

of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Section 2(a)(9) of the 1940 Act defines "control" in part to mean "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of any company shall be presumed to control such company."

3. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganizations because the Existing Funds and the New Equity Fund may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Each Existing Fund and the New Equity Fund may be deemed affiliated persons since they are under the common control of CFSC. Additionally, the Existing Funds may be deemed affiliated persons since they are under the common control of Catholic Knights, which beneficially owns more than 25% of the outstanding voting securities of each Existing Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Reorganizations will be

based on the relative net asset values of the Existing Funds and New Equity Fund's shares. Applicants also state that the investment objective and policies of the Funds are substantially similar. Applicants state that the Board, including the Independent Directors, has made the requisite determinations that the participation of each Existing Fund in the respective Reorganization is in the best interests of each Existing Fund and the New Equity Fund and that such participation will not dilute the interests of the existing shareholders of each Existing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-6255 Filed 3-14-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 18, 2002: A closed meeting will be held on Tuesday, March 19, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, March 19, 2002, will be: Opinion; litigation matter; formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: March 12, 2002.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 02-6318 Filed 3-12-02; 4:12 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45532; File No. SR-OPRA-2002-01]

### Options Price Reporting Authority; Notice of Filing of a Proposal To Establish Terms Governing the Provision by OPRA of a Best Bid and Offer for Each of the Options Series Included in OPRA's Market Data Service, and Governing Its Use by Vendors

March 11, 2002.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 26, 2002, the Options Price Reporting Authority ("OPRA"),<sup>2</sup> submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would add to the OPRA Plan terms governing the provision by OPRA of a best bid and offer ("BBO") for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

### I. Description and Purpose of the Amendment

The proposed amendment would establish in the OPRA Plan, and in BBO Guidelines that would be a part of the OPRA Plan, terms governing the provision by OPRA of a consolidated BBO service that would show the best

<sup>1</sup> 17 CFR 240.11Aa3-2.

<sup>2</sup> OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

bid and offer for each options series that is included in OPRA's market data service. The BBO for a given options series would show the number of contracts included in the best bid and best offer for that series subject to a minimum of ten contracts, and would identify the exchange where the best bid is being quoted and where the best offer is being quoted. In accordance with the proposed OPRA Plan amendment, OPRA vendors would be required to include only the consolidated BBO for any series of options included in the market data they provide to their customers (together with last sale reports for each such series of options), instead of having to show all bids and offers in all markets for each such series as they are currently required to do.

Under the proposed OPRA Plan amendment, the BBO for any series of options would be the highest bid and the lowest offer currently being quoted on any of OPRA's participant exchanges. In the case of options traded on two or more participant exchanges, if the same best bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified as the exchange that is quoting the best bid or offer, and if the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, the BBO would be prioritized, in order, on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO is no less than five cents, and that the minimum size increment for purposes of the BBO is no less than ten contracts.<sup>3</sup> This means that in order to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract, and in order to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from entering bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that

increase the number of contracts by less than ten. However, in order to displace the disseminated BBO, the price or size improvement must equal or exceed these minimums.

The adoption by OPRA of these minimum price and size increments occurred after OPRA received input from its vendors and subscribers, who view a BBO service that would enable OPRA to offer a meaningful options market data service as a significant benefit. Additionally, OPRA believes that the proposed BBO would require significantly less data processing and transmission capacity on the part of vendors and subscribers than is required by OPRA's full market data service. In this respect, OPRA anticipates that the BBO service would mitigate the huge increase in message traffic represented by OPRA's full service over the past several years, and the concomitant increase in the capacity required of vendors' and subscribers' systems in order to handle the full service. By proposing minimum price and size increments for purposes of the BBO at five cents and ten contracts respectively, OPRA believes that it has attempted to strike a balance between the need to show meaningful price and size improvement, and the need to keep the capacity demands of the BBO service at a level that is significantly less than the capacity demands of OPRA's full service.

OPRA states that its full market data service would continue to include all disseminated bids and offers from all of OPRA's participant exchanges and this information would continue to be available to vendors of, and subscribers to, the full service. OPRA believes that since major vendors may be expected to continue to offer the full OPRA service, and since most if not all broker-dealer subscribers would likely continue to subscribe to the full service in order to be able to fulfill their best execution obligations to customers, broker-dealers would have access to the same complete market data as they do today. For this reason, OPRA believes that the new BBO service should be viewed as an alternative to the full service for those persons who do not require the full service, and who therefore do not need to maintain the large systems needed to handle the full service.

The text of the amendment is set forth below. Text additions are in italics, deletions are in brackets:

### III. Definitions

\* \* \* \* \*

(g) "Quotation information" means bids, offers, or related information pertaining to quotations in eligible

securities, *including information consisting of the BBO (as defined below) for eligible securities.*

\* \* \* \* \*

(s) "BBO" ("Best Bid and Offer") means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with "BBO Guidelines" adopted by the parties. The adoption of the initial BBO Guidelines shall require the approval of all of the parties; thereafter the BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

\* \* \* \* \*

### V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

\* \* \* \* \*

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of *consolidated options information*, on fair and reasonable terms over a network or networks to vendors, subscribers and other approved persons. [Last sale reports and quotation] *Such information [with respect to eligible securities] shall [be disseminated only through the OPRA System,] include consolidated last sale reports and consolidated quotation information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a)-(b) of this Section V. Not later than 2002,<sup>4</sup> or upon the earlier completion of modifications to the OPRA System necessary to enable the System to carry the BBO, such information shall also include [and only] the BBO for all such [reports] series of options. Once the BBO is available through the OPRA System, OPRA may offer a complete options market data service consisting of the BBO combined with consolidated last sale reports and quotation information, or OPRA may offer a limited service consisting of the BBO combined with consolidated last sale reports only while separately continuing to offer last sale*

<sup>4</sup> OPRA represents that it will specify the date when the BBO service will be in production by the filing of a subsequent amendment to this proposal. See letter from Joseph P. Corrigan, Executive Director, OPRA, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2002.

<sup>3</sup> The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under \$3.00 per share per option contract; See, e.g., American Stock Exchange Rule 952.

reports and complete quotation information. Only such consolidated market information and related information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

\* \* \* \* \*

## VII. Vendors, Subscribers and Other Approved Persons

\* \* \* \* \*

(b) *Agreements.* Agreements for the furnishing of options [last sale reports and/or quotation] information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved vendors, subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of last sale reports and quotation information, or it may offer last sale reports and quotation information together in a single contract. As provided in Section V(c), upon the availability of a BBO through the OPRA System OPRA may contract separately for last sale reports combined with the BBO, or it may offer last sale reports, quotation information and the BBO together in a single contract. OPRA may also contract separately for access to information and facilities pertaining to FCO securities or index option securities.

Agreements with vendors shall provide that last sale reports and quotation information may be received by vendors only for the purpose of (A) developing a data base that enables the vendor to respond to inquiries from interrogation devices or other devices located in the office of approved subscribers that are capable of displaying last sale reports of transactions in, and/or quotations for, eligible securities as they occur; (B) reporting changes in last sale reports and quotation information through display devices located in the office of approved subscribers; and (C) providing last sale reports and/or quotation information to approved subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, vendor agreements shall include provisions relating to the following:

(i) There shall be uniform specifications governing the manner in which last sale reports and quotation information are transmitted by or on behalf of OPRA to vendors. Such

specifications may be different for different categories of eligible securities;

(ii) There shall be standards governing the services provided by vendors to subscribers which shall require that such services facilitate dissemination of last sale reports and quotation information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(iii) Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of last sale reports or quotation information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market, provided, however, that agreements with vendors may provide that the requirements of this paragraph (b)(iii) will be deemed to be satisfied if a vendor's market data service includes last sale reports together with the BBO, or last sale reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.

All agreements entered into between the parties and persons receiving last sale reports and/or quotation information shall provide that the respective reports and information covered thereunder remain the property of the respective party on or in whose market the reported transaction or quotation took place, and all contracts shall be executed, and the fees collectable thereunder shall be billed and collected, on behalf of all parties, except that OPRA may provide for certain contracts pertaining exclusively to FCO securities or index option securities to be executed, and certain fees pertaining to such eligible securities to be billed and collected, on behalf of those parties that provide a market in such eligible securities.

\* \* \* \* \*

## Options Price Reporting Authority BBO Guidelines

Section V(c)(i) of the OPRA Plan provides for the dissemination by OPRA of, among other things, a consolidated BBO. Section III(s) of the OPRA Plan defines the BBO as the highest bid and lowest offer for a series of options

available in one or more of the options markets maintained by the parties, as determined in accordance with "BBO Guidelines" adopted by the parties to the Plan. The BBO Guidelines as currently in effect are as follows:

1. *Price/Time Priority.* The BBO is determined on the basis of the best price (highest bid and lowest offer) quoted first in time by a market, provided that in order to displace the current best bid or offer, a quote must improve the current quote by no less than five cents.

2. *Size Included in BBO.* The BBO will include the actual size of the included bid and offer, subject to a minimum size of 10 contracts. A bid or offer at the same price as the current BBO but for a size larger than the current BBO by no less than ten contracts will displace the current BBO.

3. *Market Identifier.* The BBO as disseminated by OPRA will include identification of the market quoting the best bid or best offer comprising the BBO in accordance with these Guidelines.

4. *Crossed or Locked Markets.* Crossed or locked markets may be shown as the BBO.

5. *Excluded Quotes.* Whenever quotes in a market are identified by that market as not being firm, those quotes will be excluded for purposes of determining the BBO. In addition, if, based on information provided by an exchange, the OPRA Processor determines that the exchange is experiencing system problems resulting in the unreliability of its quotes, the Processor will exclude those quotes from the BBO determination until it determines that these problems have been resolved.

## II. Implementation of Plan Amendment

OPRA believes that its BBO service will be implemented upon the approval of the proposed OPRA Plan amendment (including its proposed BBO Guidelines) and promptly as practicable upon completion by OPRA's processor of the systems modifications necessary for its implementation. According to OPRA, its processor, the Securities Industry Automation Corporation ("SIAC"), is not now in a position to estimate when that work may be completed, since that depends upon certain technical decisions that have not yet been made by OPRA. However, OPRA has represented to the Commission that once SIAC is able to provide such an estimate, OPRA will amend this filing to include the latest date when the BBO service will go into production.<sup>5</sup> In addition, the introduction of OPRA's BBO service

<sup>5</sup> *Id.*

will likely necessitate certain changes to OPRA's forms of Vendor Agreement and Subscriber Agreements to make them conform to the revised requirements of the Plan, and perhaps to OPRA's fee structure. OPRA intends to file any such proposed amended agreements and fee changes with the Commission in one or more separate filings that may need to become effective prior to the implementation of the BBO service.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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 Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2002-01 and should be submitted by April 5, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-6256 Filed 3-14-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45527; File No. SR-EMCC-2002-02]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Conforming Rule Changes Resulting From the Integration With The Depository Trust and Clearing Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 1, 2002, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

The proposed rule change will amend EMCC's rules to conform the rules to recent changes EMCC made to its by-laws.

#### 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

On October 25, 2001, the Commission approved EMCC's integration with The Depository Trust and Clearing Corporation ("DTCC") whereby EMCC became a subsidiary of DTCC

("Integration Filing").<sup>3</sup> As part of the integration, (i) EMCC's Class A shareholders were to be offered the right to exchange their EMCC shares for DTCC common shares, (ii) the EMCC shares held by EMCC's trade association shareholders were to be repurchased and cancelled, and (iii) EMCC's certificate of incorporation and by-laws were to be revised to provide for a corporate governance structure consistent with its integration into the DTCC organization. The integration, including the exchange offer, trade association share repurchases, and amendment of EMCC's governing documents, was completed as of January 1, 2002, and on that date EMCC became a subsidiary of DTCC.

When EMCC's by-laws were amended, the reference to "participant directors" was deleted because that term was no longer relevant in the new corporate governance structure. A conforming change should also have been made to EMCC's rules in the Integration Filing but was inadvertently omitted. Also, because EMCC users are now given the opportunity to buy shares of DTCC at periodic intervals under the new structure, the obligation to become an EMCC shareholder as part of an applicant's initial membership requirements should have been omitted from EMCC's by-laws.

Accordingly, Rule 1 ("Definitions") and Rule 31 ("Hearing Procedures") are being amended to delete the definitions of "participant director." Rule 1 is also being amended to delete the definition of "ISMA," which was a "participant director." EMCC Rule 2 ("Members") is being amended to delete the requirement that applicants for membership become EMCC shareholders.

EMCC believes that the proposed rule change is consistent with the requirements of the section 17A of the Act<sup>4</sup> and the rules and regulations thereunder because it permits EMCC's rules to be consistent with its current corporate governance structure.

##### 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.

<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.

<sup>3</sup> Securities Exchange Act Release No. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001).

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 CFR 200.30-3(a)(29).