Clearing Agency would ever be required under

the Multilateral Agreement to deliver assets or the proceeds of assets of a Defaulting Member to another Clearing Agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the Defaulting Member to the first Clearing Agency, and then only up to the amount needed to discharge the liabilities and obligations of the Defaulting Member to the second Clearing Agency. In substance and effect, the Multilateral Agreement provides a mechanism for using the assets of a member or participant of any Clearing Agency to secure the obligations and liabilities of such member or participant, first, to such Clearing Agency and, second, to other Clearing Agencies to the extent of any excess assets. The Multilateral Agreement therefore should reduce risk to the Clearing Agencies (and to the national system for the clearance and settlement of securities transactions) because a Defaulting Common Member may have positions spread across the Clearing Agencies in such manner as to cause its Available Net Resources at one or more Clearing Agencies to be positive even though its Available Net Resources at one or more other Clearing Agencies are negative.

The Multilateral Agreement also provides for subsequent adjustments in Guaranty Obligations and Guaranty Entitlements among Participating Clearing Agencies if information is discovered which, if known at the time of the initial calculation, would have changed the amounts of such Guaranty Obligations and Guaranty Entitlements, subject to certain conditions and limitations as described below.

If, at any time within four years after any payment is made in respect of a Guaranty Obligation, any Participating Clearing Agency has any information that could result in a change in the calculation of such payment, such Participating Clearing Agency must give each other Participating Clearing Agency a notice thereof (an “Adjustment Notice”).

Within a period of 10 business days after the Adjustment Notice is given, each Participating Clearing Agency must deliver to each other Participating Clearing Agency (and to DTC if DTC is not a Participating Clearing Agency with respect to such default) a statement (a “Supplemental Information Statement”) which sets forth (i) the amount of the Available Net Resources of such Participating Clearing Agency with respect to the Defaulting Member as of the close of business on the day on which such Participating Clearing Agency Ceased to Act for such Defaulting Member but taking into account the effect (if any) of the information in the Adjustment Notice, and (ii) the amount of its Available Net Resources (if any) as of the close of business on the day it received the Adjustment Notice.

Within two business days after the end of the period for submitting Supplemental Information Statements (with the information on the Available Net Resources of the Participating Clearing Agencies), DTC, acting for the Participating Clearing Agencies (whether or not DTC is a Participating Clearing Agency with respect to such default), and using only the information on Available Net Resources contained in the

Supplemental Information Statements, recalculates the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies in accordance with the same formula originally used to calculate the Guaranty Obligations and Guaranty Entitlements of the Participating Clearing Agencies and delivers a report thereon to the Participating Clearing Agencies; provided, however, that no Participating Clearing Agency that is required to make a payment as a result of any recalculation of Guaranty Obligations and Guaranty Entitlements with respect to a prior default is required to make any payment in excess of the positive amount of its Available Net Resources on the date it received the Adjustment Notice plus or minus any cash payments it previously received or paid, respectively, pursuant to the terms of the Multilateral Agreement in respect of the same default. Two business days after that, DTC, acting on appropriate instructions from the Participating Clearing Agencies required to make adjustment payments as a result of the recalculation of Guaranty Obligations and Guaranty Entitlements described above, debits their settlement accounts the amounts they are obligated to pay and credits the settlement accounts of the Participating Clearing Agencies entitled to receive adjustment payments the amounts they are entitled to receive. Such debits and credits are then netted and settled with all other debits and credits to the settlement accounts of the Participating Clearing Agencies on the day of settlement.

As the foregoing description of the process for adjusting Guaranty Obligations and Guaranty Entitlements under the Multilateral Agreement indicates, a Clearing Agency is never required to use its own assets to pay the claim of any other Clearing Agency against a Defaulting Member. Only the available net assets of the Defaulting Member are ever used for this purpose, so, if as a result of a recalculation of Guaranty Obligations and Guaranty Entitlements, the obligation of a Participating Clearing Agency which was a Payor Clearing Agency to make a payment is increased or a Participating Clearing Agency which was a Payee Clearing Agency is now required to make a payment, the amount of that payment is nevertheless limited to the net assets of the Defaulting Member then in the possession of the Participating Clearing Agency required to make the payment plus the net amount of any payments it previously received from other Participating Clearing Agencies on account of the same claim.

Any Clearing Agency other than DTC may withdraw from the Multilateral Agreement on ten days' advance written notice, any Clearing Agency which resigns as a participant of DTC ceases to be a party to the Multilateral Agreement effective upon such resignation, and DTC may terminate the Multilateral Agreement entirely on one year's advance written notice; provided, however, that any such withdrawal or resignation does not effect the obligations of a withdrawing or resigning Clearing Agency with respect to a claim for which a Default Notice was delivered prior to such withdrawal or resignation and any such termination does not effect the obligations of any Clearing

Agency with respect to a claim for which a Default Notice was delivered prior to such termination.

In conjunction with the Multilateral Agreement, NSCC and each of EMCC, GSCC, MBSCC and OCC will be terminating the Bilateral Agreements so that there will be no conflict or priority issue with the limited cross-guaranty provisions of the Multilateral Agreement.

- (d) Section 17A(a)(2)(A) of the Securities Exchange Act of 1934 (the “Act”) directs the Securities and Exchange Commission (the “Commission”) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions. 15 U.S.C. §78q-1(a)(2)(A). Section 17A(b)(3)(F) of the Act requires 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. 15 U.S.C. §78q-1(b)(3)(F).

The proposed rule change -- comprising the Multilateral Agreement and the Termination Agreements -- is consistent with the requirements of the Act and the rules and regulations promulgated thereunder because it will (i) reduce the risk of loss to Clearing Agencies resulting from the failure or default of a Common Member, (ii) mitigate the risk to the national clearance and settlement system resulting from such failure or default and

the impact of such failure or default on Clearing Agencies and their other members or participants, (iii) foster cooperation and coordination among Clearing Agencies and other persons involved in the clearance and settlement of securities transactions and (iv) assist Clearing Agencies in safeguarding the securities and funds in their custody or control or for which they are responsible.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

EMCC perceives no impact on competition by reason of the proposed rule change.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

EMCC has not solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or such longer period (i) as the Commission may delegate up to 90 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within \_\_\_\_ days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Secretary.

Dated:

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<sup>4</sup> 17 C.F.R. 200.30-3(a)(12).