

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40989; File No. SR-EMCC-99-1]

Self-Regulatory Organizations; the Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges for Pairing-Off

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 6, 1999, Emerging Markets Clearing Corporation ("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 primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change expands the fees charged by EMCC for pairing-off services provided.

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.²

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

Addendum H to EMCC's Rules allows EMCC to pair-off fail receive and deliver obligations relating to EMCC eligible instruments.³ When EMCC conducted its first pairing-off of fail receive and deliver obligations of EMCC eligible instruments, it only charged for the pairing-off of obligations related to

warrants. EMCC charges a fee of \$2.00 per warrant fail receive or deliver obligation eliminated as a result of any pairing-off. The proposed rule change expands the \$2.00 fee to cover the pairing-off of all fail receive and deliver obligations regardless of the type of EMCC eligible instruments to which they relate.⁴

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

EMCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No comments on the proposed rule change were solicited or received.

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)(3)(A)(ii)⁵ of the Act and pursuant to Rule 19b-4(e)(2)⁶ promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. At any time within sixty days of the filing of such proposed 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-99-1 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2532 Filed 2-2-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40983; File No. SR-NASD-98-99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Fee to Provide Proprietary Regulatory and Trading Data to NASD Members via NasdaqTrader.com

January 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 31, 1998,³ the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as describe in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,⁴ which renders the proposal effective

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange filed Amendment No. 1 with the Commission on January 21, 1999. The amendment corrects an inaccurate reference to the Act. See Letter from Thomas P. Moran, Senior Attorney, The Nasdaq Stock Market, Inc., to Mignon McLemore, Division of Market Regulation, SEC, dated January 21, 1999.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by EMCC.

³ Prior to the approval of Addendum H, EMCC only had the authority to pair-off fail receive and deliver obligations relating to warrants.

⁴ The complete text of the proposed amendments to EMCC's rules and procedures is attached to EMCC's filing as Exhibit A, which is available for inspection and copying at the Commission's Public Reference Room and through EMCC.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

upon filing by the Commission. 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

Nasdaq is proposing to amend Rule 7010 of the NASD Rules, to establish a fee for a compliance and trading data report distribution facility accessible to NASD members through its "NasdaqTrader.com" website. Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 7010 System Services

(a)-(n) No Changes

(o) NasdaqTrader.com Trading and Compliance Data Package Fee

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is \$75 per month (monthly maximum of 25 Historical Research Reports) or \$100 per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

- (1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only)*
- (2) Monthly Compliance Report Cards (Member Firm's information only)*
- (3) Monthly Summaries*
- (4) Historical Research Reports*
- (i) Market Maker Price Movement Report*
- (ii) Equity Trade Journal (Member Firm's information only)*

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

* * * * *

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 NASD 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. Nasdaq 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

Nasdaq is proposing to establish a fee for a trading and compliance data

distribution facility accessible to NASD members through its "NasdaqTrader.com" website. Under the proposal, NASD member firms will be able to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Use of this service will be voluntary, and fees from NASD members who subscribe will be used to offset the costs associated with the maintenance of the secured content as well as the product's portion of the ongoing maintenance and administration of the Nasdaq web-security infrastructure.

Specifically, NASD member firms who elect to receive Nasdaq's Trading and Compliance Data Package ("Data Package") will be able to obtain the following: (1) Daily Share Volume Reports displaying the firm's own T+1 daily trading volume for each issue in which the firm reports volume; (2) Monthly Compliance Report Cards outlining the firm's own compliance status in the areas of trade reporting, firm quote compliance and best execution obligations; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (e.g., block or total); and (4) Historical Research Reports consisting of Market Maker Price Movement Reports ("MMPMR"), which show all of a Market Maker's quote updates (i.e., price, size and inside quote at time of update) for a security on a specified date, and Equity Trade Journals ("ETJs") detailing all trades reported through the Automated Confirmation Transaction Service by the NASD member firm for a selected security and date. Due to capacity restrictions, Data Package users seeking Historical Research Reports will be limited to either 25 or 100 monthly reports depending on the subscription fee paid.

Recognizing the proprietary and confidential nature of the data contained in the Data Package, Nasdaq has established a secure information display and retrieval environment through the combined use of user IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that firm-specific reports regarding compliance and trading activity will only be made available to the member firm itself. Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) ⁵ of the Act in that the Data Package fee

provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.⁶

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

The Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) ⁷ of the Act and subparagraph (e) of Rule 19b-4 thereunder⁸ in that it establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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

⁶ Initially, the proposal inaccurately referenced another Section of the Act. Amendment No. 1 corrected this mistake. See *supra* note 3.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19(b)-4(e).

⁵ 15 U.S.C. 78o-3(b)(5).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2484 Filed 2-2-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40988; File No. SR-NASD-98-79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Issuer Responsibilities When Using the Internet; Updating MarketWatch Contact Information and Other Matters

January 28, 1999.

On October 21, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule IM-4120-1 with respect to the use of the Internet for dissemination of issuer disclosures.

The proposed rule change appeared in the **Federal Register** on December 17, 1998.³ The Commission received no comments concerning the proposed rule change. This Order approves the proposed rule change for the reasons discussed below.

I. Description of Proposal

Increased use of the Internet to provide access to corporate information for shareholders has resulted in questions regarding the timing of news releases over the Internet and the use of issuers' Internet sites as replacements for traditional dissemination of news. While Nasdaq believes that it is generally in the public interest to encourage widespread dissemination of

information to investors through the Internet, it also believes that it must maintain a level playing field for all investors, including those who do not have Internet access or who may not generally rely on the Internet as their primary source of material corporate news. Consequently, Nasdaq proposes permitting issuers to publicize news over the Internet, but only as a supplement to its ongoing requirement that news be disseminated through traditional news services. These include Dow Jones News Service, Reuters, Bloomberg Business News, Business Wire, PR Newswire, The Wall Street Journal, and *The New York Times*.⁴

Accordingly, Nasdaq is proposing to amend NASD Interpretation IM-4120-1 to state that it fully supports companies' use of Internet home pages to disseminate information to shareholders, but that the Internet must be a substitute for the dissemination of news through traditional news services. In the interests of maintaining a level playing field for all investors and to avoid situations of potential selective disclosure, the Nasdaq policy will be amended to indicate that dissemination of news over the Internet is appropriate as long as it is *not* made available over the Internet before the same information is transmitted to, and received by, the traditional news services. Furthermore, the amended policy will reiterate that issuers must still notify Nasdaq at least ten minutes prior to any release of material information to traditional news services or over the Internet, consistent with the existing policy.⁵

II. Discussion

Upon review, the Commission finds that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder applicable to a registered securities association. In particular, the Commission believes the proposal is consistent with Sections 15A(b)(6)⁶ and 11A(a)(1)(B)⁷ of the Act.⁸ Section 15A(b)(6) requires that the rules of an association be designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.⁹ Section 11A(a)(1)(B) recognizes that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Increasing the available outlets through which material information is circulated, as proposed, increases market transparency and furthers the goals of this section.

A free and open national market system requires the timely and thorough dissemination of information to market participants. Since its advent, the Internet's popularity has grown rapidly. The Commission believes that the Internet is a viable method to disseminate information to market participants. With its relatively low cost of operation, easy accessibility, and potential for rapid dissemination, it represents an effective and timely method for issuers to disseminate information to investors and the general public. The Commission agrees with Nasdaq that the Internet is an acceptable method for issuers to communicate with investors; its use to publicize material information should promote rapid and wide-spread dissemination of Company information, specifically enhancing the openness and fairness of the national market system generally.

The Commission further notes that the proposed rule change should adequately protect investors who rely on traditional news services to obtain information on issuers. As proposed, issuers who are required to disseminate information under NASD rules must use Nasdaq-approved traditional news services regardless of whether the issuers post the information on the Internet. This should protect investors who do not have Internet access or who still rely on traditional news services for their corporate news. In addition, the proposal provides that material news may not be released on the Internet prior to its receipt by traditional news services thereby helping to ensure that material news is not selectively disseminated.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Rel. No. 40771 (December 10, 1998), 63 FR 56055.

⁴ A complete list of appropriate news services is available from Nasdaq's Market Watch Department by telephone 1-800-537-3929 or (301) 590-6411. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number.

⁵ In addition, this Order also approves several technical corrections to cross references contained in NASD Rule 4120 and IM-4120-1, as well as eliminating several footnote references to an outdated phone number used to contact MarketWatch, which are contained in NASD Rules 4120, 4310, and 4320.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78k-1.

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).