

market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>20</sup> In any event, financial information regarding CSFB in addition to the information on the 500 common stocks comprising the Index will be publicly available.<sup>21</sup>

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,<sup>22</sup> the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing

access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.<sup>23</sup> The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>24</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-Amex-2003-74), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48463; File No. SR-EMCC-2003-04]

#### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Creating an Inactive Member Category

September 9, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 7, 2003, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a 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 would create a new "inactive member" membership category in EMCC's rules.

#### 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 of 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

The purpose of the proposed rule change is to create a new category of inactive membership. From time to time, participants find that their activity level in EMCC-cleared instruments does not warrant active membership status and the costs and risks associated with such status. At the same time, however, they are reluctant to terminate their active membership status because of the amount of time, effort, and cost that would be required to provide EMCC with the membership documents required to regain their active status should they later choose to take advantage of EMCC's services. To accommodate this need, EMCC proposes to add a category of inactive membership to its rules.

In order to be eligible to be an inactive member, the participant must have no pending or fail positions or unpaid obligations. After a participant requests that they be placed in inactive status, management will act upon its request. It will not require the Membership and Risk Management Committee's approval (although those entities will be notified).

A participant that requests to be placed on inactive status will be entitled to a refund of its clearing fund deposit thirty calendar days after it is placed on

<sup>20</sup> See Company Guide Section 107A.

<sup>21</sup> The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

<sup>22</sup> See Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

<sup>23</sup> See supra note 17.

<sup>24</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</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.