

File No. SR-EMCC-2004-03

Securities and Exchange Commission  
Washington, D.C. 20549

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Form 19b-4

Proposed Rule Change

By

EMERGING MARKETS CLEARING CORPORATION

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

1. Text of Proposed Rule Change.

(a) The text of the proposed rule change consists of revisions to Emerging Markets Clearing Corporation's ("EMCC" or the "Corporation") Rule 2 – Members and is attached hereto as Exhibit A.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization.

(a) The proposed rule change was approved by the Membership and Risk Management Committee pursuant to authority delegated by the Board of Directors.

(b) Contact regarding questions and comments:

Karen L. Saperstein (212) 855-3203.

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

(a) EMCC'S Rule 2, Section 3(b) requires an applicant to provide audited financial statements for the two years ending immediately preceding the year in which the application is made. Notwithstanding such requirement, EMCC's rules permit entities to apply for membership if they have been in business for less than two years. To accommodate such applicants and to preclude the necessity to obtain a waiver of the rules where less than 2 years of financials are available EMCC is modifying the requirement to provide that the applicant submits 2 years of financials or, if in business for a lesser period of time, the

applicant submits financials correlating to the time it has conducted or intends to conduct its business.

Rule 2 Sections (d) and (e) contain provisions for applicants that are broker/dealers, banks or trusts to provide FOCUS, or FOGS reports for specific periods of time while section (f) provides that non-U.S. registered broker/dealers subject to regulation by the Securities and Futures Authority Limited (“SFA”), provide EMCC with their SFA monthly reports and returns for the prior 24 months and if necessary and feasible, financial statements prepared in accordance with Generally Accepted Accounting Principles. These sections will also be amended to provide that the applicant is requested to submit as many reports as are available for the time the applicant has been in business, if less than two years, if any.

For banks and trust companies, there may not be separate audited financials for the applicant. The applicant’s financials, in these cases, are consolidated with the financials of a parent holding company or an affiliate of the applicant. To accommodate such applicants and to preclude the necessity to obtain a waiver of the rules where the applicant’s financials are consolidated with a parent holding company or affiliate, EMCC is modifying the requirement to require the submission of the parent holding company or affiliate’s financials.

In addition to the above, EMCC is making a technical correction to Rule 2 Section 3(c), to delete an erroneous reference to subsection (g).

(b) By making these changes, EMCC will continue to permit applications from qualified entities without having to seek a waiver of the Rules regarding their financial documents. Accordingly, the rule change will permit the Corporation to remove impediments to and further perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and therefore is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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.

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

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

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

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

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

9. EXHIBITS

Exhibit A Text of the proposed change to EMCC's Rules.

Exhibit B Notice of the proposed rule change for publication in the Federal Register.

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: /s/ Karen L. Saperstein  
Karen L. Saperstein  
General Counsel

**EXHIBIT A**

**Underlined, boldface** text indicates additions.

~~[Strikethrough and Bracketed]~~ text indicates deletions.

**Shaded text** indicates changes pending approval in SR-EMCC-2004-06

MEMBERS

Rule 2. SEC. 1. The Corporation shall provide services to those organizations, entities or persons who qualify as Members under these Rules and who apply to the Corporation to act for them, whose applications are approved by the Corporation and who have contributed to the Clearing Fund as provided in Rule 4. A partnership, corporation, limited liability company or other organization, entity or individual shall be qualified to become a Member if it satisfies at least one of the following qualifications:

(i) it is a broker or dealer registered under the Exchange Act ("Registered Broker-Dealer");

(ii) it is a broker or dealer registered or regulated under the laws of the jurisdiction, other than the U.S., in which it is organized or established ("Non-U.S. Registered Broker-Dealer");

(iii) it is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities in the U.S. having supervision over banks ("U.S. Bank");

(iv) it is a bank or trust company, which is supervised and examined by the banking regulator in the jurisdiction, other than the U.S., in which it is organized or established ("Non-U.S. Bank"); or

(v) if it does not qualify under paragraphs (i) through (iv) above but is the successor or assigns of any Member and has demonstrated to the Board of Directors that its business and capabilities are such that it could use the Corporation's services without undue risk; provided, however, that if admitted under this section it may become a Member only for the limited purpose of winding up the business of the predecessor Member in an orderly manner.

A partnership, corporation, limited liability company or other organization, entity or individual whose application to become a Member has been approved by the Corporation shall pay to the Corporation its original contribution to the Clearing Fund determined in

accordance with the provisions of Rule 4 and shall sign and deliver to the Corporation an instrument in writing whereby such applicant shall agree as provided in Section 2 of this Rule.

Only Members shall be entitled to settle contracts through the Corporation. A Member who settles or carries out through the Corporation any contract or transaction for a partnership, corporation, limited liability company or other organization, entity or individual who is not a Member ("Non-Member"), shall, so far as the rights of the Corporation and all other Members are concerned, be liable as a principal. A Non-Member who compares, settles or carries out transactions through a Member shall not possess or be deemed to possess any of the rights or benefits of a Member.

SEC. 2. (a) Each applicant to become a Member shall sign and deliver to the Corporation an instrument in writing whereby the applicant shall agree:

**[(a)](i)** to abide by the Rules of the Corporation and to be bound by all the provisions thereof and that the Corporation shall have all the rights and remedies contemplated by the Rules of the Corporation;

**[(b)](ii)** that the Rules of the Corporation shall be a part of the terms and conditions of every contract or transaction which it may make or have with the Corporation;

**[(c)](iii)** not to clear or settle through the Corporation any contract or transaction unless the Rules of the Corporation are a part of the terms and conditions of such contract or transaction;

**[(d)](iv)** to pay to the Corporation the compensation provided for by the Rules of the Corporation for clearing and other services rendered and such fines as may be imposed in accordance with such Rules of the Corporation for the failure to comply therewith;

**[(e)](v)** to pay to the Corporation any amounts which pursuant to the provisions of the Rules of the Corporation shall become payable by the Member to the Corporation;

**[(f)](vi)** that its books and records shall at all times be open to inspection by the duly authorized representatives of the Corporation and that the Corporation shall be furnished with all such information in respect of its business and transactions as the Corporation may require, provided that if it shall cease to be a Member, the Corporation shall have no right to inspect its books and records or to require

information relating to transactions wholly subsequent to the time when it ceased to be a Member;

**[(g)](vii)** that the determination of the Corporation by the Board of Directors of all questions affecting the charges to which its contribution to the Clearing Fund are or may be subject shall be final and conclusive;

**[(h)](viii)** to be bound by any amendment to the Rules of the Corporation with respect to any transaction occurring subsequent to the time such amendment takes effect as fully as though such amendment were now a part of the Rules of the Corporation, provided, however, that no such amendment shall affect its right to cease to be a Member or alter the provisions of Rule 4 of the Corporation unless before such amendment becomes effective it is given an opportunity to give written notice to the Corporation of its election that the Corporation shall cease to act for it; and that its agreement with the Corporation shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns;

**[(i)](ix)** to submit to the jurisdiction of the Courts of the State of New York and the U.S. District Court for the Southern District of New York;

**[(j)](x)** to appoint a Person acceptable to the Corporation as its agent to receive on its behalf service of process if it is accepted as a Member under Section 1(ii) or (iv) of this Rule;

**[(k)](xi)** its Membership in the Corporation and its use of the services shall be governed by the laws of the State of New York;

**[(l)](xii)** that any judgment obtained in an action or proceeding may be enforced in the courts of any jurisdiction where the applicant or any of its property may be found, and the applicant irrevocably submits to the jurisdiction of each such court in respect of any such action or proceeding;

**[(m)](xiii)** that, to the fullest extent permitted by law, any judgment shall be obtained in the currency in which a default of payment has occurred and that payment of such judgment shall be in such currency. If under the law of the jurisdiction in which judgment is obtained, judgment is not obtainable in the currency in which a default of payment occurred, or if the judgment amount is required to be converted to another currency (which shall be only U.S. dollars) on a date other than the date of payment, then notwithstanding any such judgment or requirement and as a separate obligation, the applicant shall indemnify EMCC against any exchange loss, and EMCC shall remit to the applicant any exchange gain, between such other date and the date of payment.

Any exchange loss or exchange gain shall be measured by using the prevailing currency exchange rates on the respective dates, net of premiums and costs of exchange payable in connection with the conversion. Further, that any judgment for damages shall be in the currency in which the damages is suffered and that payment of such judgment shall be governed by the foregoing provisions.

**[(n)](xiv)** to waive, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgment) and execution to which it might otherwise be entitled in any action or proceeding in any county or jurisdiction, relating in any way to the agreement or to any transaction; and

**[(e)](xv)** to provide, upon the request of and at no charge to the Corporation, research that it provides to any of its customers relating to EMCC Eligible Instruments and events or conditions which might affect the price of EMCC Eligible Instruments.

~~[(b) Each applicant to become a Member shall deliver to the Corporation an opinion of counsel substantially to the effect of Annex 1 to Addendum D to these Rules, with respect to Non-U.S. Registered Broker-Dealer applicants and Non-U.S. Bank applicants, or Annex 2 to Addendum D to these Rules, with respect to U.S. applicants, and otherwise acceptable to the Corporation.]~~

**(b) Each applicant to become a Member shall deliver to the Corporation an opinion of counsel that addresses the points covered in Annex 1 to Addendum D for US registered broker/dealers and US regulated banks and trust companies and the points covered in Annex 2 to Addendum D for non-US registered broker/dealers and non-US regulated banks and trust companies.**

(c) Each Non-U.S. Registered Broker-Dealer applicant and each Non-U.S. Bank applicant to become a Member shall deliver to the Corporation a Letter of Representations substantially to the effect of Addendum E to these Rules.

SEC. 3. (a) Each applicant to become a Member shall complete and deliver to the Corporation (i) an Applicant Questionnaire in such form as may be prescribed by the Corporation from time to time and (ii) the financial reports specified in sub-sections (b) through (f) of Section 3 of this Rule. All documentation and financial information shall be provided in the English language and may be required to be provided in U.S. dollar equivalents (indicating the applicable conversion rate and the applicable date used).

(b) For all applicants **which have two or more years of financial statements certified by an independent certified public accountant,** a copy of the applicant's

financial statements or, if the applicant's financial statements are consolidated in a parent holding company or affiliate financial statement, a copy of the applicant's parent holding company or affiliate financial statements in all cases for the two fiscal years ending immediately preceding the year in which application is made, certified without qualification by independent certified public accountants. For all applicants which have less than two years of financial statements certified by an independent certified public accountant or, if applicable, whose parent holding company or affiliate, whichever appropriate, has less than two years of financial statements certified by an independent certified public accountant, a copy of the applicant's, parent holding company or affiliate, whichever applicable, financial statement for the fiscal year ending immediately preceding the year in which application is made certified without qualification by independent certified public accountants. For all applicants that have not issued financial statements certified by an independent certified public accountant or, if applicable, whose parent holding company or affiliate has not issued financial statements certified by an independent certified public accountant, pro-forma financial statements for such period of time as requested by the Corporation. To the extent that such audited financial statements are not prepared in accordance with Generally Accepted Accounting Principles, the applicant shall provide the Corporation with a discussion of the material variations of the accounting principles used from Generally Accepted Accounting Principles, unless the Corporation determines that such discussion is unnecessary.<sup>1</sup>

(c) For all applicants, if required by the Corporation, a certificate of the chief executive or chief financial officer of the applicant that no material adverse changes have occurred in the financial condition of the applicant since the date of the most recent financial statements, Form X-17A-5 FOCUS Reports ("FOCUS Reports"), Form G-405 Reports on Finances and Operations ("FOGS Reports"), Consolidated Reports of Condition and Income ("Call Reports"), or comparable reports to regulatory authorities, as applicable, filed with the Corporation pursuant to subsections (b), (d), (e)~~(f)~~ and (f) ~~and (g)~~ of this Section 3, and that the applicant has not guaranteed the obligations of any other person, and is not subject to any other contingent liabilities, except as set forth in such financial statements, FOCUS Reports, FOGS Reports, Call Reports, comparable reports to regulatory authorities or the certificate.

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<sup>1</sup> The Corporation has determined that with respect to an applicant's audited financial statements prepared in accordance with either U.K. Generally Accepted Accounting Principles or International Accounting Standards, it will accept such financial statements without requiring a discussion of the material variations of such accounting principles from Generally Accepted Accounting Principles unless, in its sole discretion, the Corporation determines that circumstances warrant the applicant's providing such discussion. In that case, the applicant shall also provide a discussion of the material variations between the applicable financial standards on which its financials are prepared and Generally Accepted Accounting Principles.

(d) If the applicant is a Registered Broker Dealer copies of the applicant's FOCUS Reports, or its FOGS Reports, as the case may be, for the last 24 months (if a monthly filer) or the last 8 quarters (if a quarterly filer) submitted to its Designated Examining Authority and any supplemental reports required to be filed with the SEC pursuant to SEC Rule 17a-11 or 17 C.F.R. Section 405.3, or any successor rules or regulations thereto[.], **unless the applicant has been operational for less than two years, in which case all available FOCUS or FOGS Reports as the case may be, if any, and supplemental reports, if any, must be provided.**

(e) If the applicant is a bank or a trust company (i) all quarterly financial statements covered by the last audited financial statement plus all subsequent quarterly financial statements and (ii) (A) if the applicant is a U.S. Bank, copies of the applicant's three most recent Call Reports (if any) submitted to the applicant's Appropriate Regulatory Agency and, to the extent not contained within such Call Reports (or to the extent that Call Reports are not required to be filed), information containing each of the applicant's capital levels and ratios, as such levels and ratios are required to be provided to the applicant's Appropriate Regulatory Agency for the same periods provided for in (i) above or (B) if the applicant is a Non-U.S. Bank, all material regulatory filings made with its primary regulator in its home country over the prior two years[.], **unless the applicant has been operational for less than two years, in which case each such available document, if any, must be provided for the applicable length of time the applicant has been operational.**

(f) If the applicant is a Non-U.S. Registered Broker-Dealer subject to regulation by the SFA, it shall provide the Corporation with its SFA monthly reports and returns for the prior 24 months **unless the applicant has been operational for less than two years, in which case each report or return, if any, must be provided for the applicable length of time the applicant has been operational** and if necessary and feasible, financial statements prepared in accordance with Generally Accepted Accounting Principles.

**EXHIBIT B**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-EMCC-2004-03)

Proposed rule change by EMERGING MARKETS CLEARING CORPORATION ("EMCC") consists of revisions to Emerging Markets Clearing Corporation's Rule 2 – Members with regard to financial statements to be provided to EMCC for applicants that have been in business for less than two years and with regard to the financial statements provided to EMCC by applicants that are bank or trust companies .

Comments requested within days after the date of this publication.

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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 text of the proposed rule change is set forth on Exhibit A and consists of changes to Emerging Markets Clearing Corporation's Rule 2 – Members.

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

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(a) EMCC'S Rule 2, Section 3(b) requires an applicant to provide audited financial statements for the two years ending immediately preceding the year in which the application is made. Notwithstanding such requirement, EMCC's rules permit entities to apply for membership if they have been in business for less than two years. To accommodate such applicants and to preclude the necessity to obtain a waiver of the rules where less than 2 years of financials are available EMCC is modifying the requirement to provide that the applicant submits 2 years of financials or, if in business for a lesser period of time, the applicant submits financials correlating to the time it has conducted or intends to conduct its business.

Rule 2 Sections (d) and (e) contain provisions for applicants that are broker/dealers,

banks or trusts to provide FOCUS, or FOGS reports for specific periods of time while section (f) provides that non-U.S. registered broker/dealers subject to regulation by the Securities and Futures Authority Limited (“SFA”), provide EMCC with their SFA monthly reports and returns for the prior 24 months and if necessary and feasible, financial statements prepared in accordance with Generally Accepted Accounting Principles. These sections will also be amended to provide that the applicant is requested to submit as many reports as are available for the time the applicant has been in business, if less than two years, if any.

For banks and trust companies, there may not be separate audited financials for the applicant. The applicant’s financials, in these cases, are consolidated with the financials of a parent holding company or an affiliate of the applicant. To accommodate such applicants and to preclude the necessity to obtain a waiver of the rules where the applicant’s financials are consolidated with a parent holding company or affiliate, EMCC is modifying the requirement to require the submission of the parent holding company or affiliate’s financials.

In addition to the above, EMCC is making a technical correction to Rule 2 Section 3(c), to delete an erroneous reference to subsection (g).

(b) By making these changes, EMCC will continue to permit applications from qualified entities without having to seek a waiver of the Rules regarding their financial documents. Accordingly, the rule change will permit the Corporation to remove impediments

to and further perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and therefore is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(2) of the Act and subparagraph (e) of the Securities Exchange Act rule 19b-4. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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.

Jonathan G. Katz

Secretary

Dated: