

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 are 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."¹

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 requires 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 provides the SEC with basic information about exchanges that trade security futures products but does not otherwise require registration with the SEC. This information assists the SEC to ascertain that such exchanges' activities do not conflict with the Exchange Act and, thus, assists the

¹ See 15 U.S.C. 78f(g).

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 is not 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 increase the speed, accuracy and availability of information, generating benefits to investors and financial markets.

4. Efforts to Identify Duplication

Because the CFTC shares jurisdiction with the SEC to regulate the markets for security futures products, much of the information collected by the SEC also is 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.² 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 must 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.

² 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 Burdena. Initial Filing

Under the CFMA, futures exchanges may become national securities exchanges for the limited purpose of trading security futures products. In its most recent Paperwork Reduction Act submission, the SEC stated that after the first seven respondents file, the SEC believes that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever. The SEC continues to believe that such filings would be infrequent, if ever. Therefore, the Commission estimates that the burden is 0 hours. The following discussion is for informational purposes in the event that a respondent files a Form 1-N.

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 \$7,146. This figure was derived in the following manner:

20 hours of outside professional work at \$316/hr ³ =	\$6,320
11 hours of clerical work at \$66/hr ⁴ =	\$ 726
miscellaneous clerical expenses =	<u>\$ 100</u>
	\$7,146

Initial filings on Form 1-N by futures exchanges would be on a one-time basis. As stated above, following the enactment of the CFMA, a number of entities registered with the SEC to become Security Futures Product Exchanges and therefore the above burden would not apply to such entities on a prospective basis. The SEC believes that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever. The SEC estimates that in the event an entity files an initial Form 1, the total burden for filing the initial Form 1-N for would be 31 hours for a total cost of \$7,146.

b. Amendment

Rule 6a-4 also requires existing Security Futures Product Exchanges to file an 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 and \$100 of miscellaneous clerical expenses. The SEC estimates that each exchange will incur an annual burden of 15 hours and \$100 associated with this requirement. This figure was derived in the following manner: 10 hours of in-house professional work + 5 hours of in-house clerical work x 1 response = 15 hours; and \$100 of miscellaneous clerical expenses. In the last few years, three Security Futures Product Exchanges have filed amendments to Form 1-N with the SEC. Therefore, the SEC estimates that these Security Futures Product Exchanges will continue to file amendments to their Form 1-N for a total annual burden of 45 hours (15 hours x 1 response x 3 respondents) and \$300 (\$100 of miscellaneous clerical expenses x 1 response x 3 respondents).

³ \$316 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2009*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁴ \$66 per hour figure for an Administrative Assistant is from SIFMA's *Office Salaries in the Securities Industry 2009*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

c. Periodic Reporting

Finally, Rule 6a-4 requires each existing Security Futures Product Exchange 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 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 SEC estimates that each exchange will incur an annual burden of 12.5 hours and \$125 associated with this requirement. These figures were derived in the following manner: 0.5 hours of in-house clerical work x 25 filings = 12.5 hours; and \$125 of miscellaneous clerical expenses. The Commission estimates that these three existing Security Futures Product Exchanges will provide the SEC with copies of supplementary materials and monthly reports concerning security futures products traded on the exchange. Accordingly, the total annual burden for all respondents to provide supplementary materials and reports is 37.5 hours (12.5 hours x 3 respondents) (rounded to 38 hours) and \$375 (\$125 of miscellaneous clerical expenses x 3 respondents).

d. Total Burden

In sum, the SEC estimates that the total annual burden for all Security Futures Product Exchanges after filing Form 1-N is: (1) 45 hours and \$300 for three respondents combined to prepare and submit amendments to Form 1-N; and (2) 38 hours and \$375 for three respondents combined to prepare and submit supplementary materials and monthly reports.

13. Estimate of Total Annualized Cost Burden

Not applicable. The SEC does not anticipate that respondents will 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

The costs to the Federal Government in administering Rule 6a-4 result from appropriate regulatory staff time and related overhead costs devoted to reviewing the filings submitted by respondents.

As noted above, the SEC believes that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever. The SEC estimates that in the event an entity files an initial Form 1, the SEC will devote approximately 6 hours of professional

time to review each Form 1-N which, at \$265/hour,⁵ has a related cost of \$1,590. The SEC also estimates that it will devote approximately 10 hours of administrative time to review each Form 1-N which, at \$60/hour,⁶ has a related cost of \$600. The total cost to review each Form 1-N is \$2,190. If the SEC receives one Form 1-N, the total estimated cost to review this forms is \$2,190.

The SEC estimates that it will devote approximately 2 hours of professional time to review amendments and updates to Form 1-N which, at \$265/hour, has a related cost of \$550 ($=\$265 \times 2 \text{ hours} + \$10 \text{ (miscellaneous clerical expenses)} \times 2$). The SEC also estimates that it will devote approximately 4 hours of administrative time to review each Form 1-N which, at \$60/hour, has a related cost of \$240. The total cost to review amendments and updates to each Form 1-N is \$790. If the SEC receives two amendments to Forms 1-N, one from each respondent as estimated above, the total estimated cost to review these forms is \$1,580.

Thus, the SEC estimates that its aggregate annual costs to review amendments and updates to Form 1-N filings would be \$1,580 (two respondents x one amendment or update per year per respondent x \$790/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 \$1,715 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

The original estimates provided that after the first seven respondents file, the SEC believes that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever. This submission provides that the SEC continues to believe that additional entities would file an initial Form 1-N on an extremely infrequent basis, if ever, based upon its experience over the last few years with initial Form 1-N filings. In addition, the SEC has analyzed the number of Security Futures Product Exchanges that have listed and traded security futures products and, based on that analysis, has determined that three Security Futures Product Exchanges are likely to continue making amendments and updates to their Form 1-N and continue providing periodic information and monthly reports. The burden estimates above associated with amendments and updates to the Form 1-N and the submission of periodic and monthly reports are applied to the existing Security Futures Product Exchanges that file such reports currently.

16. Information Collected Planned for Statistical Purposes

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

⁵ Based on an SEC professional, as adjusted for special SEC pay rates, fringe benefits, and includes overhead.

⁶ Based on SEC office salaries.

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.