

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. The recent revisions ("Amendments") to Rule 19b-7 and Form 19b-7 seek to streamline 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 Amended Rule 19b-7 and Amended 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 new procedure established by the CFMA (and Amended Rule 19b-7, which implements the new procedure) 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, will 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 collection of information (Security Futures Product Exchanges and Limited Purpose National Securities Associations) are not 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

As is the current practice, the SEC published in the Federal Register notice of the Amendments to Rule 19b-7 and Form 19b-7 and solicited comments regarding, among other things, the proposed burden of the proposed collection of information. Comments received were discussed and addressed in the adopting release published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. Information provided on Amended Form 19b-7 is publicly available. As noted above, such information is 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 Amended Form 19b-7.

The SEC estimates that respondents average 12 proposed rule changes per year that have to file on Amended Form 19b-7. This estimate is based on the SEC's experience in receiving the paper version of Form 19b-7 prior to the Amendments becoming effective. The SEC does not expect the number of filings to change as a result of the Amendments to Form 19b-7 and thus believes that 12 continues to be a reasonable estimate.

Amended Form 19b-7 is modeled very closely on the prior Form 19b-7 which in turn was modeled very closely on Form 19b-4. Filings on Amended Form 19b-7 are generally 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 prior 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 the prior 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.

Based upon the experience of electronic filing of proposed rule changes on Form 19b-4, the Commission expects that an electronic Amended Form 19b-7 and new requirements in Amended Form 19b-7 will reduce by three hours the amount of SRO clerical time required to prepare the average proposed rule change and four hours an amendment thereto. Therefore, the Commission staff estimates that 12.5 hours is the amount of time that is required to complete an average rule filing and that three hours is the amount of time required to complete an average amendment. The Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the Amendments is 159 hours (12 rule change proposals x 12.5 hours + 3 amendments x 3 hours).

Furthermore, the Amendments also require SROs to post proposed rule changes filed under Rule 19b-7, and any amendments thereto, on their Web sites. The Commission staff estimates that 30 minutes is the amount of time that is required to post a proposed rule on an SRO's Web site and that 30 minutes is the amount of time that is

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

required to post an amendment on an SRO's Web site.⁴ The Commission staff estimates that the reporting burden for posting rule change proposals and amendments on the SRO Web sites is 8 hours⁵ (12 rule change proposals x 0.5 hours + 3 amendments x 0.5 hours).

Lastly, Amended Rule 19b-7 requires SROs to post and maintain their entire set of rules on their Web site. The Commission estimates that this requires 48 hours annually for all respondents combined. However, the Commission notes that currently, Rule 19b-4(m) requires SROs to already do this. Therefore, this "increase" is merely a shifting of burden hours from Form 19b-4 to Amended Form 19b-7.

The SEC estimates that the total burden to file an Amended Form 19b-7 for all respondents is approximately \$57,722 per year:

144 ⁶ hours of legal work at \$310/hour ⁷ =	\$ 44,640
15 ⁸ hours of paralegal work at \$169/hour ⁹ =	\$ 2,535
56 ¹⁰ hours of programming work at \$199/hour ¹¹ =	<u>\$ 11,144</u>
	\$ 58,319

The total number of hours annually for all respondents combined is 215 (159 + 8 + 48).

13. Estimate of Total Annualized Cost Burden

⁴ Commission legal staff from the Division of Market Regulation discussed the estimated amount of time to post a proposed rule change on the Web with staff from the Commission's Office of Information Technology. See Memorandum to File No. S7-XX-06, from Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated Month XX, 2006.

⁵ The calculation of 7.5 has been rounded to 8 hours.

⁶ 12 x 11.5 hrs + 3 x 2 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.

⁸ 12 x 1 hrs + 3 x 1 hrs.

⁹ 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.

¹⁰ 8 hrs plus 48 hrs.

¹¹ 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.

The SEC estimated that the respondent would incur a one-time training cost of 50 hours to train their staff on filing Amended Form 19b-7. If this training time is equally divided between attorneys and paralegals, the cost is \$11,975 (5 x \$310 plus 5 x \$169) for all respondents. The 50 hours of training described above is not included in the burden calculation because, in order to ensure that they would be prepared for the transition, all respondents incurred the 50 hour burden prior to Amended Rule 19b-7 and Form 19b-7 becoming effective.

There is also a nominal cost of \$500 annually for all respondents for the purchase and maintenance of signature tokens (assuming each respondent purchases five tokens: 5 x 5 x \$20). It was estimated that each of the five respondents would require five signature tokens (for five different employees) at \$20 per token (5 x 5 x 20) for a total cost of \$500. However, because some respondents already have tokens in order to file rule filings unrelated to 19b-7, they did not have to incur this cost for the purpose of complying with Amended Rule 19b-7 and Form 19b-7. In addition, some respondents decided to purchase fewer than five tokens. Based on the actual number of tokens purchased and the current number of respondents, the Commission estimates the annual burden to be a total of \$200 (10 tokens) per year for all respondents combined.

The SEC does not anticipate that respondents will have to incur any other capital or start-up costs, nor any other additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements required by Amended Rule 19b-7 and Amended Form 19b-7.

14. Estimate of Annualized Cost to the Federal Government

Based on its experience with processing proposed rule changes filed on current 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 Amended Form 19b-7 is as follows:

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 will 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 Amended Form 19b-7 annually, equaling 28 hours total.

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

16 hours of legal review at \$87/hour ¹² =	\$ 1,392
12 hours of clerical work at \$35/hour ¹³ =	<u>\$ 420</u>
	\$ 1,812

15. Explanation of Changes in Burden

There are no material changes in burden hours from prior Form 19b-7 to Amended Form 19b-7. The change in the Annual Cost Burden reflects the \$200 cost for the additional signature tokens that will be required for compliance with Amended Rule 19b-7 and Form 19b-7.

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 does not employ statistical methods.

¹² Based on an attorney at SK-14/6, as adjusted for special SEC pay rates, including fringe benefits, and overhead.

¹³ Based on a secretary at SK-7/5, as adjusted for special SEC pay rates, including fringe benefits, and overhead.