

PAPERWORK REDUCTION ACT SUBMISSION

Rule 6h-1

Supporting Statement

A. Justification

1. **Necessity of Information Collection**

The Securities Exchange Act of 1934, as amended (“Exchange Act”),¹ provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations, 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 the responsibility for assuring that each of these self-regulatory organizations (“SROs”) complies with and advances the policies of the Exchange Act.

The Commodity Futures Modernization Act of 2000 (“CFMA”)² amended the Exchange Act by allowing the trading of futures on individual securities or on narrow-based security indexes (collectively, “security futures products”), and providing a framework for the joint regulation of trading in security futures products by the SEC and the Commodity Futures Trading Commission.

Section 6(h) of the Exchange Act³ provides that, prior to trading security futures products, a national securities exchange or national securities association must file with the SEC under Section 19(b) of the Exchange Act⁴ listing standards for such security futures products. The Exchange Act, as amended by the CFMA, provides that such listing standards must require, among other things, that: (1) trading in security futures products not be readily susceptible to price manipulation,⁵ and (2) the market trading a security futures product has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product.⁶ To further these statutory mandates, Rule 6h-1 under the Exchange Act⁷ requires that: (1) the final settlement price of cash-settled security futures products fairly reflect the opening price of the underlying security or securities, rather than the closing price, on the grounds that settlement based on the closing price creates greater volatility and more

¹ 15 U.S.C. 78a et seq.

² Pub. L. No. 106-554, 114 Stat. 2763 (2000) (codified in scattered sections of 7 U.S.C.).

³ 15 U.S.C. 78f(h).

⁴ 15 U.S.C. 78(s)(b).

⁵ See 15 U.S.C. 78f(h)(3)(H).

⁶ See 15 U.S.C. 78f(h)(3)(K).

⁷ 17 CFR 240.6h-1.

opportunity for price manipulation; and (2) the rules of an SRO that trades security futures products must provide that trading of a securities futures product will be halted at all times that a regulatory halt has been instituted for the underlying security, in the case of a security futures product based on a single security, or for one or more underlying securities that constitute 50% or more of the market capitalization of the underlying narrow-based security index, in the case of a security futures product based on a narrow-based security index.

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

Rule 6h-1 results in proposed rule changes being filed by an SRO that is a national securities exchange or national securities association with the SEC pursuant to Section 19(b) of the Exchange Act.⁸ The SEC reviews these rule changes to ascertain whether the SRO's listing standards are in compliance with the listing requirements for security futures products set forth in the Exchange Act. Moreover, any listing standards established by an SRO must be published in the Federal Register. Without such publication, the public would be denied a principal means by which to review and offer input on SRO rules.

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

The preparation and filing of the proposed rule changes reflects the complexity of the SRO's business. Improved technology, therefore, would not reduce the respondents' burden in making these filings.

4. Efforts to Identify Duplication

The SEC does not believe that SROs' compliance with the relevant provisions of the Exchange Act would entail any duplicative filing requirements.

5. Effect on Small Entities

Not applicable. No small business entities are involved.

6. Consequences of Less Frequent Collection

If an SRO did not file its listing standards with the SEC, the SEC would not be able to publish them in the Federal Register, and the public would be denied a principal means by which to review and offer input on SRO rules.

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. Consultation Outside the Agency

⁸ 15 U.S.C. 78s(b).

On August 30, 2001, the SEC published for public comment proposed Rule 6h-1.⁹ The SEC received eight comment letters in response to the proposed Rule 6h-1. The commenters generally supported the proposed rule. After considering the comments, the SEC adopted Rule 6h-1, effective June 24, 2002, substantially as proposed with slight modifications in response to the recommendations by the commenters.¹⁰

9. Payment or Gift to Respondents

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

10. Assurances of Confidentiality

Not applicable. Any SRO rule filing 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

The SEC estimates that there will be 18 respondents to the collection of information request, consisting of 14 national securities exchanges registered under Section 6(a) of the Exchange Act¹¹ and 4 futures markets that have registered as national securities exchanges under Section 6(g) of the Exchange Act.¹²

The SEC believes that these SROs would have to devote some professional resources to review Rule 6h-1 and to ensure that their listing standards (and the rule filings to implement them) were consistent with Rule 6h-1. The SEC estimates that this burden, per SRO, would be as follows:

10 hours of legal work at \$316/hour¹³ = \$3,160

The SEC estimates that the total hourly burden for all respondents would be 180 hours (10 hours/respondent x 18 respondents). The SEC estimates that the total cost associated with

⁹ See Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 (August 30, 2001).

¹⁰ See Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

¹¹ 15 U.S.C. 78f(a).

¹² 15 U.S.C. 78f(g).

¹³ \$316/hour figure for an Attorney is from the SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

such hours burden for all respondents would be \$56,880 (\$3,160/respondent x 18 respondents). The SEC believes that these are one-time burdens that would not recur.

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 associated with Rule 6h-1.

14. Estimate of Annualized Cost to the Federal Government

The SEC does not believe that Rule 6h-1 would result in any cost to the federal government that has not already been accounted for. Even in the absence of Rule 6h-1, any SRO that wishes to trade security futures products would have to submit to the SEC a proposed rule change under Section 19(b) of the Exchange Act¹⁴ to establish listing standards for such products. Rule 6h-1 may affect the content of these filings, but not their number or length.

15. Explanation of Changes in Burden

The number of national securities exchanges registered pursuant to Section 6(a) of the Exchange Act has increased from 9 to 14. The number of futures markets that are notice-registered as national securities exchanges pursuant to Section 6(g) of the Exchange Act has increased from 2 to 4. There is no longer any national securities association that operates a securities market. These changes in the number of respondents accounts for the increase in the burden estimate from 170 hours to 180 hours. In addition, the estimated related cost associated with such hours burden has increased from \$33,490 to \$56,880 due to both an increase in the number of respondents and an increase in the hourly estimated rates for professional legal work.¹⁵

The estimate of total annualized cost has been reduced to zero, as the cost information previously included in this section in the Commission's 2007 request to extend the current collection of information for Rule 6h-1 actually reflected the cost of the burden measured in hours and was, therefore, being "double counted."

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

¹⁴ 15 U.S.C. 78s(b).

¹⁵ See supra note 13.

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.