

File No. SR-EMCC-2004-09

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 Rule 2, Members, of Emerging Markets Clearing Corporation's ("EMCC" or the "Corporation") Rules 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 pursuant to authority delegated by the Board of Directors.

(b) Contact regarding questions and comments:

Karen L. Saperstein (212) 855-3203

Allison M. Finnegan (212) 855-3283

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

(a) The purpose of the proposed rule change is to amend the rules of EMCC to (i) eliminate the need for a rule waiver if a member becomes subject to an order of statutory disqualification or similar order, and (ii) eliminate the need for a rule waiver if the Corporation determines to admit an applicant that is subject to an order of statutory disqualification or similar order, provided that doing so will not create any undue risk to the Corporation.

The rules of EMCC currently provide that a membership applicant that is subject to an order of statutory disqualification under Section 3(a)(39) of the Securities and Exchange Act of 1934 or similar order is<sup>1</sup> not be eligible for membership unless a waiver of that requirement is granted by the Committee. EMCC's admission requirements also serve as continuance standards for current members.<sup>2</sup> Therefore, if a member becomes subject to a statutory disqualification, under the EMCC rules as presently constructed, a waiver would also have to be sought.

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<sup>1</sup> EMCC's rules provide that an applicant may not be subject to an order of statutory disqualification or "an order of similar effect issued by a Federal or State banking authority in the U.S. or any non-U.S. regulator."

<sup>2</sup> EMCC members, pursuant to Rule 2, Section 7 are required to notify the Corporation if they are no longer in compliance with any of the relevant qualifications and standards for admission to membership. EMCC recently filed with the Commission SR-EMCC-2004-01, which will, upon Commission approval, give EMCC the ability to fine members for failure to so notify the Corporation.

In the past, instances of statutory disqualification were a rare occurrence and called into question the entity's ability to meet membership requirements or to remain a member in good standing of EMCC. More recently, firms are increasingly becoming subject to statutory disqualification, but the reasons for the firm's statutory disqualification may have little or no bearing on its ability to become or remain a member.<sup>3</sup> EMCC would like to retain the ability to deny membership to, or terminate as a member, a firm whose ability to meet applicable membership requirements is called into question; however, to the extent an order of statutory disqualification does not, EMCC does not want to be required to continue to seek a waiver from the Committee.

The proposed rule change would eliminate the need for a waiver in cases where an entity is subject to an order of statutory disqualification or similar order, but would keep such orders as a criterion to be considered for membership or continued membership. EMCC management would continue to present all instances of statutory disqualification to the Committee, and the Committee would make all final determinations with respect to these entities. In this manner, EMCC management and the Committee would be able to thoroughly evaluate the risks presented by an applicant or member that becomes subject to an order of statutory disqualification, but allow the Committee to permit EMCC to admit or retain members that pose no risk to the Corporation or its members without the need for a waiver of EMCC's rules.<sup>4</sup>

(b) The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder, because it would enable EMCC, through its Membership and Risk Management Committee, to make prudent decisions regarding applicants and members that are in the best interests of all EMCC members without the need for rules waivers, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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

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

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<sup>3</sup> Of note is that in those situations brought by management before the Committee recently, the SEC has permitted the entity to continue operating as a registered broker-dealer and the relevant designated examining authority has retained the entity as a member. In addition, Rule 19h-1 promulgated pursuant to the Securities Exchange Act of 1934 does not require that self-regulatory organizations automatically terminate the membership of entities subject to statutory disqualification.

<sup>4</sup> To the extent the Committee determines to admit or retain a member despite a statutory disqualification, this would not restrict their ability to impose limitations, as applicable, on such member.

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

Written comments relating to the proposed rule change have not yet been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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) EMCC requests that the Commission accelerate effectiveness of the proposed rules changes pursuant to Section 19(b)(2). The Commission's granting of accelerated effectiveness would enable EMCC, through its Membership and Risk Management Committee, to make decisions regarding applicants and members that are in the best interests of all EMCC members without the need for rules waivers.

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

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



**Exhibit A**

**Underlined, boldface** text indicates additions.

**[Bracketed, bold, strikeout]** text indicates deletions.

**Shaded text** indicates changes pending approval in SR-EMCC-2004-05 and SR-EMCC-2004-08

EMERGING MARKETS CLEARING CORPORATION RULES

Rule 2. MEMBERS

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SEC. 6. Admission Criteria for Members

The Board or the Membership and Risk Committee of the Board may approve an application to become a Member by a Person that is eligible to apply to become a Member pursuant to this Rule upon a determination that such applicant meets the following requirements:

(a) Operational Capability - The applicant must have adequate personnel, physical facilities, books and records, accounting systems, and internal procedures to enable it to satisfactorily handle transactions and communicate with the Corporation, fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy, and conform to any condition and requirement that the Corporation reasonably deems necessary for its protection or that of its Members.

(b) Business History - The applicant must have an established business history of a minimum of 3 years or personnel with sufficient operational background and experience to ensure, in the judgment of the Board, the ability of the firm to conduct its business.

(c) Financial - The applicant agrees to make, and has sufficient financial ability to make, all anticipated payments required to be made to the Corporation that may be set forth in these Rules.

(d) Required Capital - The applicant is in compliance with the capital requirements imposed by its Designated Examining Authority or Appropriate Regulatory Agency, any other Self-Regulatory Organizations and any other regulatory authority or self regulatory authority to which it is subject by statute, regulation or agreement.

~~[(e) No Adverse Order – The applicant shall not be subject to an order of Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act), or an order of similar effect issued by a Federal or State banking authority in the U.S. or any non-U.S. regulator.]~~

~~{(f)}—Disqualification Criteria—~~

**In addition to the above, [F]the Corporation must have received no substantial information that would reasonably and adversely reflect on the applicant, or any Associated Person, to such an extent that the applicant should be denied membership in the Corporation.[-; provided, however, that no application shall be denied pursuant to this subsection (f) unless the Board shall have reasonable grounds to believe that the applicant or any Associated Person]. The following criteria may be used to make this determination:**

**(i) the applicant is subject to an order of Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act), or an order of similar effect issued by a Federal or State banking authority in the U.S. or any non-U.S. regulator.**

~~{(i)}~~ **(ii) the applicant** is subject to special or closer-than-normal surveillance by its Designated Examining Authority or Appropriate Regulatory Agency, or by another Self-Regulatory Organization or any other regulatory authority or self regulatory authority of which the applicant is a member (including, if the applicant is a broker or dealer regulated by the SFA, being subject to a Secondary Requirement under Rule 10-74 of the SFA rules);

~~{(ii)}~~ **(iii) the applicant** is subject to an action or condition, including but not limited to incurring a loss, the existence of which would require the applicant, if already a Member, to be placed on surveillance status by the Corporation pursuant to Rule 4;

~~{(iii)}~~ **(iv) the applicant or an Associated Person** has been responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation, in connection with its application to become a Member or thereafter, or (B) fraudulent acts or willful violation of the Securities Act, the Exchange Act, the Government Securities Act, or any rule or regulation promulgated thereunder, or any similar law, rule or regulation to which the Member is subject;

~~{(iv)}~~ **(v) the applicant or an Associated Person** has been convicted within the ten years preceding the filing of the application or at any time thereafter of (A) any criminal offense involving the purchase, sale or delivery of any security, or the taking of a false oath, or the making of a fraudulent statement, or the making of a false report, or bribery, or perjury, or burglary, or conspiracy to commit any offense referred to in this subparagraph (iv), (B) the larceny, theft, robbery embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property, (C) any violation of Sections 153, 1341 or 1342 or of Chapters 25 or 47 of Title 18, United States Code, or (D) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, bank, trust company, or other financial institution;

~~{(v)}~~ **(vi) the applicant or an Associated Person** has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other

governmental authority of competent jurisdiction from acting as, or as a person associated with or as an affiliated person or employee of, a broker, dealer, investment company, advisor or underwriter, bank, trust company, fiduciary, insurance company or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

~~[(vi)]~~ **(vii) the applicant** has been expelled or suspended from or had its participation terminated by a national securities association or exchange registered under the Exchange Act, a Self-Regulatory Organization, a regulatory agency, a self regulatory organization, or a corporation that engages in clearance and settlement activities or a securities depository, or has been barred or suspended from being associated with any member of such an exchange, association, organization, corporation, or securities depository;

~~[(vii)]~~ **(viii) the applicant** has recently incurred significant losses or reductions in capital, including for Registered Broker-Dealers and brokers or dealers regulated by the SFA, (A) any pre-tax loss over (1) the last month in excess of 15% of Excess Net Capital or Excess Financial Resources (as the case may be), (2) the last two months in excess of 25% of Excess Net Capital or Excess Financial Resources, or (3) the last three months in excess of 30% of Excess Net Capital or Excess Financial Resources or (B) any reduction in Excess Net Capital or Excess Financial Resources (as the case may be) in any of the last three months of 25% or more; or

~~[(viii)]~~ **(ix) the applicant** has business practices, internal risk management controls or is subject to any other fact or condition that would create undue risk for the Corporation or its Members;

**provided further that nothing shall prevent the Corporation, in its discretion, from denying membership to an applicant on any other basis. [~~provided further that the Corporation shall not be required to reject any applicant which is subject to any condition specified in subsections (f) (i) through (vi), above unless the applicant itself, rather than an Associated Person, is subject to any condition specified in subsection (v) through (vi) above. The Corporation shall notify the SEC of acceptance of any applicant, to which subsections (f) (i) through (vii) applies.~~]**  
**In addition, the Corporation shall not be required to reject any applicant subject to any of the conditions listed above unless not rejecting such applicant creates undue risk for the Corporation or its Members.**

In addition, if the applicant is a Bank, it must have net worth as of the end of the quarter prior to the effective date of its membership, determined in accordance with generally accepted accounting principles, of at least U.S. \$500 million, provided, however, that it may have net worth of as low as U.S. \$200 million if the Corporation makes a determination that becomes a part of the Corporation 's books and records to the effect that other credit factors of the applicant compensate for the lower net worth. In making such a determination, the Corporation will consider the following financial ratios to the

extent available (or roughly equivalent ratios to the extent available) over the same periods for which the applicant is required to provide financial statements: (i) return on average assets, (ii) capital to total assets, (iii) non-performing assets (plus owned real estate) to total assets, and (iv) liquid assets to total assets. If (i) return on average assets is negative, (ii) the ratio of non-performing assets (plus owned real estate) to total assets is greater than 2%, or (iii) the ratio of liquid assets to total assets is less than 10%, then the Corporation will obtain an explanation from the applicant and consider such explanation when determining the applicant's suitability for membership. The Corporation will also consider any ratings assigned to the applicant by a Nationally Recognized Statistical Rating Organization as well as any significant adverse off-balance sheet items noted in the financial statements received as part of the admissions process. The Corporation will also consider the applicant's risk management controls with respect to its business in EMCC Eligible Instruments and other instruments and transactions related to issuers of EMCC Eligible Instruments or issuers domiciled in countries which have issued EMCC Eligible Instruments. The records of the Corporation shall also include any other determinations it makes as to the applicant's internal risk management controls, the regulatory regime and practice in the relevant jurisdictions and whether the capital of the applicant is sufficient to support its business lines, in each case as represented to the Corporation by the applicant, it being understood that an exhaustive analysis of any of these factors may not be practicable. The Corporation may ask an applicant for specific representations and back-up documentation relating to the above, including representations and documentation relating to, among other things, the applicant's customer base, asset composition, revenue sources, transaction sizes, experience of managerial personnel and counterparty, customer or instrument concentrations, on both an historical and current basis. This provision shall not be construed to limit the Corporation's rights to obtain information with respect to the applicant or to view the applicant's books and records set forth elsewhere in these Rules.

If the applicant is a Registered Broker-Dealer (a) its aggregate indebtedness/Net Capital must be less than 950% or its Net Capital/Aggregate Debit Items must be in excess of 5.25%, and (b)(i) its Excess Net Capital must equal at least U.S. \$100 million provided, however, that it may have excess net capital as low as U.S. \$50 million if the Corporation makes a determination that becomes a part of the Corporation's books and records to the effect that other credit factors of the applicant compensate for the lower excess net capital. In making such a determination, the Board will consider any ratings assigned to the applicant by a Nationally Recognized Statistical Rating Organization as well as any significant adverse off-balance sheet items noted in the financial statements received as part of the admissions process. The Corporation will also consider the applicant's significant business lines and internal risk management controls and short term funding arrangements, in each case as represented to the Corporation by the applicant, and make a determination that the risk management controls and short term funding arrangements, as so represented, are appropriate for the business lines. Any applicant admitted under such a determination will not be permitted to add business lines without the approval of the Corporation. The Corporation may ask an applicant for specific representations and back-up documentation relating to the above, including representations and documentation relating to, among other things, the applicant's customer base, asset composition, revenue

sources, transaction sizes, experience of managerial personnel and counterparty, customer or instrument concentrations, on both an historical and current basis. It should be understood that an exhaustive examination of any of these matters may not be practicable. This provision shall not be construed to limit the Corporation's rights to obtain information with respect to the applicant or to view the applicant's books and records set forth elsewhere in these Rules.

If the applicant is a broker or dealer regulated by the SFA (a) its Financial Resources must be at least 120% of its Financial Resources requirement, and (b)(i) its Excess Financial Resources must equal at least U.S. \$100 million **(or equivalent currency using the currency conversion rate in effect as of the date of the financials)** (ii) provided, however that its Excess Financial Resources may be as low as \$50 million **(or equivalent currency using the currency conversion rate in effect as of the date of the financials)** if the Corporation makes a determination that will become part of the Corporation's books and records to the effect that other credit factors of the applicant compensate for the lower Excess Financial Resources. In making such a determination, the Committee will consider any ratings assigned to the applicant by a Nationally Recognized Statistical Rating Organization as well as any significant adverse off-balance sheet items noted in the financial statements received as part of the admissions process. The Corporation will also consider the applicant's significant business lines and internal risk management controls and short term funding arrangements, in each case as represented to the Corporation by the applicant, and make a determination that the risk management controls and short term funding arrangements, as so represented, are appropriate for the business lines. Any applicant admitted under such a determination will not be permitted to add business lines without the approval of the Corporation. The Corporation may ask an applicant for specific representations and back-up documentation relating to the above, including representations and back-up documentation relating to, among other things, the applicant's customer base, asset composition, revenue sources, transaction sizes, experience of managerial personnel and counterparty, customer or instrument concentrations, on both an historical and current basis. It should be understood that an exhaustive examination of any of these matters may not be practicable. This provision shall not be construed to limit the Corporation's rights to obtain information with respect to the applicant or to view the applicant's books and records set forth elsewhere in these Rules.

If the applicant is applying to become an Inter-Dealer Broker Member, it must have excess net capital of at least \$10 million if it is a Registered Broker Dealer or \$10 million **(or equivalent currency using the currency conversion rate in effect as of the date of the financials)** in Excess Financial Resources if it is a broker or dealer regulated by the SFA and must agree to submit trading data to the Corporation in such instruments as requested by the Corporation from time to time. If such applicant has between \$10,000,000 **(or if applicable, equivalent currency using the currency conversion rate in effect as of the date of the financials)** and \$20,000,000 **(or, if applicable, equivalent currency using the currency conversion rate in effect as of the date of the financials)** excess net capital or Excess Financial Resources, as applicable, it will be margined by the Corporation under Rule 4 at an Event Factor of 1.5, or such higher factor

as determined by the Corporation as provided in rule 4, Section 5(A)III. If such applicant has more than \$20,000,000 **(or, if applicable, equivalent currency using the currency conversion rate in effect as of the date of the financials)** excess net capital or Excess Financial Resources, as applicable, it will be margined by the Corporation at an Event Factor as provided in Rule 4, Section 5(A)III.

The foregoing financial responsibility standards are only minimum requirements, and the Board, based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through the Corporation, and the overall financial condition of the applicant, may impose greater standards. If an applicant does not itself satisfy the above minimum capital requirements, the Board may include for such purposes the capital of an Affiliate of the applicant, if the Affiliate has delivered to the Corporation a guaranty, satisfactory in form and substance to the Board, of the obligations of the applicant to the Corporation.

#### SEC. 7. General Continuance Standards

A Member shall promptly inform the Corporation, both orally and in writing, if (i) it no longer is in compliance with any of the relevant qualifications and standards for admission to membership set forth in Section 6 of this Rule, (ii) any bankruptcy, insolvency, moratorium or similar proceeding is instituted against the Member, (iii) the Member becomes the subject of any investigation or inquiry by any governmental, regulatory or self-regulatory body, (iv) any investigation covered in (iii) above is concluded or settled (stating the results of such conclusion or settlement), (v) any development which would materially change the answers provided in the EMCC Questionnaire; or (vi) any material adverse change, including the occurrence of a circumstance referred to in Rules 15 or 17, which could bring into question the Member's ability to perform as a clearing member, has occurred. If, with respect to any type of Member: (a) it fails to maintain the relevant standards and qualifications for admission to membership, including but not limited to minimum capital standards; (b) it violates any Rule of the Corporation or other agreement with the Corporation; (c) it fails to satisfy in a timely manner any obligation to the Corporation; (d) there is a material change in control or financial condition of such Member; or (e) the Board otherwise deems it necessary or advisable, in order to protect the Corporation, its other Members, or its creditors or investors, to safeguard securities and funds in the custody or control of the Corporation, or to promote the prompt and accurate processing, clearance or settlement of securities transactions, the Board may review the financial responsibility and operational capability of the Member to the extent provided in this Rule for such review of an applicant for membership, and otherwise require from the Member additional reporting of its financial or operational condition at such intervals and in such detail as the Board shall determine, and shall make a determination as to whether such Member should be placed on surveillance status by the Corporation consistent with the provisions of Section 7 of Rule 4.

In addition, if the Corporation has reason to believe that a Member may fail to comply with any of these Rules, it may require the Member to provide it, within such time frame, in such detail, and pursuant to such manner as the Corporation shall determine, with assurances in writing of a credible nature that the Member shall not, in fact, violate any of these Rules.

In the event that a Member fails to maintain the relevant requirements of any of these Rules, the Corporation shall ~~[, pursuant to Rule 15,]~~ **(i) cease to act for the Member in respect of any service provided by the Corporation either with regard to a particular transaction or transactions, or with regard to transactions generally, pursuant to the provisions of Rule 15; (ii) condition the Member's participation in one or more services available to the Member, including but not limited to increasing the Member's required Clearing Fund deposit; [unless the Member requests that such action not be taken and]** ~~(iii) [the Corporation determines that, depending upon the specific circumstances and the record of the Member, it is appropriate instead to]~~ establish for such Member a time period (the "Noncompliance Time Period"), which shall be determined either by the Board or by the Membership and Risk Committee of the Board and which shall be no longer than 30 calendar days unless otherwise determined by the Board or by the Membership and Risk Committee of the Board, during which the Member must resume compliance with such requirements; **and/or, (i)iv** if the failure is caused by the Member no longer fulfilling the capital requirements set forth in Section 6, **require** the Member **to** provide **[s]** a guaranty, satisfactory in form and substance to the Board, of an Affiliate of the Member. **With regard to clause (iii) above, [I]** in the event that the Member is unable to satisfy such requirements within the Noncompliance Time Period, the Corporation shall, pursuant to these Rules, cease to act for the Member in respect of any service provided by the Corporation either with regard to a particular transaction or transactions, or with regard to transactions generally.

Notwithstanding anything to the contrary in this Section, if the Corporation, in its sole discretion, determines that a Member's financial condition has significantly deteriorated during a Noncompliance Time Period, the Corporation immediately may, pursuant to these Rules, either cease to act for the Member in respect of any service provided by the Corporation either with regard to a particular transaction or transactions, or with regard to transactions generally.

## **SEC. 8. Application of Membership Standards**

**Notwithstanding the provisions of this Rule, the Membership and Risk Management Committee may determine, after considering the facts and circumstances pertaining to an applicant, not to apply one or more of the qualifications or standards set forth in this Rule. If the Corporation determines that such qualification or standard shall not apply, the Membership and Risk Management Committee shall determine what, if any, limitation or restriction shall be placed on such applicant. Limitations and restrictions will bear a reasonable relationship to the qualification or standard not applied to such applicant and may include, but are not limited to, an increased Clearing Fund requirement, a**

**limitation on the applicant's activities, or a limitation on the dollar value of transactions processed through the Corporation. Such determination will only be made if the Membership and Risk Management Committee concludes that not applying such qualification or standard, and imposing such limitation or restriction, would not be against the best interests of the Corporation and its Members. If, after admitting the applicant and imposing any such limitation or restriction, the Member fails to meet any other membership requirement on an ongoing basis, the provisions of Section 7 of this Rule shall apply.**

SEC. [8] **9**. Notification to the SEC

If the Corporation takes any action pursuant to Section 7 of this Rule, it shall promptly file with its records and with the SEC a full report of such actions, and the reasons therefor.

SEC. [9] **10**. Guaranty

If an applicant proposes to satisfy any financial requirements imposed by the Corporation pursuant to the Rules by means of a guaranty of its obligations by its parent company or an Affiliate, the parent company or Affiliate shall be required to comply with all provisions of these Rules as if it were an Applicant or Member.

SEC. [10] **11**. Inactive Status

At any time a Member may request that it become an Inactive Member. The Corporation will place a Member on Inactive Status only if the Member has no open pending or fail positions and all money obligations have been paid.

A Member which is placed on Inactive Status may receive back its clearing fund deposit 30 calendar days after it is placed on Inactive Status. Notwithstanding this delay, at such time as the Member requests that it be placed on Inactive Status, it will no longer have liability pursuant to Section 11(c) of Rule 4 for losses arising from the default of other Members subsequent to receipt of the request.

An Inactive Member will continue to be required to file with the Corporation all financial and other reports as are required of active Members and will be required to pay all applicable fees as set forth in the fee schedule. Inactive Members which fail to comply with these obligations will be subject to the same terms and conditions as Members including fines.

An Inactive Member may request that its membership be activated at any time and any such request shall be treated as an application for membership and all applicable rules and procedures relevant to an applicant shall apply to the Member at such time; provided, however, that the Corporation may waive the requirement to provide one or more documents or information required of applicants if it determines that the information or documents available to the Corporation (e.g. Member's Agreement,

financials) are sufficient to make a determination on the reactivation request. Notwithstanding the foregoing, if the request occurs 18 or more months after Inactive Status is granted, the Inactive Member will be required to provide an opinion of counsel in form satisfactory to the Corporation. If approved for reactivation, the Member will be required to fulfill its clearing fund requirement which shall be calculated in the same manner as the Initial Required Fund Deposit.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-EMCC-2004-09)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by EMERGING MARKETS CLEARING CORPORATION (“EMCC”) relating to EMCC's application and continuing membership standards.

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 attached hereto as Exhibit A.

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.

(i) The purpose of the proposed rule change is to amend the rules of EMCC to (i) eliminate the need for a rule waiver if a member becomes subject to an order of statutory disqualification or similar order, and (ii) eliminate the need for a rule waiver if the Corporation determines to admit an applicant that is subject to an order of statutory disqualification or similar order, provided that doing so will not create any undue risk to the Corporation.

The rules of EMCC currently provide that a membership applicant that is subject to an order of statutory disqualification under Section 3(a)(39) of the Securities and

Exchange Act of 1934 or similar order is<sup>1</sup> not be eligible for membership unless a waiver of that requirement is granted by the Committee. EMCC's admission requirements also serve as continuance standards for current members.<sup>2</sup> Therefore, if a member becomes subject to a statutory disqualification, under the EMCC rules as presently constructed, a waiver would also have to be sought.

In the past, instances of statutory disqualification were a rare occurrence and called into question the entity's ability to meet membership requirements or to remain a member in good standing of EMCC. More recently, firms are increasingly becoming subject to statutory disqualification, but the reasons for the firm's statutory disqualification may have little or no bearing on its ability to become or remain a member.<sup>3</sup> EMCC would like to retain the ability to deny membership to, or terminate as a member, a firm whose ability to meet applicable membership requirements is called into question; however, to the extent an order of statutory disqualification does not, EMCC does not want to be required to continue to seek a waiver from the Committee.

The proposed rule change would eliminate the need for a waiver in cases where an entity is subject to an order of statutory disqualification or similar order, but would keep such orders as a criterion to be considered for membership or continued membership. EMCC management would continue to present all instances of statutory disqualification to the Committee, and the Committee would make all final determinations with respect to these entities. In this manner, EMCC management and the Committee would be able to thoroughly evaluate the risks presented by an applicant or member that becomes subject to an order of statutory disqualification, but allow the Committee to permit EMCC to admit or retain members that pose no risk to the Corporation or its members without the need for a waiver of EMCC's rules.<sup>4</sup>

(b) The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder, because it would enable EMCC, through its Membership and Risk Management Committee, to make prudent decisions regarding applicants and members that are in the best interests of all EMCC members without the need for rules waivers, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

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<sup>1</sup> EMCC's rules provide that an applicant may not be subject to an order of statutory disqualification or "an order of similar effect issued by a Federal or State banking authority in the U.S. or any non-U.S. regulator."

<sup>2</sup> EMCC members, pursuant to Rule 2, Section 7 are required to notify the Corporation if they are no longer in compliance with any of the relevant qualifications and standards for admission to membership. EMCC recently filed with the Commission SR-EMCC-2004-01, which will, upon Commission approval, give EMCC the ability to fine members for failure to so notify the Corporation.

<sup>3</sup> Of note is that in those situations brought by management before the Committee recently, the SEC has permitted the entity to continue operating as a registered broker-dealer and the relevant designated examining authority has retained the entity as a member. In addition, Rule 19h-1 promulgated pursuant to the Securities Exchange Act of 1934 does not require that self-regulatory organizations automatically terminate the membership of entities subject to statutory disqualification.

<sup>4</sup> To the extent the Committee determines to admit or retain a member despite a statutory disqualification, this would not restrict their ability to impose limitations, as applicable, on such member.

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

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

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

Written comments relating to the proposed rule change have not yet 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room 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

Dated: