

# PAPERWORK REDUCTION ACT SUBMISSION

## Rule 19b-4 and Form 19b-4

### SUPPORTING STATEMENT

#### **A. Justification**

##### 1. Necessity of Information Collection

The Securities Exchange Act of 1934 ("Act") provides a framework for self-regulation within which national securities exchanges, national securities associations, and registered clearing agencies have primary responsibility for regulating their members or participants and the Municipal Securities Rulemaking Board is responsible for establishing rules for certain transactions in municipal securities. The role of the Securities and Exchange Commission ("Commission") in this framework is primarily one of oversight: the Act charges the Commission with supervising each of these organizations (generally referred to as self-regulatory organizations or "SROs") and with assuring that each complies with and advances the policies of the Act. As part of its oversight responsibilities, the Commission is required to review changes in the rules of the various SROs.

Section 19(b) of the Act, as amended, requires each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission is required to publish notice of the filing together with the terms of substance of the proposed rule change or a description of the subjects and issues involved, and to give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. The Commission must either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved; no proposed rule change shall take effect, however, unless either approved by the Commission or otherwise permitted in accordance with the Act. In order to approve a proposed rule change, the Commission must make an affirmative finding that it is consistent with the Act and the rules thereunder. Section 19(b) also provides that certain administrative or interpretive proposed rule changes may become effective on filing, subject to the Commission's authority to abrogate the proposed rule change within sixty days of filing.

##### 2. Purpose of, and Consequences of Not Requiring, the Information Collection

Rule 19b-4 implements the requirements of Section 19(b) of the Act by requiring SROs to file their proposed rule changes on Form 19b-4<sup>1</sup> and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b). Rule 19b-4 and Form 19b-4 were adopted in 1975 pursuant to Sections 2, 3, 6, 11A, 15A, 15B, 17, 19, and 23 of the Act and were significantly amended in 1980 to clarify and simplify the filing process.

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<sup>1</sup> 17 CFR 249.819.

Form 19b-4 is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information received is also made available to members of the public who may wish to comment on a particular proposed rule change.

The federal securities laws generally require that, before an SRO's proposed rule change may be approved, the Commission must make certain required findings. Also, if the Commission determines that a proposed rule change, which became effective on filing, does not meet the statutory standards, it may summarily abrogate such proposed rule change.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

The Commission and the SROs continue to improve their systems for information gathering, storage, and retrieval through increasing use of computer technology. Some of these improvements, such as increased use of e-mail in correspondence between the Commission and the SROs, have improved the efficiency of the Commission's oversight role. However, the process of compiling, preparing, and filing of the data required for review of each proposed rule change reflects the complexity of the SROs' business. The Commission believes that use of improved technology, specifically electronic filing of proposed rule changes, and posting of proposed rule changes and SRO rules on SRO web sites has and will continue to reduce the respondents' burden in making these filings.

4. Efforts to Identify Duplication

Not applicable. Each proposed rule change by an SRO must be treated on an individual basis.

5. Effects on Small Entities

Not applicable. None of the SROs subject to the collection of information is a small business, as that term applies to this Item 5.

6. Consequences of Less Frequent Collection

The collection of information is required with respect to any proposed rule change described by Rule 19b-4. Any less frequent collection would deprive the Commission of the information on proposed rule changes it needs to comply with its statutory obligations.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The information collection is consistent with the general information collection guidelines imposed for public protection as set forth in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

Each proposed rule change is published in the Federal Register for public comment. The comment period is generally 21 days. In addition, the Commission shall not approve such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless it finds good reason for doing so and publishes its reasons.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. An SRO's proposed rule change, when filed with the Commission, is public information.

11. Sensitive Questions

Not applicable. No questions of a sensitive nature are involved.

12. Estimate of Respondent Reporting Burden

A filing on Form 19b-4 is generally made after the SRO's staff has obtained its board's approval. Frequently, a substantial portion of the filing can be drawn from the materials prepared for the board's review. The time required to complete a filing varies significantly and is difficult to separate from that time an SRO spends in developing internally the proposed rule change.

There are currently 22 SROs subject to the collection of information, though that number may vary owing to consolidation of existing SROs or the introduction of new entities. In recent years, these respondents have each filed an average of 58.14 filings per year, for an average annual total of 1,279 filings pursuant to Rule 19b-4. Although the amount of time needed to complete a given filing varies significantly, Commission staff estimates that the total annual reporting burden under the proposed rule would be 29,753 hours (27,676 hours for filing proposed rule changes and amendments, plus 640 hours for posting proposed rule changes and amendments on the SROs' web sites, plus 27 hours for initial posting of accurate SRO rule text on SRO web sites, plus 1,410 hours for updating SRO final rules on SRO web sites).

Costs:

27,676 hours of legal/paralegal work at \$ at \$269.70/hour <sup>2</sup>	\$7,464,217
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<sup>2</sup> Legal work at \$310 per hour and paralegal work at \$169, prorated at a 25/10 ratio based on estimate of ratio of legal to paralegal worked involved in preparing a filing. SIA Report on Management & Professional Earnings in the Securities Industry 2005, modified to account for an 1800-hour work-year and multiplied by 5.35% to account for

2,077 hours of programming work at \$199/hour<sup>3</sup> \$413,323

Under the Commodity Futures Modernization Act of 2000 (“CFMA”), Security Futures Product Exchanges and Limited Purpose National Securities Associations must file proposed rule changes with the Commission via Form 19b-7 if those changes relate to security futures products. There are currently four Security Futures Product Exchanges and one Limited Purpose National Securities Association, the National Futures Authority. Therefore, there are currently five respondents affected by the proposed change to Rule 19b-4(m) and the parallel change to proposed Rule 19b-7 and proposed Form 19b-7.

The Commission estimates that the proposed change will reduce the Form 19b-4 burden hours of these five respondents by 48 hours per year, the time it takes for them to post and update a complete set of their rules on their Web sites.

Annual Cost Savings:

48 hours of programming work at \$199/hour<sup>4</sup> \$ 9,552

New Total Cost \$7,454,665

### 13. Estimate of Total Annualized Cost Burden

The Commission does not expect that the proposed amendments to Rule 19b-4(m) would impose any material additional costs on SROs. Instead, the SROs would enjoy the cost savings discussed in Item 12.

### 14. Estimate of Cost to the Federal Government

The Commission estimates that the cost of reviewing approximately 1279 filings pursuant to Section 19(b) and Rule 19b-4 is \$5,564,370. This figure was derived as follows:

#### Review by Type of Filing

summary effective filings

356 x 10 hours legal review time 3,560 hours

routine filings

267 x 20 hours legal review time 5,340 hours

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bonuses, firm size, employee benefits, and overhead.

<sup>3</sup> SIA Report on Management & Professional Earnings in the Securities Industry 2005, modified to account for an 1800-hour work-year and multiplied by 5.35% to account for bonuses, firm size, employee benefits, and overhead.

<sup>4</sup> SIA Report on Management & Professional Earnings in the Securities Industry 2005, modified to account for an 1800-hour work-year and multiplied by 5.35% to account for bonuses, firm size, employee benefits, and overhead.

amendments	
510 x 3 hours legal review time	1,530 hours
significant filings	
109 x 120 hours legal review time	13,080 hours
major market impact filings	
37 x 1,000 hours legal review time	<u>37,000 hours</u>
total legal review time	60,510 hours

Related Cost

60,510 hours of legal work at \$87/hour <sup>5</sup>	\$5,264,370
printing costs (Federal Register)	<u>300,000</u>
	\$5,564,370

The Commission does not expect the proposed amendment to Rule 19b-4(m) to impose any additional cost on the Federal Government.

15. Explanation of Changes in Burden

As indicated above in Item 12, the Commission staff believes that only 5 respondents will be affected by the proposed amendment to Rule 19b-4(m) and the effect will be the 48 burden hour reduction.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable.

18. Exceptions to Certification

None.

**B. Collection of Information Employing Statistical Methods**

Not applicable. The collection of information does not employ statistical methods.

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<sup>5</sup> Based on an attorney at SK-14/6, as adjusted for special SEC pay rates, fringe benefits, and associated overhead.