

9(a) of the Act with respect to the Injunction.

On November 12, 2004, the Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction until the Commission takes final action on an application for a permanent order or, if earlier, January 12, 2005 ("Existing Temporary Order").<sup>5</sup>

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct alleged in the Complaint did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor or principal underwriter for any Fund. Applicants state that none of the current or former officers, directors or employees of the Advisers or the Underwriter who are or were involved in providing investment advisory, subadvisory, or underwriting services to the Funds were involved in the conduct underlying the Injunction.

5. Applicants state that the inability of the Advisers to continue providing advisory or subadvisory services to the Funds, and of the Underwriter from serving as principal underwriter to the Funds, would result in potentially severe hardships for the Funds and their shareholders. Applicants assert that section 9(a) disqualifications would deprive Fund shareholders of the services they selected in investing in the Funds, cause uncertainty by frustrating efforts to effectively manage Fund assets, and could increase the Funds' expense ratios to the detriment of the Funds' shareholders. The Advisers and Underwriter have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants will provide the Boards with all information concerning the Injunction and the

application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. The Advisers and Underwriter also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Advisers and Underwriter state that they have committed substantial resources to establish an expertise in advising, subadvising, and distributing the Funds. The Advisers and Underwriter state that prohibiting them from providing advisory and distribution services to the Funds would adversely affect not only the viability of their businesses, but also the livelihoods of the hundreds of employees of the Advisers and Underwriter. Applicants state that they have not received any orders under section 9(c) of the Act in the past.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Applicants are granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the Injunction, subject to the condition in the application, from January 12, 2005 until the Commission takes final action on the application for a permanent order.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51026; File No. SR-EMCC-2005-01]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Establish Procedures for Exiting Open Fail Positions Prior to Dissolution

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 5, 2005, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a cut-off date for processing securities transactions and implements procedures for EMCC to exit open fail positions prior to its dissolution.

#### 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.<sup>2</sup>

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

At EMCC's October 27, 2004, Board of Directors ("Board") meeting, the Board authorized EMCC's dissolution and deregistration as a clearing agency effective no later than March 31, 2005. In order to accomplish this, EMCC has

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

<sup>5</sup> Investment Company Act Release No. 26654 (Nov. 12, 2004)

set a cut-off date of February 18, 2005,<sup>3</sup> for the input of transactions.<sup>4</sup> While EMCC management expects that all trades submitted to it by February 15, 2005, will settle promptly, it is possible that some trades may not settle timely. Accordingly, EMCC is establishing February 23, 2005, as EMCC's final settlement date. This means that EMCC will exit from any trades that remain open as of February 23, 2005. Under revised Rule 3, Section 1 of EMCC's rules, EMCC will issue deliver and receive instructions to the original buyers and sellers for any trades that have not settled by February 23, 2005. The legal obligations of those parties will continue to be subject to EMCC's rules even though such trades will no longer settle pursuant to EMCC's rules. To the extent that EMCC discontinues processing before the end of February 2005, EMCC will prorate its members' February charges and will reflect any proration on the members' final bill.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder because it will enable EMCC to process its final transactions in an orderly manner thereby promoting the prompt and accurate clearance and settlement of securities.

#### *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 by EMCC. EMCC will notify the Commission of any written comments it receives.

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

The Commission finds that EMCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and

particularly with the requirements of Section 17A(b)(3)(F)<sup>6</sup> of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change will enable EMCC to process its final transactions in an orderly and transparent manner thereby promoting the prompt and accurate clearance and settlement of securities.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will afford EMCC sufficient time to give its members notice of its decision to cease operations and to wind down its clearing agency operations in an orderly fashion.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMCC-2005-01 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-EMCC-2005-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at <http://www.e-m-c-c.com/legal/>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMCC-2005-01 and should be submitted on or before February 9, 2005.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2005-01) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51020; File No. SR-MSRB-2005-01]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds**

January 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 5, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has designated this proposal

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Telephone conversation between Karen Saperstein, General Counsel and Secretary, EMCC, and Jerry Carpenter, Assistant Director of Market Regulation, Commission (January 12, 2005).

<sup>4</sup> While EMCC expects that the dates set forth in this filing will be used, EMCC reserves the right to postpone these dates if, in its sole discretion, circumstances warrant. In the event EMCC postpones these dates, it will provide notice to the Commission and to its members.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).