

# PAPERWORK REDUCTION ACT SUBMISSION

## Rule 6a-4 and Form 1-N

### SUPPORTING STATEMENT

#### **A. Justification**

##### 1. Necessity for Information Collection

The Securities Exchange Act of 1934 ("Exchange Act") provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges, have primary responsibility for regulating their members or participants. The role of the Securities and Exchange Commission ("SEC") in this framework is primarily one of oversight: the Exchange Act charges the SEC with supervising the national securities exchanges and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), which allows the trading of futures on individual stocks or on narrow-based stock indexes (collectively, "security futures products"). Under the CFMA, markets that wish to trade security futures products would be regulated jointly by the SEC and the Commodity Futures Trading Commission ("CFTC"). The Exchange Act, as amended by the CFMA, provides that futures exchanges that meet certain criteria and that wish to trade security futures products must file notice with the SEC to become a "Security Futures Product Exchange."<sup>1</sup>

Rule 6a-4 sets out procedures for filing such notices with the SEC on Form 1-N. Form 1-N calls for information regarding: how the futures exchange operates, its rules and procedures, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a-4 also would require existing Security Futures Product Exchanges to file: (1) amendments to Form 1-N in the event of material changes to the information provided in the initial Form 1-N; (2) periodic updates of certain information provided in the initial Form 1-N; (3) certain information that is provided to the exchange's members; and (4) a monthly report summarizing the exchange's trading of security futures products.

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

The information obtained under Rule 6a-4 and Form 1-N would provide the SEC with basic information about exchanges that would trade security futures products but would not otherwise be required to register with the SEC. This information would assist the SEC to ascertain that such exchanges' activities do not conflict with the Exchange Act and, thus,

---

<sup>1</sup> See 15 U.S.C. 78f(g).

assist the SEC's efforts to protect investors and the public interest. An entity that is not already registered with the SEC and that does not comply with proposed Rule 6a-4 by filing the Form 1-N would not be permitted to trade security futures products.

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

Because much of the information requested by Form 1-N consists of copies of existing documents, the SEC does not expect information technology to reduce respondents' burden in any meaningful way. However, Rule 6a-4 permits respondents to make certain information available on the Internet and to notify the Commission of its web location. The Internet has developed the potential to ease compliance burdens for respondents and would increase the speed, accuracy and availability of information, generating benefits to investors and financial markets.

4. Efforts to Identify Duplication

Because the CFTC would share jurisdiction with the SEC to regulate the markets for security futures products, much of the information to be collected by the SEC would also be collected by the CFTC. The Exchange Act, as amended by the CFMA, provides that, if a futures exchange has filed documents with the CFTC, to the extent that such documents contain information satisfying the SEC's informational requirements, copies of such documents may be filed with the SEC in lieu of the SEC's required written notice.<sup>2</sup> In addition, Rule 6a-4 provides that, in lieu of providing hard copies for certain information, a Security Futures Product Exchange may simply provide the SEC with the location of the website where such information may be found.

5. Effects on Small Entities

Not applicable. None of the entities that would file notice to become Security Futures Product Exchanges and trade security futures products is a small business entity.

6. Consequences of Less Frequent Collection

To become a Security Futures Product Exchange, an entity would have to file a single Form 1-N. Therefore, less frequent collection is not feasible. After an entity files the initial Form 1-N and becomes a Security Futures Product Exchange, Rule 6a-4 requires the entity to file: (1) amendments to Form 1-N in the event of material changes to the information provided in the initial Form 1-N; (2) periodic updates of certain information provided in the initial Form 1-N; (3) certain information that is provided to the exchange's members; and (4) a monthly report summarizing the exchange's trading of security futures products. Any less frequent collection of information would deprive the SEC of up-to-date information about Security Futures Product Exchanges that is necessary to regulate them in accordance with the Exchange Act.

---

<sup>2</sup> See 15 U.S.C. 78f(g)(2)(A).

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

The collection of information is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The SEC published in the Federal Register notice of the proposal for Rule 6a-4 and Form 1-N. The SEC solicited comments regarding, among other things, the proposed burden of the proposed collection of information.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. Information provided on Form 1-N is publicly available.

11. Sensitive Questions

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

12. Estimate of Respondent Reporting Burden

Under the CFMA, futures exchanges may become national securities exchanges for the limited purpose of trading security futures products. The SEC estimates that seven entities would seek to become Security Futures Product Exchanges. This estimate was arrived at by: (1) determining the number of entities that are properly registered with the CFTC such that they are eligible to trade security futures products; and (2) subtracting from that figure the number of eligible entities that, based on an analysis of their existing product lines, are not likely to trade security futures products in the foreseeable future.

The SEC has an existing Form 1 that is used to register national securities exchanges. The Form 1-N, which is based on the Form 1, registers futures exchanges that become national securities exchanges solely because they would trade security futures products. As the SEC's jurisdiction over such Security Futures Product Exchanges is less comprehensive than over the existing securities exchanges, the SEC believes that less information should be required on Form 1-N than on the Form 1. Accordingly, the SEC requires on the Form 1-N approximately one-third fewer items than required for the Form 1. (The remaining two-thirds of the items are the same for both forms.)

In its most recent Paperwork Reduction Act submission for the Form 1, the SEC estimated that a respondent would incur an average burden of 47 hours to comply with Rule 6a-1 and file an initial Form 1 with the Commission. Reducing that figure by approximately one-third, the SEC estimates that a respondent would incur an average burden of 31 hours to comply with Rule 6a-4 and file an initial Form 1-N. The Commission estimates that the

average cost per initial filing would be approximately \$3000. This figure was derived in the following manner:

20 hours of outside professional work at \$128/hr =	\$2560
11 hours of clerical work at \$31/hr =	\$ 341
miscellaneous clerical expenses =	<u>\$ 100</u>
	\$3001

Initial filings on Form 1-N by futures exchanges would be on a one-time basis. After the first seven respondents file to become Security Futures Product Exchanges, the SEC believes that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever. Thus, the SEC estimates that the total burden for filing initial Form 1-Ns for all respondents would be 217 hours (7 respondents x 31 hours/respondent) for a total cost of \$21,000 (7 responses x \$3000/response).

Rule 6a-4 also requires existing Security Futures Product Exchanges to file amendment to Form 1-N whenever material information supplied in the initial Form 1-N changes and to update certain information on a periodic basis. In its most recent Paperwork Reduction Act submission for the Form 1, the SEC estimates that each exchange would file one amendment or periodic update per year at an average burden of 25 hours per response. The Commission believes that Security Futures Product Exchanges would also have to file one amendment or update per year, but, because Form 1-N would be a less comprehensive filing than the Form 1, the SEC estimates that the average burden for filing each amendment or update to the Form 1-N would be 15 hours per response. The Commission estimates that the average cost per response would be approximately \$1438. This figure was derived in the following manner:

20 hours of in-house professional work at \$128/hr <sup>3</sup> =	\$1152
6 hours of clerical work at \$31/hr <sup>4</sup> =	\$ 186
miscellaneous clerical expenses =	<u>\$ 100</u>
	\$1438

Finally, Rule 6a-4 requires each existing Security Futures Product Exchanges to provide the SEC with copies of certain supplemental materials sent to the exchange's members, and to file monthly reports concerning security futures products traded on the exchange. Existing Rule 6a-3 imposes a similar requirement on securities exchanges

<sup>3</sup> SIA Management and Professional Earnings, Table 107 (Attorney, New York), plus a 35 percent differential for bonus, overhead, and other expenses. The SEC believes that New York salaries are an appropriate basis for its estimates, as nearly all of the attorneys who would contribute to the filing of Form 1-Ns would be based in New York or cities with comparable legal markets.

<sup>4</sup> SIA Management and Professional Earnings, Table 012 (Secretary) plus a 35 percent differential for overhead, bonus, and other expenses.

registered under Form 1. The SEC estimates that the preparation and filing of amendments generally involves photocopying existing documents and would usually take less than one-half hour per response. The Commission estimates that each exchange would make approximately 25 such filings annually. The Commission estimates that the average cost per response would be approximately \$21. These figures were derived in the following manner:

0.5 hours of clerical work at \$31/hr =	\$15.50
miscellaneous clerical expenses =	<u>\$ 5.00</u>
	\$20.50

The SEC estimates that the total annual burden for all respondents to provide the amendments and periodic updates under Rule 6a-4 would be 105 hours (15 hours/respondent per year x seven respondents) and \$10,066 (\$1438/response x seven responses/year). The SEC estimates that the total annual burden for the filing of the supplemental information and the monthly reports required under Rule 6a-4 would be 87.5 hours (25 filings/respondent x seven respondents x 0.5 hours/response). The SEC estimates that the total annual cost for all supplemental filings would be \$3675 (25 filings/respondent per year x seven respondents x \$21/response).

In sum, the SEC concludes that the total annual burden for all Security Futures Product Exchanges (after filing the initial Form 1-N) would be 192.5 hours (105 + 87.5) and \$13,741 (\$10,066 + \$3675).

### 13. Estimate of Total Annualized Cost Burden

Not applicable. The SEC does not anticipate that respondents would have to incur any capital or start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements imposed by Rule 6a-4 and Form 1-N.

### 14. Estimate of Cost of Federal Government

Unlike the registration process for Form 1 (which requires the SEC's specific approval before an entity may become a national securities exchange), Form 1-N would be a notice procedure only and would not require any specific action by the SEC. Thus, the costs incurred by the SEC in reviewing Form 1-Ns would be substantially less than the costs incurred in reviewing the Form 1. The SEC estimates that the total costs for reviewing each Form 1-N would be as follows:

6 hours of legal work at \$75/hr =	\$450
10 hours of clerical work at \$25/hr =	\$250
miscellaneous clerical expenses =	<u>\$ 50</u>
	\$750

Assuming there would be seven respondents, the SEC estimates that the total annual cost of reviewing initial Form 1-N filings would be approximately \$5250 (seven respondents x \$750/response).

The SEC estimates that it would incur burdens of approximately six hours of staff time to review amendments and updates to proposed Form 1-N at a cost of \$260 per amendment filing. These figures were derived in the following manner:

2 hours of legal work at \$75/hr =	\$150
4 hours of clerical work at \$25/hr =	\$100
miscellaneous clerical expenses =	<u>\$ 10</u>
	\$260

Thus, the SEC estimates that its aggregate annual costs to review amendments and updates to Form 1-N filings would be \$1820 (seven respondents x one amendment or update per year per respondent x \$260/amendment). In addition, the SEC estimates that its total operational cost to review periodic information updates and monthly reports required by Rule 6a-4 would be approximately \$3000 per year. This amount was based on our computation of the value of staff time devoted to reviewing similar filings made under existing Rule 6a-3 on a regular basis and the related overhead value (at 35 percent of the value of staff time).

15. Explanation of Changes in Burden

Not applicable.

16. Information Collected Planned for Statistical Purposes

Not applicable. This information is not published for statistical use.

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

The SEC is not seeking approval not to display the expiration date for OMB approval.

18. Exceptions to Certification

The SEC is not seeking an exception to the certification statement.

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

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