

## **PAPERWORK REDUCTION ACT SUBMISSION**

17 CFR 240.19b-4(e) and Form 19b-4(e)

### **SUPPORTING STATEMENT**

#### **A. Justification**

##### **1. Necessity of Information Collection**

The Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup> sets forth a scheme of self-regulation under which national securities exchanges, national securities associations, and registered clearing agencies have primary responsibility for regulating their members or participants. Under this scheme, the Commission's role is primarily one of oversight; the Act charges the Commission with the responsibility for assuring that each of these organizations (“self-regulatory organizations” or “SROs”) 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 self-regulatory organizations.

Section 19(b) of the Act, as amended by the Securities Act Amendments of 1975, requires each SRO to file with the Commission copies of any proposed amendment to its constitution, articles of incorporation, by-laws, rules or similar instrument or any interpretation of these instruments (collectively, “rule changes”). The Commission is required to publish notice of the filing, and then either to approve the rule change or institute proceedings to determine whether the rule change should be disapproved. Rule 19b-4 implements the requirements of Section 19(b) of the Act by requiring SROs to file their rule changes on Form 19b-4 and by clarifying which actions by SROs must be filed pursuant to Section 19(b). Rule 19b-4 was adopted in 1975 pursuant to Sections 2, 3, 6, 11A, 15A, 15B, 17, 19, and 23 of the Act.

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<sup>1</sup>

15 U.S.C. 78a et seq.

The Commission has exercised its rulemaking authority<sup>2</sup> by promulgating paragraphs (b), (c) and (d) of Rule 19b-4 under the Act, which interpret the terms “stated policy, practice or interpretation” and “proposed rule change.” Paragraph (c) of Rule 19b-4 provides that certain stated policies, practices and interpretations of SROs do not constitute proposed rule changes. Specifically, a “stated policy, practice or interpretation” of an SRO is not a proposed rule change if it is reasonably and fairly implied by an existing SRO rule. The Commission then amended Rule 19b-4 by adding paragraph (e) to state that the listing and trading of new derivative securities products would not be proposed rule changes so long as there are existing SRO trading rules, procedures, surveillance programs, and listing standards.

The Commission believes that, when the Commission has approved, pursuant to Section 19(b) of the Act, an SRO’s trading rules, procedures, surveillance programs, and listing standards for the product class that would include the new derivative securities product, the listing and trading of the new derivative securities product may be reasonably and fairly implied by the SRO’s existing trading rules, procedures, surveillance programs, and listing standards. The Commission therefore deemed the listing and trading of new derivative securities products not to be proposed rule changes pursuant to Rule 19b-4(b)(1) under certain conditions.

Certain provisions of Rule 19b-4(e) contain “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995<sup>3</sup> through the use of Form 19b-4(e) under the Act. The collection of information requires an SRO to submit a completed one-page sheet of nine questions within five days of beginning to trade a new derivative securities product through its facilities. Form 19b-4(e) asks factual information regarding the characteristics of the subject new derivative securities product and the securities underlying it. Such questions do not require any analysis or exhibits.

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<sup>2</sup> Sections 3(a)(26), 3(a)(27), 3(a)(28) and Section 3(b), of the Act provide that the Commission may promulgate rules regarding, among other things, “stated policies, practices and interpretations” of SROs. Section 19(b) authorizes the Commission to promulgate rules regarding “proposed rule changes” of SROs. Section 23(a) of the Act provides that the Commission shall have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of the Act for which it is responsible or for the execution of the functions vested in it by the Act, and may for such purposes classify persons, securities, transactions, statements, applications, reports and other matters within its jurisdiction, and prescribe greater, lesser or different requirements for different classes thereof. (See e.g., Securities Exchange Act Release No. 34140 (June 1, 1994) 59 FR 29393 (June 7, 1994)). In addition, in 1996, Congress granted the Commission the authority, under Section 36(a), to exempt any class of person, security or transaction from any provision of the Act. Pub. L. No. 104-290, 110 Stat. 3416 (1996).

<sup>3</sup> 44 U.S.C. 3501 et seq.

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

Rule 19b-4(e) permits SROs to immediately list and trade a new derivative securities product so long as such product is in compliance with the criteria of Rule 19b-4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e), it is necessary that the SRO maintain, on-site, a copy of Form 19b-4(e) under the Act. Rule 19b-4(e) requires SROs to file a summary form, Form 19b-4(e), and thereby notify the Commission, within five business days after the commencement of trading a new derivative securities product. In addition, the Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs.

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

The compilation and filing of the data required reflects the complexity of the SROs' businesses. Thus, improved technology would not reduce the burden.

4. Efforts to Identify Duplication

Not applicable. The Commission believes that no duplication of the requirements of Rule 19b-4(e) exists.

5. Effects on Small Entities

Not applicable. The SROs who are required to respond to the collection of information are not small businesses.

6. Consequences of Less Frequent Collection

The Commission could not collect the information less frequently. To do so would deprive the Commission of the information that it needs on new derivative securities products to comply with its statutory oversight 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. Consultation Outside the Agency

Rule 19b-4(e) and Form 19b-4(e) were adopted after appropriate public notice and comment.

9. Payment or Gift to Respondents

Not applicable. No payments or gifts are required to be made or are made to respondents.

10. Assurance of Confidentiality

Not applicable. Any collection of information pursuant to Rule 19b-4(e) and Form 19b-4(e) under the Act would not be held confidential and would be available for public inspection from the Commission upon request.

11. Sensitive Questions

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

12. Estimate of Respondent Reporting Burden

There are currently 12 SROs which may be subject to the reporting requirements of Rule 19b-4(e). In proposing the adoption of Rule 19b-4(e) and Form 19b-4(e), Commission staff estimated that each respondent would require two hours to complete and submit a Form 19b-4(e), and that there would be an aggregate of 45 such filings per year by all respondents. The Commission's experience since the adoption of Rule 19b-4(e) and Form 19b-4(e), however, was that the total time required to complete each filing is closer to one hour and the expected number of filings in a year is 3,180.<sup>4</sup> The Commission estimates, therefore, that, based on an average of 3,180 annual responses from 12 respondents, each response taking approximately one hour to complete, the current average reporting burden is 265 hours per respondent, or 3,180 hours for all respondents combined.

13. Estimate Of Total Annualized Cost Burden

Not applicable. It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information.

Additionally, the Commission notes that Rule 19b-4(e) has not imposed new recordkeeping burdens on the SROs. Paragraph (2)(i) of Rule 19b-4(e) reiterates the SROs' existing recordkeeping burdens under Rule 17a-1 of the Act.

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<sup>4</sup> 3,180 is based on the average annual number of new derivative securities products accounted for on Forms 19b-4(e) received by the Commission in fiscal years 2007, 2008 and 2009. The Commission notes that some SROs have, on certain occasions, filed a single Form 19b-4(e) that provided notice of the trading of multiple new derivative securities products.

14. Estimate Of Cost To The Federal Government

Costs to the Federal Government in administering Rule 19b-4(e) result from appropriate regulatory staff time and related overhead costs devoted to reviewing the filings submitted by respondents. In fiscal year 2009, the staff estimates that it devotes approximately 50 hours of staff time to the annual administration of Rule 19b-4(e), which, at \$265/hour,<sup>5</sup> has a related annual cost of \$13,250.

15. Explanation of Changes in Burden

The Commission staff has revised its estimate of the overall number of respondents from 14 to 12. The Commission staff notes that there are currently 12 SROs that could be subject to the reporting requirements of Rule 19b-4(e) since the collection of information was last submitted to OMB for approval. The Commission staff has also revised its estimate of the overall number of responses expected annually from 300 to 3,180. Based on the number of new derivative securities products that were reported to the Commission in the fiscal years 2007, 2008 and 2009, the Commission staff believes that this is a more accurate estimate of expected responses.

16. Information Collection Planned for Statistical Purposes

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

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 SEC professional, as adjusted for special SEC pay rates, fringe benefits, and includes overhead.