

PAPERWORK REDUCTION ACT SUBMISSION

Rule 19b-7 and Form 19b-7

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 and national securities associations (collectively, self-regulatory organizations or "SROs"), 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 SROs 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"). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, "security futures products"). The CFMA removed this restriction and provides that trading in security futures products would be regulated jointly by the SEC and the Commodity Futures Trading Commission ("CFTC").

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.¹ Rule 19b-7 and Form 19b-7 implemented this procedure.

¹ These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. See 15 U.S.C. 78s(b)(7)(A).

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

Ordinarily, the proposed rule changes filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations pursuant to the procedure established by the CFMA would take effect upon filing. This information would assist the Commission to ascertain that the activities of Security Futures Product Exchanges and Limited Purpose National Securities Associations do not conflict with the Exchange Act and, thus, assist the Commission's efforts to protect investors and the public interest. The SEC may abrogate the rule change if, upon review of the information filed pursuant to Rule 19b-7 and Form 19b-7, it appears to the SEC that the rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.

A rule change by a Security Futures Product Exchange or Limited Purpose National Securities Association that was not filed in accordance with the procedure established by the CFMA (and Rule 19b-7) would not have legal effectiveness.

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

The SEC and the SROs continue to upgrade their use of technology for the gathering, storage, and retrieval of information. Some of these improvements, such as the use of e-mail in correspondence between the SEC and the SROs, have improved the efficiency of the SEC's oversight. 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, would reduce the respondents' burden in making these filing.

4. Efforts to Identify Duplication

The information to be collected cannot be obtained in any other manner. However, the Exchange Act, as amended by the CFMA, provides that a proposed rule change filed with the SEC must be filed concurrently with the CFTC.² Thus, although a Security Futures Product Exchange would be required to file the proposed rule change with two agencies, there would in effect be only one collection of information.

² See 15 U.S.C. 78s(b)(7)(B).

5. Effects on Small Entities

Not applicable. The entities subject to the proposed collection of information (Security Futures Product Exchanges and Limited Purpose National Securities Associations) would not be small business entities.

6. Consequences of Less Frequent Collection

It is essential that the SEC receive timely notice of rule changes proposed by Security Futures Product Exchanges and Limited Purpose National Securities Associations. Without such notice, proposed rule changes could come into effect that were contrary to the protection of investors or the public interest.

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

Not Applicable.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. Information provided on Form 19b-7 would be publicly available. As noted above, such information would be published in the Federal Register.

11. Sensitive Questions

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

12. Estimate of Respondent Reporting Burden

Under the CFMA, Security Futures Product Exchanges and Limited Purpose National Securities Associations must file proposed rule changes with the SEC 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 to Form 19b-7.

The SEC estimates that respondents would average 12 proposed rule changes per year that would have to file on Form 19b-7. This estimate is based on the SEC's

experience in receiving Form 19b-7 in previous years and thus believes that 12 is a reasonable estimate.

Form 19b-7 was modeled very closely on Form 19b-4. Filings on Form 19b-7 would generally be made after the SRO's staff has obtained the approval of its board of directors. Frequently, a substantial portion of the filing to the SEC can be drawn from the materials prepared for the review of the SRO's board. However, the time required to complete a filing varies significantly depending on the size and scope of the proposed rule change. Moreover, it is difficult to distinguish the time an SRO spends to prepare a filing with the SEC from the time the SRO spends in developing the proposal and presenting it to its management for approval.

The time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. However, the Commission estimates that 15.5 hours is the amount of time required to complete an average rule filing using present Form 19b-7.³ This figure includes an estimated 11.5 hours of in-house legal work and four hours of clerical work. The amount of time required to prepare amendments varies because some amendments are comprehensive, while other amendments are submitted in the form of a one-page letter. The Commission staff estimates that, under current rules, seven hours is the amount of time required to prepare an amendment to the rule proposal. This figure includes an estimated two hours of in-house legal work and five hours of clerical work.

The Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission would be 207 hours (12 rule change proposals x 15.5 hours + 3 amendments x 7 hours).

The SEC estimates that the total burden to file a Form 19b-7 all respondents would be approximately \$55,287 per year:

144 ⁴ hours of legal work at \$310/hour ⁵ =	\$ 44,640
63 ⁶ hours of paralegal work at \$169/hour ⁷ =	<u>\$ 10,647</u>
	\$ 55,287

³ See Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (August 20, 2001) (19b-7 Adopting Release).

⁴ 12 x 11.5 hrs + 3 x 2 hrs.

⁵ 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.

⁶ 12 x 4 hrs + 3 x 5 hrs.

⁷ 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.

13. Estimate of Total Annualized Cost Burden

The SEC does not anticipate any additional costs other than the \$55,287 described in Item #12.

14. Estimate of Annualized Cost to the Federal Government

Based on its experience with processing proposed rule changes filed on Form 19b-7, the SEC estimates that its cost to process 12 proposed rule changes (5 respondents x 2.4 filings/respondent per year) filed per year on Form 19b-7 is:

11	filings requiring minimal review	
	x 1 hour legal review/filing =	11 hours
	x 1 hour clerical work/filing =	11 hours
1	filings requiring additional review	
	x 5 hours legal review/filing =	5 hours
	x 1 hour clerical work/filing =	1 hour

Thus, the SEC estimates that it would incur a burden of 16 hours of legal review hours (11 plus 5) and 12 hours of clerical work (11 plus 1) to review all filings made on Form 19b-7 annually, equaling 28 hours total.

The SEC estimates that its annual costs to process 12 filings on Form 19b-7 would be as follows:

16 hours of legal review at \$87/hour ⁸ =	\$ 1,392
12 hours of clerical work at \$35/hour ⁹ =	<u>\$ 420</u>
	\$ 1,812

15. Explanation of Changes in Burden

The cost and burden hours for Form 19b-7 differ from the previous PRA submission because: i) the estimated number of responses has been reduced based on the number of actual Form 19b-7 filings for the past few years; and ii) the per hour cost estimates provided by the SIA survey has increased significantly.

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

⁸ Based on an attorney at SK-14/6, as adjusted for special SEC pay rates, including fringe benefits, and overhead.

⁹ Based on a secretary at SK-7/5, as adjusted for special SEC pay rates, including fringe benefits, and overhead.

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 would not employ statistical methods.