

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43675; File No. SR-EMCC-00-01]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financial Statements Prepared in Accordance With International Accounting Standards or United Kingdom Generally Accepted Accounting Principles

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 29, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on October 26, 2000, and on November 15, 2000, amended it proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily 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 would permit EMCC to accept financial statements from an applicant prepared in accordance with International Accounting Standards ("IAS") or United Kingdom Generally Accepted Accounting Principles ("UK GAAP") without requiring the applicant to provide a discussion of the material variations of such accounting principles from United States Generally Accepted Accounting Principles ("US GAAP").

#### 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

Currently, Rule 2, Section 3(b) of EMCC's Rules and procedures requires applicants to provide audited financial statements for the two fiscal years immediately preceding the year the application is made. To the extent such financial statements are not prepared in accordance with US GAAP, applicants must provide EMCC with a discussion of the material variations of such accounting principles from US GAAP.

When membership requirements were initially established in 1996, EMCC had minimal experience in analyzing non-U.S. financial statements. Therefore, it was deemed prudent to require applicants submitting audited financial statements prepared on a basis other than US GAAP to provide a discussion of the material differences. Since that time, EMCC's staff's familiarity with, understanding, and expertise in evaluating financial statements not prepared in accordance with US GAAP has significantly increased.

Pursuant to the proposed rule change, EMCC would have the authority to determine that a discussion of the material variations between US GAAP and another financial accounting standard used in a preparing an applicant's audited financial statement is unnecessary. Also under EMCC's proposal, EMCC is seeking Commission approval of its determination that with respect to audited financial statements prepared in accordance with IAS or UK GAAP, it will not require an applicant to provide a discussion of such material variations from US GAAP. EMCC retains the right to require any applicant not submitting audited financial statements prepared according to US GAAP to provide a discussion of such material variations if EMCC in its sole discretion determines that circumstances warrant the applicant providing such a discussion.

Moreover, when assessing an applicant's qualifications for EMCC membership, the audited financial statements comprise only a portion of the materials provided to and reviewed by the company. Such materials

include, but are not limited to, reports filed with the applicant's primary regulator, interim financial, and a detailed questionnaire. To demonstrate to EMCC the applicant's financial responsibility and operational capability is sufficient for membership, EMCC may also require an applicant to make its books and records available to EMCC. Thus, EMCC has the ability to seek information it deems necessary or relevant to sufficiently assess and review an applicant's qualifications and capability for membership.

EMCC believes that the proposed rule change will not adversely affect the safeguarding of securities or funds in the custody or control EMC or for which it is responsible and is therefore consistent with the requirements of Section 17A of 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 impact 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

Within thirty-five 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 ninety 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 changes should be disapproved.

#### IV. Solicitation of Comments.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the propose rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<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.

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC-00-01 and should be submitted by January 3, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43679; File No. SR-NYSE-00-46]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Listing and Trading of Exchange Traded Funds

December 5, 2000.

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 November 21, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on December 5, 2000.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change,

as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The Exchange is amending certain rules and adopting other rules relative to listing and trading of investment company units ("ICUs"), also known as exchange traded funds. The text of the proposed rule change is available at the Office of the Secretary, the Exchange or the Commission.

#### 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 Exchange 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 III below and is set forth in Sections A, B, and C below.

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

###### 1. Purpose

The Exchange has rules in Section 703.16, Investment Company Units, of the Listed Company Manual ("LCM") related to the listing of ICUs.<sup>4</sup> Subsequent to the adoption of those rules, the Commission determined to allow the adoption of "generic" listing standards that permit listing and trading of new derivative products pursuant to Rule 19b-4(e) under the Act.<sup>5</sup> The Exchange is proposing to amend its listing standards in Section 703.16 of the LCM to adopt generic standards to permit the trading of ICUs pursuant to Rule 19b-4(e).

The Exchange's proposed generic listing criteria are intended to ensure that a substantial portion of the weight of an index or portfolio underlying an ICU is composed of securities with substantial market capitalization and trading volume. Under the proposal, the Exchange may approve a series of ICUs

for listing or trading pursuant to Rule 19b-4(e) under the following criteria. Upon the initial listing of a series of ICUs, component stocks accounting for at least 90% of the weight of the underlying index or portfolio have a minimum market value of at least \$75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Under the Exchange's proposed generic listing standard, the most heavily weighted component stock in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

To comply with generic listing standards, the Exchange proposed that the underlying index or portfolio must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The proposed generic listing standards specify that the current index value must be disseminated every 15 seconds over the consolidated tape, as well as an estimate of the net asset value per share of the ICU. A minimum of 100,000 shares of an ICU must be outstanding at the time trading begins. The minimum trading variation for an ICU will be  $\frac{1}{16}$ ,  $\frac{1}{32}$  or  $\frac{1}{64}$  of \$1.00, as determined by the Exchange for a specific series. The Exchange will shortly move to decimals, after which the minimum trading variation for an ICU is expected to be the same as for other stocks generally on the Exchange, which is one penny.

The Exchange will implement written surveillance procedures for the ICUs that it trades pursuant to the generic listing standards. In addition, the Exchange will comply with the record-keeping requirements of Rule 19b-4(e), and will file Form 19b-4(e) for each ICU within five business days of commencement of trading.

<sup>3</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> In Amendment No. 1, the Exchange made several technical corrections to the rule text and clarified that the Exchange will issue a circular to members highlighting the characteristics of purchases in ICUs, prior to the commencement of trading in ICUs. See Letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission from James E. Buck, Corporate Secretary, NYSE dated December 5, 2000 (received by facsimile) ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996).

<sup>5</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).