

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 19b-4

Form 19b-4

Proposed Rule Change

by

EMERGING MARKETS CLEARING CORPORATION

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

August 20, 2001

1. Text of the Proposed Rule Change

(a) The proposed rule change filed by Emerging Markets Clearing Corporation (“EMCC”) involves proposed arrangements for the integration of EMCC with The Depository Trust & Clearing Corporation (“DTCC”). The subject proposal (the “Plan”) provides the following:

- DTCC will form an acquisition subsidiary (“Acquisition Company”) for the purpose of making an exchange offer (the “Exchange Offer”) for EMCC shares, as described below, and holding all shares of EMCC received pursuant to the Exchange Offer.
- After receipt of all necessary regulatory approvals, Acquisition Company will conduct the Exchange Offer in which EMCC Class A common shareholders which are members, or affiliates of members, of EMCC, Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), The Depository Trust Company (“DTC”) or National Securities Clearing Corporation (“NSCC”) (referred to as “eligible Class A shareholders”) will have the opportunity to exchange their shares of EMCC Class A stock for shares of DTCC common stock on the basis of the adjusted book value of such EMCC shares and the DTCC common shares. Adjusted book value for the EMCC shares will equal the book value (less retained earnings, if any) of EMCC at the time of, or as of the

end of the last calendar month preceding, the integration of EMCC with DTCC. Adjusted book value of the DTCC common shares will equal book value at such time minus an amount equal to the lesser of either (i) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of the integration of NSCC and DTC with DTCC in 1999, or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of, or as of the end of the last calendar month preceding, the integration of EMCC with DTCC.¹

- Subject to the effectiveness of the Exchange Offer, EMCC's trade association shareholders will receive from EMCC, in exchange for their respective Class A and Class B common shares, cash in an amount equal to the lesser of (a) their acquisition cost, or (b) the adjusted book value of their shares.
- EMCC's Class B shareholders will retain their Class B shares (other than the trade association shareholder, who will be paid out as provided above), with the same rights to have their shares repurchased for cash as currently provided in EMCC's Amended

¹ Such retained earnings are dedicated to the business of NSCC.

and Restated Shareholder Agreement (the “EMCC Shareholder Agreement”).²

- The EMCC Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on a transfer of shares of EMCC stock to Acquisition Company and EMCC. Following a successful Exchange Offer, the EMCC Shareholder Agreement will be terminated.
- Following these transactions, Acquisition Company will be the majority shareholder of EMCC, and the Class B shareholders and any non-eligible and/or non-tendering Class A shareholders will remain as minority shareholders in EMCC.³
- DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of EMCC the persons elected by the shareholders of DTCC to be directors of DTCC.⁴
- Following the integration, EMCC will continue to exist as a separate registered clearing agency, offering its own services to its own

² In addition, and subject to the effectiveness of the Exchange Offer, holders of Class B shares will be provided with the limited right to vote for the election of EMCC Directors.

³ Pursuant to separate plans for the integration of GSCC and MBSCC with DTCC, it is contemplated that GSCC and MBSCC will become operating subsidiaries of DTCC at the same time that EMCC becomes an operating subsidiary of DTCC.

⁴ Given that EMCC's initial post-integration board would be elected upon the effectiveness of the integration Plan, EMCC has determined to postpone its 2001 annual election of directors which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, then EMCC will call an annual meeting for the election of directors pursuant to its current procedures.

members pursuant to separate legal arrangements and separate risk management procedures.⁵

- As a matter of DTCC policy, any retained earnings of EMCC existing as of the time the integration becomes effective will be dedicated to supporting the business of EMCC. EMCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

(b) Not applicable.

(c) Not applicable.

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

(a) The proposed rule change was approved by the Board of Directors of EMCC.

(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 at (212) 855-3203

Merrie Faye Witkin, Assistant Secretary at (212) 855-3208.

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

(a) At their meeting on July 25, 2001 the Board of Directors of EMCC voted to proceed with a plan (the "Plan") for the integration of EMCC with DTCC. This

⁵ Neither Acquisition Company nor DTCC will engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration and corporate communications will continue to be centralized in DTCC (as they are currently for EMCC), with those services provided by DTCC, through NSCC, to EMCC pursuant to existing service contracts.

integration is expected to take place concurrently with the integration of GSCC and MBSCC with DTCC.⁶ DTCC is a holding company for DTC and NSCC. DTC and NSCC are registered clearing agencies. EMCC has been advised that the Board of Directors of DTCC has also agreed to proceed with the Plan. A principal goal of the Plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at EMCC, MBSCC, GSCC, DTC and NSCC (collectively the “Operating Subsidiaries”) for the clearance and settlement of both institutional and broker transactions, thereby accommodating shortened settlement cycles and increased volumes, improving risk management and lowering transaction processing costs.

The initial step in the Plan – implementing certain changes in the organizational documents of EMCC to facilitate the Exchange Offer and repurchase of the trade association shareholders’ EMCC shares – is the subject of the proposed rule change.

A wholly-owned subsidiary of DTCC, Acquisition Company, will conduct the Exchange Offer in which the EMCC eligible Class A shareholders will have the opportunity to exchange their EMCC shares for shares of DTCC common stock. Concurrent with, and subject to the effectiveness of, the Exchange Offer, EMCC will repurchase the Class A and Class B common shares held by its trade association shareholders.

Following a successful Exchange Offer, Acquisition Company will be the majority shareholder of EMCC, and the Class B and any non-eligible and/or non-tendering Class

⁶ However, the transaction involving EMCC is not contingent on the transactions involving GSCC and MBSCC and vice versa.

A EMCC shareholders will remain as minority shareholders in EMCC.

As part of the Plan, a structure will be implemented allowing for the fair representation of the members of each of the Operating Subsidiaries in the governance of DTCC. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of EMCC, MBSCC and GSCC that become shareholders of DTCC as a result of the Exchange Offer, will elect the persons to serve on the Board of Directors of DTCC (the "DTCC Board"). These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board (in accordance with the DTCC Shareholders Agreement), rights to purchase DTCC common stock will be re-allocated to shareholders using the services of any one or more of the Operating Subsidiaries based upon their usage. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

In addition, DTCC's existing International Operations and Planning Committee will include representatives of members of EMCC. The International Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the international products and/or services of the Operating Subsidiaries, including EMCC, and have certain other responsibilities to be assigned to the Committee.

Furthermore, EMCC will continue to have a Membership and Risk Committee, which will be comprised of representatives of EMCC's members. The EMCC

Membership and Risk Committee will advise the Board of Directors of EMCC and management with respect to membership and credit and risk matters, and have certain other responsibilities to be assigned to the Committee.

As explained in more detail below, in the proposed integration structure, the Operating Subsidiaries will satisfy the fair representation requirement (the “Fair Representation Requirement”) of Section 17A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), by (1) giving participants of each of the Operating Subsidiaries, including EMCC, who are also shareholders of DTCC the right to purchase shares of DTCC common stock on a basis that reflects their use of the services and facilities of each of the Operating Subsidiaries (a system analogous to the system now employed by DTCC for reallocating entitlements to purchase shares of DTCC common stock among participants in DTC and NSCC); and (2) selecting individuals to be directors of DTCC (who will also be directors of each of the Operating Subsidiaries) on a basis that will ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of the Operating Subsidiaries.

DTCC’s Certificate of Incorporation, By-Laws and Shareholders Agreement (the “Basic Documents”), will be amended to extend to the shareholders of EMCC, MBSCC and GSCC that become shareholders of DTCC as a result of the Exchange Offer, the rights that the shareholders of DTCC currently have and, in particular, satisfy the Fair Representation Requirement of the Exchange Act. In this regard, the Basic Documents will provide for the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including EMCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc., as the owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.
- As discussed above, the rights to purchase DTCC common stock will be reallocated to the users of each of the Operating Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by the DTCC Board and in accordance with the DTCC Shareholders Agreement.
- The owners of DTCC common stock will be able to exercise cumulative voting in the election of directors of DTCC.
- With respect to the nomination process, each year the DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of

DTCC common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

The Certificate of Incorporation and By-Laws of EMCC will be updated and revised – not only to reflect the changes in EMCC’s corporate governance structure entailed by the Plan, but also to include certain other changes so that these constitutive documents will conform, to the extent practicable, with the Certificates of Incorporation and By-Laws of GSCC and MBSCC, so as to promote efficiency in the governance of the Operating Subsidiaries upon completion of the Plan. The full text of the proposed changes to the Certificate of Incorporation and to the By-Laws are set forth in Exhibits A and B, respectively, hereto.

- The Certificate of Incorporation of EMCC will be amended as follows:
 - Its operative provisions, which currently are contained in the original Certificate and several amendments, will be restated into a single, composite Amended and Restated Certificate of Incorporation, and reordered and re-numbered, as appropriate.
 - In Article 3 (as renumbered), the provisions relating to the Class B common shares will be modified to provide such shares with limited voting rights: these shares will have the right to vote, with the

Class A common shares voting together as a single Class, for the election of directors.

- A new Article 4 will be inserted that provides, in accordance with New York Business Corporation Law, that EMCC shareholders may take action by written consent without a meeting and without unanimity, so long as such consent is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- The supermajority voting provisions currently contained in Article 6 will be deleted since they will be unnecessary because DTCC, through its subsidiary, Acquisition Company, will be the controlling shareholder of EMCC.
- A new Article 6, which limits the liability of the directors to EMCC and its shareholders for any breach of duty, so long as such limitation is consistent with the provisions of the New York Business Corporation Law, will be inserted.
- Since after the proposed integration DTCC, through its wholly-owned subsidiary, Acquisition Company, will be the majority shareholder of EMCC, the current By-Laws of EMCC will be replaced with a set of by-

laws that conform, except for certain brief modifications⁷ and a broadly drafted indemnification provision, to the by-laws of NSCC.

(b) The proposed rule change is consistent with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder applicable to EMCC because it is designed to coordinate further the activities of each of the Operating Subsidiaries in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry. The proposed rule change will not affect, and is therefore consistent with, the safeguarding of securities and funds in EMCC's custody or control or for which it is responsible.

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

EMCC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. EMCC, as well as each of the other Operating Subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

⁷ The modifications include (i) making all references gender-neutral, (ii) deleting the requirement in Section 3.3 that the President be the Chief Executive Officer, (iii) providing that the number of directors shall be between 15 and 25, as determined by the Board, and (iv) amending Sections 1.2 and Article VIII so that the holders of a majority of the outstanding shares may, respectively, call a special shareholders meeting, and may amend the By-Laws.

5. **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.

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

Not applicable.

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 the Commission**

As noted above, certain of the proposed changes to EMCC's Certificate of Incorporation (Proposed Articles 4 and 6) are designed to conform with the corresponding proposed provisions of GSCC's and MBSCC's Certificates of Incorporation. Similarly, the proposed changes to EMCC's By-Laws are generally designed to conform to NSCC's current By-Laws, and to be consistent with the corresponding proposed provisions of GSCC's and MBSCC's By-Laws.

9. **Exhibits**

1. Form of Notice of Proposed Rule Change for publication in the *Federal Register*.
- A. Form of Proposed Amended and Restated Certificate of Incorporation of EMCC.
- B. Form of Proposed By-Laws of EMCC

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, 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: _____
Name: Karen L. Saperstein
Title: General Counsel and Secretary

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-EMCC-2001-03)

Proposed rule change by EMERGING MARKETS CLEARING CORPORATION ("EMCC") regarding proposed arrangements for the integration of EMCC with The Depository Trust & Clearing Corporation ("DTCC").

Comments requested within days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on , EMCC filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared 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 filed by Emerging Markets Clearing Corporation ("EMCC") involves proposed arrangements for the integration of EMCC with The Depository Trust & Clearing Corporation ("DTCC"). The subject proposal (the "Plan") provides the following:

- DTCC will form an acquisition subsidiary ("Acquisition Company") for the purpose of making an exchange offer (the "Exchange Offer") for EMCC

shares, as described below, and holding all shares of EMCC received pursuant to the Exchange Offer.

- After receipt of all necessary regulatory approvals, Acquisition Company will conduct the Exchange Offer in which EMCC Class A common shareholders which are members, or affiliates of members, of EMCC, Government Securities Clearing Corporation (“GSCC”), MBS Clearing Corporation (“MBSCC”), The Depository Trust Company (“DTC”) or National Securities Clearing Corporation (“NSCC”) (referred to as “eligible Class A shareholders”) will have the opportunity to exchange their shares of EMCC Class A stock for shares of DTCC common stock on the basis of the adjusted book value of such EMCC shares and the DTCC common shares. Adjusted book value for the EMCC shares will equal the book value (less retained earnings, if any) of EMCC at the time of, or as of the end of the last calendar month preceding, the integration of EMCC with DTCC. Adjusted book value of the DTCC common shares will equal book value at such time minus an amount equal to the lesser of either (i) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of the integration of NSCC and DTC with DTCC in 1999, or (ii) the retained earnings of DTCC attributable to the retained earnings of NSCC at the time of, or as of the end of the last calendar month preceding, the integration of EMCC with DTCC.¹

¹ Such retained earnings are dedicated to the business of NSCC.

- Subject to the effectiveness of the Exchange Offer, EMCC's trade association shareholders will receive from EMCC, in exchange for their respective Class A and Class B common shares, cash in an amount equal to the lesser of (a) their acquisition cost, or (b) the adjusted book value of their shares.
- EMCC's Class B shareholders will retain their Class B shares (other than the trade association shareholder, who will be paid out as provided above), with the same rights to have their shares repurchased for cash as currently provided in EMCC's Amended and Restated Shareholder Agreement (the "EMCC Shareholder Agreement").²
- The EMCC Shareholder Agreement will be amended in connection with the Exchange Offer in order to eliminate any restrictions on a transfer of shares of EMCC stock to Acquisition Company and EMCC. Following a successful Exchange Offer, the EMCC Shareholder Agreement will be terminated.
- Following these transactions, Acquisition Company will be the majority shareholder of EMCC, and the Class B shareholders and any non-eligible and/or non-tendering Class A shareholders will remain as minority shareholders in EMCC.³

² In addition, and subject to the effectiveness of the Exchange Offer, holders of Class B shares will be provided with the limited right to vote for the election of EMCC Directors.

³ Pursuant to separate plans for the integration of GSCC and MBSCC with DTCC, it is contemplated that GSCC and MBSCC will become operating subsidiaries of DTCC at the same time that EMCC becomes an operating subsidiary of DTCC.

- DTCC, through its wholly-owned subsidiary, Acquisition Company, will elect as directors of EMCC the persons elected by the shareholders of DTCC to be directors of DTCC.⁴
- Following the integration, EMCC will continue to exist as a separate registered clearing agency, offering its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.⁵
- As a matter of DTCC policy, any retained earnings of EMCC existing as of the time the integration becomes effective will be dedicated to supporting the business of EMCC. EMCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

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 the 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.

⁴ Given that EMCC's initial post-integration board would be elected upon the effectiveness of the integration Plan, EMCC has determined to postpone its 2001 annual election of directors which would normally occur near calendar year-end, with the current Board remaining in office until the Plan is effectuated. Should the Plan not become effective by March 31, 2002, then EMCC will call an annual meeting for the election of directors pursuant to its current procedures.

⁵ Neither Acquisition Company nor DTCC will engage in clearing agency activities. Certain support functions, including human resources, finances, audit, general administration and corporate communications will continue to be centralized in DTCC (as they are currently for EMCC), with those services provided by DTCC, through NSCC, to EMCC pursuant to existing service contracts.

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

(a) At their meeting on July 25, 2001 the Board of Directors of EMCC voted to proceed with a plan (the "Plan") for the integration of EMCC with DTCC. This integration is expected to take place concurrently with the integration of GSCC and MBSCC with DTCC.⁶ DTCC is a holding company for DTC and NSCC. DTC and NSCC are registered clearing agencies. EMCC has been advised that the Board of Directors of DTCC has also agreed to proceed with the Plan. A principal goal of the Plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at EMCC, MBSCC, GSCC, DTC and NSCC (collectively the "Operating Subsidiaries") for the clearance and settlement of both institutional and broker transactions, thereby accommodating shortened settlement cycles and increased volumes, improving risk management and lowering transaction processing costs.

The initial step in the Plan – implementing certain changes in the organizational documents of EMCC to facilitate the Exchange Offer and repurchase of the trade association shareholders' EMCC shares – is the subject of the proposed rule change.

A wholly-owned subsidiary of DTCC, Acquisition Company, will conduct the Exchange Offer in which the EMCC eligible Class A shareholders will have the opportunity to exchange their EMCC shares for shares of DTCC common stock. Concurrent with, and subject to the effectiveness of, the Exchange Offer, EMCC will repurchase the Class A and Class B common shares held by its trade association shareholders.

⁶ However, the transaction involving EMCC is not contingent on the transactions involving GSCC and MBSCC and vice versa.

Following a successful Exchange Offer, Acquisition Company will be the majority shareholder of EMCC, and the Class B and any non-eligible and/or non-tendering Class A EMCC shareholders will remain as minority shareholders in EMCC.

As part of the Plan, a structure will be implemented allowing for the fair representation of the members of each of the Operating Subsidiaries in the governance of DTCC. Specifically, the DTCC shareholders, consisting of the current shareholders of DTCC and the shareholders of EMCC, MBSCC and GSCC that become shareholders of DTCC as a result of the Exchange Offer, will elect the persons to serve on the Board of Directors of DTCC (the “DTCC Board”). These individuals will, in turn, be selected by DTCC to serve as the directors of each of the Operating Subsidiaries. On a periodic basis to be determined by the DTCC Board (in accordance with the DTCC Shareholders Agreement), rights to purchase DTCC common stock will be re-allocated to shareholders using the services of any one or more of the Operating Subsidiaries based upon their usage. Shareholders may, but will not be obligated to, purchase some or all of the DTCC common stock to which they are entitled. Holders of DTCC common stock will be entitled to cumulative voting in the election of directors.

In addition, DTCC’s existing International Operations and Planning Committee will include representatives of members of EMCC. The International Operations and Planning Committee will advise the DTCC Board and management on its policies and procedures with respect to the international products and/or services of the Operating Subsidiaries, including EMCC, and have certain other responsibilities to be assigned to the Committee.

Furthermore, EMCC will continue to have a Membership and Risk Committee,

which will be comprised of representatives of EMCC's members. The EMCC Membership and Risk Committee will advise the Board of Directors of EMCC and management with respect to membership and credit and risk matters, and have certain other responsibilities to be assigned to the Committee.

As explained in more detail below, in the proposed integration structure, the Operating Subsidiaries will satisfy the fair representation requirement (the "Fair Representation Requirement") of Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), by (1) giving participants of each of the Operating Subsidiaries, including EMCC, who are also shareholders of DTCC the right to purchase shares of DTCC common stock on a basis that reflects their use of the services and facilities of each of the Operating Subsidiaries (a system analogous to the system now employed by DTCC for reallocating entitlements to purchase shares of DTCC common stock among participants in DTC and NSCC); and (2) selecting individuals to be directors of DTCC (who will also be directors of each of the Operating Subsidiaries) on a basis that will ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of the Operating Subsidiaries.

DTCC's Certificate of Incorporation, By-Laws and Shareholders Agreement (the "Basic Documents"), will be amended to extend to the shareholders of EMCC, MBSCC and GSCC that become shareholders of DTCC as a result of the Exchange Offer, the rights that the shareholders of DTCC currently have and, in particular, satisfy the Fair Representation Requirement of the Exchange Act. In this regard, the Basic Documents will provide for the following:

- The persons elected as directors to the DTCC Board will also serve as the directors of each of the Operating Subsidiaries, including EMCC.
- Other than, as is currently the case, one director appointed to the DTCC Board by the New York Stock Exchange, Inc., as the owner of DTCC preferred stock, and one director appointed to the DTCC Board by the National Association of Securities Dealers, Inc., as the owner of DTCC preferred stock, all directors will be elected annually by the owners of DTCC common stock.
- As discussed above, the rights to purchase DTCC common stock will be reallocated to the users of each of the Operating Subsidiaries based upon their usage. Under the Basic Documents, these rights will be reallocated on a periodic basis to be determined by the DTCC Board and in accordance with the DTCC Shareholders Agreement.
- The owners of DTCC common stock will be able to exercise cumulative voting in the election of directors of DTCC.
- With respect to the nomination process, each year the DTCC Board will appoint a nominating committee that may include both members and non-members of the DTCC Board. After soliciting suggestions from all users of each of the Operating Subsidiaries of possible nominees to fill vacancies on the DTCC Board, the nominating committee will recommend a slate of nominees for the full DTCC Board. The DTCC Board may make changes in that slate before submitting nominations to the holders of DTCC common stock for election. The election ballot included in the

proxy materials will provide an opportunity for stockholders to cast their votes for a person not listed as a nominee. Because the Basic Documents will provide for cumulative voting, certain large holders of DTCC common stock may have a sufficient number of shares to elect a person not on the slate nominated for election by the DTCC Board.

The Certificate of Incorporation and By-Laws of EMCC will be updated and revised – not only to reflect the changes in EMCC’s corporate governance structure entailed by the Plan, but also to include certain other changes so that these constitutive documents will conform, to the extent practicable, with the Certificates of Incorporation and By-Laws of GSCC and MBSCC, so as to promote efficiency in the governance of the Operating Subsidiaries upon completion of the Plan. The full text of the proposed changes to the Certificate of Incorporation and to the By-Laws are set forth in Exhibits A and B, respectively, hereto.

- The Certificate of Incorporation of EMCC will be amended as follows:
 - Its operative provisions, which currently are contained in the original Certificate and several amendments, will be restated into a single, composite Amended and Restated Certificate of Incorporation, and reordered and re-numbered, as appropriate.
 - In Article 3 (as renumbered), the provisions relating to the Class B common shares will be modified to provide such shares with limited voting rights: these shares will have the right to vote, with the Class A common shares voting together as a single Class, for the election of directors.

- A new Article 4 will be inserted that provides, in accordance with New York Business Corporation Law, that EMCC shareholders may take action by written consent without a meeting and without unanimity, so long as such consent is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- The supermajority voting provisions currently contained in Article 6 will be deleted since they will be unnecessary because DTCC, through its subsidiary, Acquisition Company, will be the controlling shareholder of EMCC.
- A new Article 6, which limits the liability of the directors to EMCC and its shareholders for any breach of duty, so long as such limitation is consistent with the provisions of the New York Business Corporation Law, will be inserted.
- Since after the proposed integration DTCC, through its wholly-owned subsidiary, Acquisition Company, will be the majority shareholder of EMCC, the current By-Laws of EMCC will be replaced with a set of by-laws that conform, except for certain brief modifications⁷ and a broadly drafted indemnification provision, to the by-laws of NSCC.

⁷ The modifications include (i) making all references gender-neutral, (ii) deleting the requirement in Section 3.3 that the President be the Chief Executive Officer, (iii) providing that the number of directors shall be between 15 and 25, as determined by the Board, and (iv) amending Sections 1.2 and Article VIII

(b) The proposed rule change is consistent with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder applicable to EMCC because it is designed to coordinate further the activities of each of the Operating Subsidiaries in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry. The proposed rule change will not affect, and is therefore consistent with, the safeguarding of securities and funds in EMCC's custody or control or for which it is responsible.

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

EMCC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. EMCC, as well as each of the other Operating Subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

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.

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

so that the holders of a majority of the outstanding shares may, respectively, call a special shareholders meeting, and may amend the By-Laws.

within such longer period (i) as the Commission may designate 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 rule filing, or
- (B) institute proceedings to determine whether the rule filing should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. 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.

Secretary

EXHIBIT A

Underlined, boldface text indicates additions.

~~Strikeout~~ text indicates deletions.

RESTATED
CERTIFICATE OF INCORPORATION
OF
EMERGING MARKETS CLEARING CORPORATION
UNDER SECTION 807 OF THE BUSINESS CORPORATION LAW

THE UNDERSIGNED, being duly authorized officers of Emerging Markets Clearing Corporation, hereby certify:

I. The name of the corporation is Emerging Markets Clearing Corporation.

II. The original Certificate of Incorporation of the corporation was filed with the Department of State on January 13, 1997.

III. This Amended and Restated Certificate of Incorporation (A) amends the Certificate of Incorporation, as now in effect, to: (i) reorder its provisions and renumber them in Arabic numerals; (ii) provide that the Class B common shares shall have certain limited voting rights; (iii) provide that shareholders may take action by written consent as permitted by Section 615 of the Business Corporation Law; (iv) delete the super majority voting provisions contained in Article IV, and (v) add a new Article 6 which limits the liability of directors to the corporation and its shareholders for damages for breach of duty, all under the

terms set forth below, and (B) restates and integrates into a single instrument all of the provisions thereof, as so amended and restated, as follows:

1. The name of the corporation is Emerging Markets Clearing Corporation.

2. The purposes for which it is formed are to engage in any lawful act or activity for which corporations may be organized under the Business Corporation Law; provided, however, that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without first obtaining the consent of such body.

3. The aggregate number of shares which the corporation shall have authority to issue is 6,000 shares having no par value, which are to be divided into classes as follows:

2,000 Class A common shares having no par value.

4,000 Class B common shares having no par value.

All shares of the corporation are common shares, with equal rights to the profits and assets of the corporation. The Class B shares shall have no voting rights except: (i) the right to vote, with the Class A shares, voting together as a single class, for the election of directors, and (ii) otherwise as specifically required by applicable law.

4. Whenever shareholders of the corporation are required or permitted to take any action by vote, the shareholders of the corporation may take such action without a meeting on written consent, setting forth the action so taken, signed by the holders of outstanding shares having not less than the minimum

number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

5. No holder of any shares of the corporation of any class shall as such holder have any preemptive right to purchase or subscribe for any other shares of securities of the corporation which at any time may be sold or offered for sale or subscription by the corporation.

6. To the fullest extent that the New York Business Corporation Law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the corporation shall be liable to the corporation or its shareholders for damages for any breach of duty as a director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article 6 shall apply to or have any effect on the liability of any director of the corporation for or with respect to any acts or omissions of such director occurring after the adoption of this Article 6 and prior to such amendment or repeal.

7. The office of the corporation is to be located in the County of New York, State of New York.

8. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is 55 Water Street, New York, New York 10041.

IV. This amendment and restatement was authorized by at least a majority of the Board of Directors, followed by the affirmative vote of the holders of in excess of two-thirds (2/3) of the outstanding shares at the time entitled to vote in the election of directors.

IN WITNESS WHEREOF, we have signed this certificate on the _____ day of _____, 200_ and we affirm the statements contained herein as true under penalties of perjury.

Name:

Title:

Name:

Title:

EXHIBIT B

Underlined, boldface text indicates additions
~~[Bracketed, Strikethrough]~~ text indicates deletions

BY-LAWS
OF
EMERGING MARKETS CLEARING CORPORATION

ARTICLE I

Shareholders

Section 1.1. Annual Meeting. The annual meeting of the shareholders of the Corporation for the election of directors and the transaction of such other business as may properly come before the meeting shall be held ~~[annually]~~ at such ~~[time]~~ **hour** and place within or without the State of New York as the Board of Directors shall determine, **or, if not so determined at 10:00 A.M. on the last day in April at the principal office of the Corporation, or, if that day shall be a Saturday, Sunday or a legal holiday in the place where the meeting is to be held, on the immediately preceding day not a Saturday, Sunday or a legal holiday.**

Section 1.2. Special Meetings. Special meetings of the shareholders may be called by the Board of Directors, by the Chairman, ~~[any Vice-Chairman,]~~ or by the President, and shall be called by the Chairman, ~~[a Vice-Chairman,]~~ the President, a Managing Director, a Vice President or the Secretary at the written ~~[request]~~ **demand** of ~~[one-third]~~ **a majority** of the ~~[entire]~~ Board of Directors or at the written ~~[request]~~ **demand** of the holders of ~~[at least ten percent (10%)]~~ **a majority** of all outstanding

shares entitled to vote on the action proposed to be taken at such meeting, or in the case of special meetings for the election of directors pursuant to Section 603 of the Business Corporation Law, the percentage provided therein. Any such call or ~~[request]~~ **demand** shall state the purpose or purposes of the proposed meeting. On failure of any officer above specified to call such special meeting when duly ~~[requested]~~ **demand**, any signer of such ~~[request]~~ **demand** may call such special meeting and give notice thereof. Special meetings shall be held on the date specified in the notice thereof at such hour and place within or without the State of New York as may be specified in such notice. At any special meeting, only such business may be transacted which is related to the purpose or purposes set forth in the notice thereof, but any special meeting may be called and held in conjunction with an annual meeting of the shareholders.

Section 1.3. Record Date for Meetings and Other Purposes. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than ~~[fifty]~~ **sixty** nor less than ten days before the date of such meeting, nor more than ~~[fifty]~~ **sixty** days prior to any other action.

If no record date is so fixed by the Board of Directors, (a) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of

shareholders shall be at the close of business on the day next preceding (i) the day on which notice is given, or ~~the~~ (ii) the day on which the meeting is held if notice is not given by reason of due waiver thereof, and (b) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the Board of Directors relating thereto is adopted.

A determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders, made in accordance with this Section, shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date under this Section for the adjourned meeting.

Section 1.4. Notice of Meetings. Whenever shareholders are required or permitted to take any action at a meeting, written notice shall be given stating the place, date and hour of the meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting (including any such meeting to be held in conjunction with an annual meeting) shall also state the purpose or purposes for which the meeting is called. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders fulfilling the requirements of Section 623 of the New York Business Corporation Law to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect. A copy of the notice of any meeting shall be given, ~~personally, by facsimile transmission or by mail,~~ not less than ten nor more than ~~fifty~~ **sixty** days before the date of the meeting, to each shareholder entitled to vote, at such meeting. If mailed, such notice shall be given by sending it

through the United States Postal Service, with postage thereon prepaid, directed to the shareholder at ~~its~~ **his or her** address as it appears on the record of shareholders, or, if ~~it~~ **he or she** shall have filed with the Secretary of the Corporation a written request that notices to ~~it~~ **him** be mailed to some other address, then directed to ~~it at such address.~~ **him or her at such address. If transmitted electronically, such notice shall be given by sending electronic mail directed to the shareholder's electronic mail address as supplied by the shareholder to the Secretary of the Corporation or as otherwise directed pursuant to the shareholder's authorization or instructions.**

When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment, the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under this Section.

Section 1.5. Waivers of Notice. Notice of any meeting of shareholders need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by ~~it~~ **him or her**.

Section 1.6. List of Shareholders at Meetings. A list of shareholders as of the record date, certified by the Secretary **or by a transfer agent**, shall be produced at any

meeting of shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

Section 1.7. Quorum at Meetings. Except as otherwise provided by law or by the certificate of incorporation, the holders of a majority of the shares entitled to vote thereat shall constitute a quorum at any meeting of shareholders for the transaction of any business, but the shareholders present may adjourn any meeting to another time or place despite the absence of a quorum. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any shareholders.

Section 1.8. Presiding Officer and Secretary. At any meeting of the shareholders, if neither the Chairman of the Board~~[, nor a Vice-Chairman,]~~ nor the President~~[,]~~ nor a Managing Director~~[,]~~ nor a Vice President nor ~~[any other]~~ a person designated by the Board of Directors to preside at the meeting ~~[is]~~ **shall be** present, the shareholders shall appoint a presiding officer for the meeting. If neither the Secretary nor an Assistant Secretary ~~[is]~~ **be** present, **the appointee of** the person presiding at the meeting shall ~~[appoint an acting]~~ **act as** secretary of the meeting.

Section 1.9. Proxies. Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him or her by proxy. Every proxy shall be signed by~~[, or on behalf of,]~~ the shareholder **or his or her attorney-in-fact**. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the

proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law. Proxies shall be delivered to the Secretary of the Corporation or, if inspectors are appointed to act at a meeting, to the inspectors.

Section 1.10. Inspectors of Election. The Board of Directors, in advance of any meeting of Shareholders, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at the meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. No director or officer of the Corporation shall be eligible to act as an inspector of an election of directors.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in

writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them.

Section 1.11. Voting. Whenever directors are to be elected by the shareholders, they shall be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election. Whenever any corporate action, other than the election of directors, is to be taken by vote of the shareholders, it shall, except as otherwise required by law or by the certificate of incorporation, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

Except as otherwise provided by law ~~[and these By-Laws]~~, every holder of record of shares of the Corporation entitled to vote on any matter at any meeting of shareholders shall be entitled to one vote for every such share standing in ~~[its]~~ **his or her** name on the record of shareholders of the Corporation on the record date for the determination of the shareholders entitled to notice of or to vote at the meeting. ~~[Upon the demand of any shareholder, the vote at any election of directors, or the vote upon any question before a meeting, shall be by ballot; but otherwise the method of voting shall be discretionary with the person presiding at the meeting.]~~

~~Section 1.11. Written Consent of Shareholders Without a Meeting. Whenever under any provision of law or of these By-Laws shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of the number of shares that would be required to vote in favor of such action at a shareholder meeting at which all holders of the shares entitled to vote thereon were present.]~~

ARTICLE II

Board of Directors

~~Section 2.1. Number and Classification of Directors. The entire Board shall consist of twenty-one directors unless and until changed as hereinafter provided, and shall consist of Board Directors, an EMTA Director, an ISMA Director and NSCC Directors (collectively, the "Non-classified Directors"), and Participant Directors. The Participant Directors shall be divided into three classes, designated Class I, Class II, and Class III, each class to consist of five directors. The number of Class I, Class II and Class III directors may be increased or decreased at any time and from time to time by amendment of the By-Laws (a) by affirmative vote of the holders of two-thirds (2/3) of the shares outstanding and at that time entitled to vote for the election of directors or (b) by vote of a majority of the entire Board, except that no decrease shall shorten the term of any incumbent director. Upon and after the initial classification of directors as provided above, any newly created directorships resulting from an increase in the number of directors and any reduction in directorships resulting from a decrease in the number of directors shall be so apportioned among the three classes as to make all three classes as nearly equal in number as possible.~~

~~Section 2.2. Qualification and Term of Directors. (i) The terms of office of the initially classified directors shall be as follows: that of Class I shall expire at the 1998 annual meeting of shareholders, that of Class II shall expire at the 1999 annual meeting and that of Class III shall expire at the 2000 annual meeting. At each annual meeting~~

~~after such initial classification, directors to replace the Class I, Class II and Class III directors whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting following their respective elections. The Non-classified Directors shall each be elected for terms expiring at the first succeeding annual meeting following their respective elections. Each director shall hold office from the time of his or her election and qualification until the expiration of his or her term of office and until his or her successor has been elected and qualified.~~

~~(ii) No Class I, Class II or Class III director shall serve for more than six consecutive years without an intervening consecutive twelve month period during which such person did not serve as a director excluding any years of service as a director prior to the 1998 Annual Meeting. Any Class I, Class II or Class III director elected at the 2000 annual meeting of shareholders or thereafter shall be an officer or partner of a shareholder, or of an affiliate or subsidiary of a shareholder.~~

~~(iii) At no time shall there be more than one Class I, II or III director who is a general partner or an officer of, or who holds a management position with any single participant, or of an affiliate or subsidiary of such participant. A violation of this provision resulting solely from a merger or affiliation of two or more participant shareholders, however, will not require the removal of any Class I, II or III director if such violation is cured by appropriate resignation from the Board effective on or prior to the first annual meeting following such merger or affiliation. If an appropriate resignation, effective on or prior to such annual meeting, is not received by the Corporation at least 60 days prior to such annual meeting, the Corporation may, by a resolution passed by a majority vote of the entire Board, remove one or more such directors, effective as of such annual~~

~~meeting, to the extent necessary to cure such violation. The choice of any such director(s) to so be removed shall be made by the Board in its discretion, and such removal shall be deemed a removal for cause.~~

~~Section 2.3. Nomination and Election of Directors.~~

~~(i) Participants shall have the right to nominate individuals to serve as Class I, II or III directors by filing with the Secretary, not less than 30 days prior to the date of the annual meeting and subsequent to the submission of a list of nominees by the Nominating Committee pursuant to Section 3.2, a petition signed by the lesser of either five percent of the participants or ten participants. Each such petition may include nominations for all or less than all the positions to be held by Class I, II or III directors, which are to be filled at or at the time of the annual meeting, but no participant shall nominate by one or more petitions more than one individual for each position to be filled at such annual meeting. The term participant as used in these By-Laws shall mean any "participant" as defined in Section 3(a)(24) of the Securities Exchange Act of 1934, as amended.~~

~~(ii) No such petition shall be valid unless it specifies the respective position (e.g., Class I director) for which each individual named therein is nominated and no nomination contained therein shall be valid unless the individual is qualified for the position for which he or she is nominated. In the event any question is raised as to the validity of any petition or as to the eligibility of any individual so named for the position specified therein, such matter shall be determined by the Secretary.~~

~~(iii) In the event one or more such petitions are filed, the Secretary shall, not less than 20 days prior to the date of the annual meeting, mail to each participant a ballot~~

~~setting forth the names of the individuals nominated by the Nominating Committee pursuant to Article III and by such petitions in respect of each position in respect of which such a petition has been filed.~~

~~(iv) In the event one or more such petitions are filed, voting by participants will be allocated based upon a formula. No cumulative voting will be permitted. For each candidate, participants will be able to cast a number of votes corresponding to the following formula:~~

~~(1) Three (3) votes for each \$1.00 of average clearing fund deposits (rounded down to the nearest \$1.00) maintained with the Corporation during the twelve month period ending on the last day of the second month prior to the date of determination by the Corporation of the number of votes to which each participant is entitled; and~~

~~(2) Two (2) votes for each \$1.00 of the average monthly fee (rounded down to the nearest \$1.00) payable or paid by the participant to the Corporation during the twelve month period ending on the last day of the second month prior to the date of determination by the Corporation of the number of votes to which each participant is entitled.~~

~~(v) In the event no valid participants petition is filed, the shareholders shall vote all their shares at the annual meeting in favor of the election as Class I, II and III directors of those individuals nominated by the Nominating Committee. In the event a valid participants petition is filed, the shareholders shall vote all their shares in favor of the election as Class I, II and III directors, of those individuals receiving the highest number of votes on the ballots which are returned by participants to the Secretary no later than five days prior to the commencement of the annual meeting.~~

~~(vi) In the event that any one or more nominees nominated to the Board pursuant to these By-Laws who would otherwise have sufficient votes for election to a position is determined to be ineligible for election to such position, the nominee receiving the next highest number of votes who is eligible for election shall be so certified and/or elected. In the case of a tie vote for individuals who absent such tie would be so certified and/or elected, the Nominating Committee shall select the individual or individuals of those subject of the tie vote who shall be so certified and/or elected.~~

~~(vii) The nomination and election of the Non-classified Directors shall be as specified in the Shareholder Agreement.~~

Section 2.4.1 of Directors. The entire Board shall consist of between 15 and 25 directors, as the Board shall, from time to time, determine. The number of directors may be changed at any time and from time to time in accordance with Article VIII. Unless and until changed in accordance with this Section, the number of directors constituting the entire Board shall continue in effect and no further action shall be required to fix such number at any meeting of the shareholders for the election of directors.

Section 2.2. Election and Term of Directors. At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting. Each such director shall hold office from the time of his or her election and qualification until the annual meeting of shareholders next succeeding his or her election and until his or her successor has been elected and qualified.

Section 2.3. Newly-Created Directorships and Vacancies. Newly-created directorships resulting from an increase in the number of directors and vacancies

occurring in the Board for any reason, including the removal of directors by the shareholders without cause and by the shareholders or the Board of Directors for cause, may ~~[only be filled by a majority vote of the entire Board]~~ **be filled only by vote of the Board or of the shareholders. If the number of the directors then in office is less than a quorum, such newly created directorships and vacancies may be filled by vote of a majority of the directors then in office.** A director elected to fill a ~~[newly-created directorship shall hold office for the unexpired term of the Class to which the newly-created directorship is apportioned or, if such directorship is created prior to the]~~ **vacancy shall hold office until the next annual** meeting of shareholders ~~[at which classification of directors is accomplished under Section 2.2, until such meeting, and, in either case,]~~ **and** until his or her successor has been elected and qualified.

~~[A director elected by the Board to fill a vacancy shall hold office until the next annual meeting of shareholders and until his or her successor has been elected and qualified. Any replacement Class I, II or III director elected by the shareholders at an annual meeting shall be elected for the remaining term of the Class to which his or her predecessor had been elected.~~

~~Section 2.5]~~ **Section 2.4.** Resignations. Any director may resign from ~~[the Board]~~ **office** at any time by delivering his or her resignation in writing to the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section ~~[2.6]~~ **2.5.** Removal of Directors. Except as otherwise provided by law, any ~~[director]~~ **or all of the directors** may be removed, for cause, by ~~[a majority]~~ vote of the ~~[entire]~~ **shareholders or the** Board~~[,]~~ **of Directors** and may be removed, ~~[with or~~

~~without cause, by the affirmative vote of holders of two-thirds (2/3) of the outstanding shares at the time entitled to vote in the election of any such director(s).]~~ **without cause, by vote of the shareholders.**

~~[Section 2.7.]~~ **Section 2.6. Meetings.** Meetings of the Board, regular or special, may be held at any place within or without the State of New York as the Board from time to time may fix or as shall be specified in the respective ~~[notices]~~ **notice** or ~~[waiver]~~ **waivers** of notice thereof. Any meeting of the Board or any committee thereof may be conducted by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting. ~~[An annual organizational meeting of the Board for election or appointment of officers shall, if practicable, be held on the day on which the annual meeting of the shareholders shall have been held and, if practicable, at the same place and as soon after the holding of such meeting of shareholders as is practicable. No notice of such organizational meeting needs to be given, if such meeting coincides with the meeting of shareholders; otherwise, notice of such meeting shall be given by the Chairman of the Board, a Vice-Chairman, the President, or the Secretary to each director by mailing the same not later than the tenth day before such meeting (or by personal delivery, fax or telephone or by some other customary means of electronic transmission). Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice.]~~ The Board may by resolution fix times and places for regular meetings of the Board and no

notice of such meetings need be given. Special meetings of the Board shall be held whenever called by the Chairman of the Board, ~~[a Vice-Chairman,]~~ the President or by at least one-third of the directors ~~[at]~~ **for** the time **being** in office. Notice of each such meeting shall be given by the Secretary or by a person calling the meeting to each director by mailing the same not later than the ~~[tenth day before such meeting (or by personal delivery, fax or telephone, or, by some other customary means of electronic transmission).]~~ **second day before the meeting, or by telegraphing, cabling, telephoning, faxing, electronically transmitting or personally delivering the same not later than one day before the meeting. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.**

Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or such committee consent in writing to the adoption of a resolution authorizing such action. Each resolution so adopted and the written consents thereto by members of the Board or such committee shall be filed with the minutes of the proceedings of the Board or such committee.

Section ~~[2-8]~~ **2.7.** Quorum and Voting. Except as otherwise provided by the certificate of incorporation, a majority of the ~~[directors]~~ **Directors of the Board** then in office shall constitute a quorum for the transaction of ~~[any business]~~ **business or of any specified item of business; provided, however, that when a majority of the entire Board is once present to organize a meeting, one-third of the entire Board shall**

thereafter constitute a quorum for the transaction of business or any specified

item of business at such meeting. Except as otherwise provided by law or by the certificate of incorporation or by these By-Laws, the vote of a majority of the directors present at a meeting at the time of the vote, if a quorum is present at such time, shall be the act of the Board; **but** provided that a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. No notice of any such adjournment need be given.

Section ~~[2.9]~~ **2.8.** **Executive Committee.** The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee, consisting of five or more directors, which, to the extent provided in the resolution and to the extent permitted by law, shall have all the authority of the Board between ~~[Board]~~ meetings **of the Board.** The Board may designate one or more directors as alternate members of the Executive Committee, who may replace any absent member or members at any meeting of the Executive Committee. Members of the Executive Committee shall serve at the pleasure of the Board.

Section ~~[2.10]~~ **2.9.** **Audit Committee.** The Board of Directors may~~[, by resolution adopted by a majority of the entire Board,]~~ appoint an Audit Committee consisting of three or more directors, other than ~~[Non-classified directors or]~~ officers of the Corporation **or of The Depository Trust & Clearing Corporation.** Members of the Audit Committee shall serve at the pleasure of the Board. The Audit Committee shall review with the Corporation's independent certified public accountants the scope of their auditing procedures, the financial statements of the Corporation which the accountants propose to certify, the proposed certification thereof and such other matters relating to

the auditing of the Corporation by its independent certified public accountants as such Committee shall deem appropriate, and shall have such other and further duties and powers as may be delegated to it by resolution of the Board of Directors from time to time. The Board may designate one or more directors as alternate members of the Audit Committee, who may replace any absent member or members at any meeting of the Audit Committee.

Section ~~[2.14]~~ **2.10. Other Committees.** The Board of Directors may, ~~by resolution adopted by a majority of the entire Board,~~ **also** appoint or provide for such other committees consisting of such directors, officers or other persons and having such powers and functions in the management of the Corporation as the Board of Directors may see fit.

Section ~~[2.12]~~ **2.11. Compensation of and Loans to Directors.** **No loan shall be made by the Corporation to any director.** Directors may receive compensation for services to the Corporation in their capacities as directors or otherwise in such amounts as may be fixed from time to time by the Board.

~~[No loan shall be made by the Corporation to any director; provided that a director that is also an officer of the Corporation shall be permitted to receive such a loan.~~

ARTICLE III

Nominating Committee

~~Section 3.1. Number. Commencing with the election of the directors at the 1998 annual meeting of shareholders, the Board shall appoint a Nominating Committee (with a view~~

~~toward providing fair representation for the interests of a cross section of participants and shareholders) for such annual meeting comprised of five persons who are officers or partners of participants or shareholders which shall act in the manner set forth in these By-laws in respect of the nomination of directors.~~

~~Section 3.2. General Provisions. Prior to each annual meeting, the Nominating Committee shall nominate one individual who is qualified under these By-laws for each position to be filled by the election of a Class I, II, or III director at such annual meeting, designating the Class for which each such individual is nominated. The Nominating Committee shall select candidates with a view toward providing fair representation for the interests of a cross section of participants. The Nominating Committee shall submit a list of its nominations in writing to the Secretary of the Corporation not later than 60 days prior to each annual meeting of shareholders, and the Secretary shall mail a copy of such list to each participant within five days thereafter.~~

~~Section 3.3. Certification to Shareholders of Nominees to the Board of Directors.~~

~~Commencing with the 1998 annual meeting, the Nominating Committee shall, not more than 60 and not less than 4 days before the annual meeting certify to the shareholders the individuals to be elected as Class I, II and III directors. Such a certificate delivered by the Nominating Committee shall be signed by each member of the Nominating Committee or shall certify that it was duly authorized by the Nominating Committee and be signed by one or more members thereof, and such a certificate delivered by the Nominating Committee shall be certified by the Secretary of the Corporation as having been duly authorized by the Nominating Committee.~~

~~ARTICLE IV~~ **ARTICLE III**Officers, Agents and Employees

Section ~~[4.1]~~ **3.1**. General Provisions. The officers of the Corporation shall ~~[be]~~ **include those officers required by statute, and may include** a Chairman of the Board, ~~[one or more Vice-Chairmen, a President, a Secretary and a Treasurer, and may include]~~ **who shall be elected by the Board from among its own number, a President, one or more Managing Directors, one or more Vice Presidents, a Secretary, a Treasurer, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, an Auditor, and** one or more Assistant Secretaries and one or more Assistant Treasurers. The officers shall be appointed by the Board of Directors at the first meeting of the Board after the annual meeting of the shareholders in each year. The Board may appoint other officers, agents and employees, as it may deem appropriate and at such times as it may deem appropriate, who shall have such authority and perform such duties as may be prescribed by the Board. Each officer shall hold office for the term for which he or she is elected or appointed and until his or her successor has been elected or appointed and qualified. Any two or more offices may be held by the same person, except ~~[for]~~ the offices of ~~[Chairman of the Board,]~~ President and Secretary. Any officer, agent or employee of the Corporation may be removed, or his or her authority suspended, by the Board with or without cause. Such removal or suspension of authority without cause shall be without prejudice to such person's contract rights, if any, but the election or appointment of any person as an officer, agent or employee of the Corporation shall not be deemed of itself to create contract rights.

The compensation of officers, agents and employees appointed by the Board shall be fixed by the Board, but this power may be delegated to any officer, agent or employee as to persons under ~~[its]~~ **his or her** direction or control, except that the compensation, if any, of the Chairman of the Board and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the whole Board of Directors ~~[or the whole Executive Committee]~~. No officer shall be precluded from receiving ~~[compensation or a loan]~~ **a salary** because he or she is also a director. **The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.**

Section 3.2. Powers and Duties of the ~~[Section 4.2.]~~ Chairman of the Board.

The Chairman of the Board shall preside at all meetings of the shareholders and of the Board at which he or she is present. **In the absence or inability to act of the Chairman of the Board, the President shall preside at all meetings of the shareholders and of the Board at which he is present.**

The Chairman of the Board ~~[shall have responsibility for carrying out the policies of the Board]~~, **or in his or her absence the President, may vote the shares or other securities of any other domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any shareholders' or other consents in respect thereof and may in his or her discretion delegate such powers by executing proxies, or otherwise, on behalf of the Corporation. The Board, by resolution from time to time, may confer like powers upon any other person or persons.**

The Chairman of the Board shall have such other powers and perform such other duties as the Board may designate. The performance of any such duty by the Chairman of the Board shall be conclusive evidence of his or her power to act.

Section **3.3. Powers and Duties of the** ~~[4.3. Vice-Chairman of the Board. Each Vice-Chairman of the Board shall have the authority to exercise all powers delegated to him or her by the Board of Directors or the Chairman of the Board. If the Chairman of the Board should for any reason be unable to act or if the office of the Chairman of the Board shall become vacant, the duties of the Chairman shall be carried on by the one or more Vice-Chairman, acting alone or together.~~

~~Section 4.4.]~~ **President.** The President ~~[shall be the Chief Executive Officer of the Corporation. He or she]~~ shall have responsibility for carrying out the policies of the Board and, subject to the direction of the Board, shall have general supervision over the business and affairs of the Corporation. The President may employ and discharge employees and agents of the Corporation, except such as shall be appointed by the Board, and he or she may delegate these powers. In the absence or inability to act of the Chairman of the Board, ~~[or any Vice-Chairman,]~~ the President shall preside at all meetings of the shareholders and of the Board at which he or she is present. ~~[The President may vote the shares or other securities of any other domestic or foreign corporation of any type or kind which may at any time be owned by the Corporation, may execute any shareholders or other consents in respect thereof and may in his or her discretion delegate such powers by executing proxies, or otherwise, on behalf of the Corporation. The Board, by resolution from time to time, may confer like powers upon any other person or persons. The President]~~ **He or she** shall have such other powers

and perform such other duties as the Board or the Chairman of the Board may designate. The performance of any such duty by the President shall be conclusive evidence of his or her power to act.

Section ~~[4.5.]~~ **3.4. Powers and Duties of Managing Directors.** ~~[A]~~ **Each** Managing Director shall ~~[be the Chief Operating Officer of the Corporation. If there be more than one Managing Director, then the Board may designate from among them a Chief Operating Officer. Managing Directors shall have general supervision over the business of the Corporation, subject to the direction of the Board.]~~ **upon request, advise and assist** the Chairman of the Board and the President~~[- They]~~ **in managing the Corporation and** shall have such other powers and perform such other duties as **usually pertain to his or her office and as may be assigned to him or her at any time or from time to time by** the Board of Directors, the Chairman of the Board or the President ~~[may prescribe. The performance of any such duty by the Managing Director shall be conclusive evidence of his or her power to act. In the absence or inability to act of the Chairman of the Board, any Vice-Chairman and the President, unless the Board shall otherwise provided, that person previously designated by the Chairman of the Board, or if there has been no such previous designation, the Managing Director who has been so selected by the Board, and who shall be present and able to act, shall perform all the duties and may exercise any of the powers of the President. The performance of any such duty by a Managing Director shall be conclusive evidence of his or her power to act.]~~

~~[Section 4.6.]~~ **Section 3.5. Powers and Duties of Vice Presidents.** Each Vice President shall have such powers and perform such duties as the Board of Directors, the Chairman of the Board or the President may prescribe.

~~[In the absence or inability to act of the President, all Managing Directors and all Executive Vice Presidents (if there be any), unless the Board shall otherwise provide, that person previously designated by the Chairman of the Board, or if there has been no such previous designation, the Vice President who has been so selected by the Board and who shall be present and able to act shall perform all the duties and may exercise any of the powers of the President. The performance of any such duty by a Vice President shall be conclusive evidence of his or her power to act.~~

~~Section 4.7.]~~ **Section 3.6. Powers and Duties of the Secretary.** The Secretary shall have charge of the minutes of all proceedings of the shareholders and of the Board of Directors, and shall attend to the giving of all notices to shareholders and directors. ~~[He or she]~~ **The Secretary** shall have charge of the seal of the Corporation and shall attest the same by his or her signature whenever required. ~~[He or she]~~ **The Secretary** shall have charge of the record of shareholders of the Corporation, and of such other books and papers as the Board may direct. He or she shall have all such powers and duties as generally are incident to the position of Secretary or as may be assigned to him or her by the Chairman of the Board, the President or the Board.

Section ~~[4.8.]~~ **3.7. Powers and Duties of the Treasurer.** The Treasurer shall have charge of all funds and securities ~~[of]~~ **beneficially owned by** the Corporation, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositaries as the Board of Directors

may authorize. ~~[He or she]~~ **The Treasurer** may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation. He or she shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned to him or her by the Chairman of the Board, the President or **by** the Board.

Section ~~[4.9.]~~ **3.8. Powers and Duties of Assistant Secretaries.** In the absence or inability of the Secretary to act, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. The performance of any such duty shall be conclusive evidence of his or her power to act. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign to him or her.

Section ~~[4.10.]~~ **3.9. Powers and Duties of Assistant Treasurers.** In the absence or inability of the Treasurer to act, an Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. The performance of any such duty shall be conclusive evidence of his or her power to act. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign to him or her.

ARTICLE IV ~~[V]~~

Indemnification

Section ~~[5.1]~~ **4.1. Directors and Officers.** ~~[Any present or past director or officer or his estate made, or]~~ **The Corporation shall, to the fullest extent to which it**

is empowered to do so by the New York Business Corporation Law or any other applicable laws, as may from time to time be in effect, indemnify any person who was or is threatened to be made~~[,]~~ a party to any ~~[action]~~threatened, pending or completed action, suit or proceeding, whether civil ~~[or]~~, criminal, administrative or investigative, by reason of the fact that he or she, or his or her testator or intestate, is or was a director or officer of the Corporation ~~[or serves or has served]~~, is or was a member of a committee established by the Board of Directors of the Corporation, or is or was serving any other corporation, domestic or foreign, ~~[or any]~~ partnership, joint venture, trust, employee benefit plan~~[,]~~ or other business enterprise or entity in any capacity at the request of the Corporation, ~~[shall be indemnified by the Corporation, and the]~~ against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding. The Corporation may advance his or her related expenses and secure appropriate indemnification insurance, to the full extent permitted by law.

Section ~~[5.2.]~~ **4.2.** Contract with the Corporation. The provisions of this Article IV shall be deemed to be a contract between the Corporation and each director or officer who serves in any such capacity at any time while this Article and the relevant provisions of the New York Business Corporation Law or other applicable law, if any, are in effect, and any repeal or modification of any such law or of this Article IV shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or

proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 4.3. Employees. The Corporation shall indemnify an employee or his or her estate who has been made, or is threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact of his or ~~hers~~ **her** (or his or ~~hers~~ **her** testator's or intestate's) employment as a member of the Corporate legal staff or his or her (or his or ~~hers~~ **her** testator's or intestate's) service when requested by the Corporation to serve any other corporation, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan, or other business enterprise or entity in any capacity, when said employee has acted in good faith within the scope of his or her employment. The Corporation may advance his or her related expenses and secure appropriate indemnification insurance, to the full extent permitted by law.

Section 4.4. Other Rights of Indemnification. The indemnification provided or permitted by this Article IV shall not be deemed exclusive of any other rights to which those indemnified may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE V ~~[ARTICLE VI]~~

Shares of the Corporation

Section ~~[6.1]~~ **5.1.** **Certificates for Shares.** The shares of the Corporation shall be represented by certificates in such form as shall be determined by the Board of

Directors. Such certificates shall be signed by the Chairman of the Board, ~~[a Vice-Chairman,]~~ the President, a Managing Director or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation, may be sealed with the seal of the Corporation or a facsimile thereof, and shall contain such information as is required by law to be stated thereon. All certificates for shares shall be consecutively numbered or otherwise identified. All certificates exchanged or surrendered to the Corporation for transfer shall be canceled.

Section ~~[6.2]~~ **5.2.** Record of Shareholders. The Corporation shall keep at the office of the Corporation in the State of New York a record containing the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. The Corporation shall be entitled to treat the persons in whose names shares stand on the record of shareholders as the owners thereof for all purposes.

Section ~~[6.3]~~ **5.3.** Transfers of Shares. Transfers of shares on the record of shareholders of the Corporation shall be made only upon surrender to the Corporation of the certificate or certificates for such shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer.

Section ~~[6.4.]~~ **5.4.** Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate for shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board may require the owner of the lost, stolen or destroyed certificate, or ~~[its]~~ **his or her** legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction or any such

certificate or the issuance of any such new certificate. The Board may require such owner to satisfy other reasonable requirements.

ARTICLE ~~[VII]~~ **VI**

Seal

The seal of the Corporation shall be circular in form and contain the name of the Corporation, the words "Corporate Seal" and "New York" and ~~[in its center]~~ the year the Corporation was formed in the center. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

ARTICLE ~~[VIII]~~ **VII**

Checks, Notes, Drafts, etc.

Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors shall from time to time determine.

ARTICLE ~~[IX]~~ **VIII**

Amendments

These By-Laws may be amended or repealed, and new By-Laws may be adopted, (1) by ~~[the affirmative]~~ vote of ~~[two-thirds (2/3)]~~ the holders of a majority of the ~~[outstanding]~~ shares at the time entitled to vote in the election of any directors, at any annual meeting of the shareholders, or at any special meeting of the shareholders called for that purpose, or (2) by the Board of Directors except as herein provided. The

Board may not adopt, amend or repeal any By-Laws relating to (1) the right of shareholders to call a special meeting of the shareholders and determine the matters to be acted upon at such a meeting or (2) loans by the Corporation to directors, and may not amend or repeal this sentence of the By-Laws. Any By-Law adopted by the Board may be amended or repealed by the shareholders entitled to vote thereon as herein provided. A By-Law adopted by the shareholders may provide that such By-Law shall not be subject to amendment or repeal by the Board.