

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

The Exchange did not receive any written comments on the proposed rule change.

**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 the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**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-Amex-2004-23 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-Amex-2004-23. 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 Commissions 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 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2004-23 and should be submitted on or before July 8, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49820; File No. SR-BSE-2004-21]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Regulation By-Laws**

June 7, 2004.

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 May 18, 2004, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange"), 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 BSE. 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend certain sections of the Boston Options Exchange Regulation LLC By-Laws relating to the separation of duties between the BSE's Chairman and Chief Executive Officer. Proposed new

language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**Rules of the Boston Stock Exchange  
Boston Options Exchange Regulation  
LLC By-Laws**

Secs. 1-2 no change

Sec. 3

Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. In accordance with Section 4, below, the [Chief Executive Officer] *Chairman* of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Sec. 4

Qualifications

Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include the [Chief Executive Officer] *Chairman* of the BSE, who will not be considered for the purposes of determining the qualification percentages for the Board set forth herein. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve

<sup>23</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.

until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Secs. 5–13 no change

Sec. 14

Committees

(a)–(c) no change.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. The [Chief Executive Officer] *Chairman* of the BSE shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

\* \* \* \* \*

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

In its filing with the Commission, BSE 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. BSE 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

#### 1. Purpose

The purpose of the rule change is to amend certain sections of the Boston Options Exchange Regulation LLC ("BOXR") By-Laws concerning the

position of the BSE Chief Executive Officer, in light of recent changes to the BSE Constitution providing for the separation of the Chairman and Chief Executive Officer roles.

On April 23, 2004, the Commission approved SR-BSE-2004-10, and Amendment No. 1 thereto.<sup>3</sup> That rule change permits the BSE Board of Governors to separate the positions of Exchange Chairman and Chief Executive Officer. The separation allows for the independence of the Exchange's regulatory function from its marketplace function. In particular, the Exchange's Constitution sets forth that the Chairman would, among other duties, be responsible for the management of the regulatory affairs of all exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party. The Chief Executive Officer's duties would primarily be limited to responsibilities for the management and administration of the Exchange's marketplace functions, and would not include any involvement in the Exchange's regulatory affairs, including the regulatory affairs of any exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party.

At the time the BOXR By-Laws were drafted, the Exchange's Chairman and Chief Regulatory Officer were the same person, as the Exchange's Constitution then mandated. Since the positions have since been separated, in accordance with recent BSE Constitutional changes, the Exchange is now seeking to replace "Chief Executive Officer" with "Chairman" in the BOXR By-Laws. This change would not only be consistent with the current changes to the BSE Constitution but with the purpose of BOXR, as a subsidiary of the Exchange responsible for regulatory oversight of the Boston Options Exchange, a facility of the BSE.

#### 2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(1) of the Act<sup>4</sup> that an exchange be organized and have the capacity to be able to carry out the purposes of the Act; the requirement under Section 6(b)(3)<sup>5</sup> that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs; and the requirement under Section 6(b)(5)<sup>6</sup> to have rules that are

designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

BSE 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 will become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>7</sup> and subparagraph (f)(1) of Rule 19b-4 under the Act because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule.<sup>8</sup> At any time within 60 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. 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-CHX-2004-10 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

<sup>3</sup> See Securities Exchange Act Release No. 49611, 69 FR 23833 (April 30, 2004).

<sup>4</sup> 15 U.S.C. 78f(b)(1).

<sup>5</sup> 15 U.S.C. 78f(b)(3).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-21. 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 the principal office of the BSE. 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-BSE-2004-21 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49825; File No. SR-EMCC-2004-06]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Form and Substance of Opinions of Counsel

June 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 2, 2004, the Emerging Markets

Clearing Corporation ("EMCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on June 4, 2004, amended its 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 will amend Rule 2 ("Members") and Annexes 1 and 2 of Addendum D ("Opinion") of EMCC's rules by clarifying the legal issues that the opinion of counsel that must be filed by EMCC applicants must address.

#### 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

Prior to this rule change, EMCC Rule 2, Section 2(b) required each applicant for EMCC membership to provide EMCC an opinion of counsel that was "substantially to the effect of" Annex 1 (for non-U.S. registered broker-dealers) or Annex 2 (for U.S. registered broker-dealers) of Addendum D of EMCC's rules. In each case, the opinion nevertheless had to be "acceptable" to EMCC.

Recently, there has been some question about whether EMCC's rule require an applicant to obtain an opinion of counsel "in the form of" as opposed to "to the effect of" the annexes to Addendum D. There has also been some question about whether an opinion must be "clean" or if it can have exceptions because the annexes do not clearly indicate whether an opinion may set forth a reservation or exception. To clarify this, EMCC is replacing each

annex with a list of items that set forth the legal issues that an opinion must address. As a result, the annexes will not contain any opinion of counsel forms, which forms EMCC had only intended to be used as examples. Additionally, in its revisions to Addendum D, EMCC is making clear which items in the lists of legal issues to be addressed may contain exceptions, restrictions, or limitations.

Annex 1 will now provide that for non-U.S. applicants the opinion will be required to:

1. Address whether the applicant is duly organized, validly existing and in good standing and the jurisdiction in which this applies.

2. Address whether the applicant has full power and authority to enter into the agreements.

3. Confirm That the agreements are legal, binding and enforceable and specify the jurisdiction in which this applies or confirm that the courts in that jurisdiction would give effect to the choice of New York Law as the governing law and any exceptions that need to be noted.

4. Confirm that submission to the jurisdiction of the federal and state courts in New York is enforceable in the jurisdiction referenced in point 3 and any exceptions which must be noted.

5. Explain how netting and novation are treated in the jurisdiction referenced in point 3 and how this would impact the obligations of the applicant.

6. Explain the extent to which a court in the jurisdiction referenced in point 3 would apply New York law to perfected security interests under the agreements.

7. Explain how insolvency, liquidation or other similar actions affecting creditor's rights impact the obligations of the applicant.

8. Confirm that the agreements will not conflict with or be impeded by the laws or regulations issued in the jurisdiction referenced in point 3 or explain any exceptions to this statement.

9. Explain the degree to which EMCC may initiate an action against the applicant in the jurisdiction referenced in point 3 without having to first obtain a judgment against the applicant in the United States.

10. Explain whether there are any restrictions or limitations on the applicant's ability to provide information or documents that may be requested pursuant to EMCC's rules.

11. Confirm that no other authorizations or actions are required from any regulatory authority in connection with the execution, delivery and performance of the agreements or

<sup>9</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.