

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

The purpose of the proposed rule change is to make a technical amendment to EMCC's Rule 2, Section 6 to eliminate erroneous references to "Excess" Net Capital regarding the calculation of the aggregate indebtedness to net capital ratio and the net capital to aggregate debit item ratio as set forth in the rule.

EMCC believes that as a technical change to its rules, the proposed rule change is concerned solely with the administration of EMCC and is 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 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*

Written comments from EMCC members have not been solicited or received on the proposed rule change.

**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)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-EMCC-2003-06. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of EMCC and on EMCC's Web site at <http://www.e-m-c-c.com/legal/index.html>. All submissions should refer to the File No. SR-EMCC-2003-06 and should be submitted by March 4, 2004.

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. 34-49195; File No. SR-ISE-2003-38]**

**Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. To Increase the Number of Authorized Shares of Class B Common Stock, Series B-2 From 130 to 160**

February 5, 2004.

On December 11, 2003, the International Securities Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to increase the number of authorized shares of Class B Common Stock, Series B-2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The proposed rule change was published for comment in the **Federal Register** on December 30, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the Exchange's rule be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the sale of 30 additional CMM Memberships may increase the depth and liquidity of the Exchange's market. It may also provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange also represented that it has carefully evaluated its systems capacity and believes that it has more than sufficient capacity to handle the increased number of CMM Members without any adverse effects. Furthermore, the Exchange noted that it would require a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (SR-ISE-2003-38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

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

<sup>3</sup> See Securities Exchange Act Release No. 48959 (December 18, 2003), 68 FR 75296.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

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