

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45359; File No. SR-EMCC-2001-04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Relating to Liability of Affiliated Entities

January 29, 2002.

On October 11, 2001, the Emerging Markets Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change (File No. EMCC-2001-04). Notice of the proposal was published in the **Federal Register** on December 20, 2001.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change addresses liability issues that may arise after the completion of the integration of EMCC, the Government Securities Clearing Corporation ("GSCC"), and the MBS Clearing Corporation ("MBSCC") with The Depository Trust and Clearing Corporation ("DTCC").³ For purposes of this notice, EMCC, GSCC, MBSCC, DTCC, The Depository Trust Company ("DTC"), and National Securities Clearing Corporation ("NSCC")⁴ are collectively referred to as the "Synergy Companies."⁵

An important aspect of the integration plan is to insulate EMCC, its members, and its clearing fund from the risks and obligations that may arise from the activities of the other Synergy

Companies.⁶ The rule change will add a new Rule 9 to EMCC's Rules that provides that notwithstanding any affiliation between EMCC and any other entity, including any clearing agency, except as otherwise provided by written agreement between EMCC and such other entity, (1) EMCC shall not be liable for any obligations of such other entity and the clearing fund or other assets of EMCC shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of EMCC and any assets of such other entity shall not be available to EMCC.

II. Discussion

Section 17A(b)(3)(F) of the Act⁷ requires that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with EMCC's obligations under section 17A(b)(3)(F) because it should help ensure that EMCC's assets, including its participants fund, are not diminished as a result of its affiliation with the Synergy Companies.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-2001-04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45378; File No. SR-GSCC-2001-13]

Self-Regulatory Organization; Government Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to a New Governance Structure

January 31, 2002.

On October 11, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change (File No. GSCC-2001-13). On December 26, 2001, GSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 15, 2001.² No comment letters were received.³ For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will amend GSCC's rules to reflect GSCC's new ownership and governance structure that will result from the integration of GSCC, MBS Clearing Corporation ("MBSCC"), and Emerging Markets Clearing Corporation ("EMCC") with the Depository Trust & Clearing Corporation ("DTCC") whereby GSCC, MBSCC, and EMCC will become operating subsidiaries of DTCC.⁴

In order for GSCC to maintain orderly and efficient operations, GSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of GSCC that will be identical in composition to the Board of Directors of MBSCC, EMCC, DIT, NSCC, and DTCC. GSCC's business will be managed under the direction of the

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 45154 (Dec. 14, 2001), 66 FR 65767.

³ Securities Exchange Act Release Nos. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001) (order approving integration of EMCC), 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) (order approving integration of GSCC), and 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001) (order approving integration of MBSCC).

⁴ DTC and NSCC are wholly-owned subsidiaries of DTCC.

⁵ After the completion of the integration, EMCC, GSCC, and MBSCC shall each be a wholly-owned subsidiary of DTCC, and a single group of individuals shall serve as directors of each of the Synergy Companies. Following the integration, EMCC will continue to exist as a separate registered clearing agency. The retained earnings of EMCC existing at the time of (or as of the end of the last full calendar month preceding) the integration of EMCC with DTCC will, as a matter of DTCC policy, be dedicated to supporting the business of EMCC. EMCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

⁶ The integration plan attempts to similarly insulate GSCC and MBSCC. Securities Exchange Act Release Nos. 45357 (Jan. 29, 2002) (order approving GSCC's limitation of liability) and 45358 (Jan. 29, 2002) (order approving MBSCC's limitation of liability). DTC and NSCC adopts rules similar to this proposed rule as part of their 1999 integration with DTCC. Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999), (order approving NSCC's limitation of liability) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (order approving DTC's limitation of liability).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 17 CFR 200.30-3(a)(12).

² Securities Exchange Act Release No. 45248 (Jan. 7, 2002), 67 FR 2005.

³ This proposed rule change had a fifteen day comment period.

⁴ For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) (order approving integration of GSCC); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001) (order approving integration of MBSCC); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001) (order approving integration of EMCC). The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC") are currently operating subsidiaries of DTCC. Securities Exchange Act Release Nos. 41786 (Aug. 24, 1999), 64 FR 47882 (Sept. 1, 1999) and 41800 (Aug. 27, 1999), 64 FR 48694 (Sept. 7, 1999) (orders approving integration of DTC, NSCC, and DTCC).