

PAPERWORK REDUCTION ACT SUBMISSION

Rule 19b-4 and Form 19b-4

SUPPORTING STATEMENT

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. Justification

1. Necessity of Information Collection

The Securities Exchange Act of 1934 (“Exchange Act”) provides a framework for self-regulation within which national securities exchanges, national securities associations, and registered clearing agencies have primary responsibility for regulating their members or participants, and the Municipal Securities Rulemaking Board is responsible for establishing rules for certain transactions in municipal securities. The Exchange Act charges the Commission with supervising each of these organizations (generally referred to as self-regulatory organizations or “SROs”) and with assuring that each complies with and advances the policies of the Exchange Act. As part of its oversight responsibilities, the Commission is required to review changes in the rules of the various SROs.

Section 19(b) of the Exchange Act, as amended, requires each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, a “proposed rule change”) accompanied by a concise general statement of the basis and purpose of such proposed rule change. Rule 19b-4 currently requires an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b-4. Form 19b-4 currently requires a description of the terms of a proposed rule change, the proposed rule change’s impact on various market segments, and the relationship between the proposed rule change and the SRO’s existing rules. Form 19b-4 also requires an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, the proposal’s impact on competition, and a summary of any written comments received by the SRO from SRO members. An SRO also is required to submit Form 19b-4 to the Commission electronically, post a proposed rule change on its public website within two business days of its filing, and to post and maintain a current and complete set of its rules on its website.

The Commission is required to publish notice of a proposed rule change together with the terms of substance of the proposed rule change or a description of the subjects and issues involved, and to give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. The Commission must either approve or disapprove a proposed rule change not later than 45 days after the date of publication in the Federal Register, which publication must be made by the Commission as soon as practicable. The Commission may, with the consent of the SRO, extend the time period for approval or disapproval by up to an additional 45 days if it determines that a longer period is appropriate and publishes the reasons for the determination. In order to approve a proposed rule change, the Commission must make an

affirmative finding that the proposed rule change is consistent with the Exchange Act and the rules thereunder. Section 19(b) also provides that certain administrative or interpretive proposed rule changes may become effective on filing, subject to the Commission's authority to temporarily suspend the proposed rule change within sixty days of filing.

2. Purpose and Use of the Information Collection

Rule 19b-4 implements the requirements of Section 19(b) of the Exchange Act by requiring SROs to file their proposed rule changes on Form 19b-4¹ and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b). Rule 19b-4 and Form 19b-4 were adopted in 1975 pursuant to Sections 2, 3, 6, 11A, 15A, 15B, 17, 19, and 23 of the Act and were significantly amended in 1980 to clarify and simplify the filing process.

Form 19b-4 is designed to provide the Commission with the information necessary to determine, as required by the Exchange Act, whether the proposed rule change is consistent with the Exchange Act and the rules thereunder. The information received is also made available to members of the public who may wish to comment on a particular proposed rule change.

The federal securities laws generally require that, before an SRO's proposed rule change may be approved, the Commission must make certain required findings. Also, if the Commission determines that a proposed rule change, which became effective on filing, does not meet the statutory standards, it may summarily temporarily suspend such proposed rule change.

3. Consideration Given to Information Technology

The Commission and the SROs continue to improve their systems for information gathering, storage, and retrieval through increasing use of computer technology. Some of these improvements, such as increased use of e-mail in correspondence between the Commission and the SROs, have improved the efficiency of the Commission's oversight role. 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 has and will continue to reduce the respondents' burden in making these filings. Currently, the Electronic Form 19b-4 Filing System ("EFFS") is used by SROs to file proposed rule changes electronically with the Commission pursuant to Exchange Act Section 19(b), and SRTS is the internal Commission system used to manage SRO proposed rule changes.

4. Duplication

Not applicable. Each proposed rule change by an SRO must be treated on an individual basis.

5. Reducing the Burden on Small Entities

¹ 17 CFR 249.819.

Not applicable. None of the SROs subject to the collection of information is a small entity, as that term applies to this Item 5.

6. Consequences of Not Conducting the Collection

The collection of information is required with respect to any proposed rule change described by Rule 19b-4. Any less frequent collection would deprive the Commission of the information on proposed rule changes it needs to comply with its statutory 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. Consultations Outside the Agency

Each proposed rule change is published in the Federal Register for public comment. The comment period is generally 21 days. In addition, the Commission shall not approve such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless it finds good cause for doing so and publishes its reasons.

For this information collection, the required Federal Register notice with a 60-day comment period soliciting comments was published. No public comments were received.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. An SRO's proposed rule change, when filed with the Commission, is public information.

11. Sensitive Questions

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

12. Estimate of Respondent Reporting Burden

An SRO proposed rule change is generally filed with the Commission after an SRO's staff has obtained approval by its board of directors. 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. In 2008, OMB approved a request to extend the existing collection of information provided for in Rule 19b-4 and Form 19b-4. See 73 FR 5245 (January 29, 2008) (Submission for OMB review; comment request). The PRA analysis conducted in 2008 estimated that the average time to complete a proposed rule change filing was 23.22 hours,

without differentiating between average and complex rule filings.²

In fiscal year 2009, 25 SRO respondents³ filed 1,405 rule change proposals subject to the current collection of information. Of this total, the Commission estimates that 60 proposed rule changes could be characterized as novel or complex and 1,345 proposed rule changes could be characterized as average. The Commission estimates that the total annual reporting burden for filing proposed rule changes with the Commission pursuant to Rule 19b-4 and Form 19b-4 will be 53,470 hours ((1,345 X 34 hours) + (60 X 129 hours)). Thus, on average, the reporting burden for filing proposed rule changes is approximately 38.0569 hours (53,470 hours/(1345 average rule change proposals + 60 complex rule change proposals)).

The Commission previously estimated that an SRO would take four hours to post proposed rule changes, and amendments under Exchange Act Section 19(b) on its website and four hours to update the posted SRO rules on its website once the proposed rules become effective.⁴ The Commission believes that these estimates remain valid. In addition, of the 1,405 proposed rule changes filed in fiscal year 2009, 1,071 were approved or not abrogated.⁵ Accordingly, the total annual third-party disclosure burden for SROs to post proposed rule changes on their websites and to update their posted rules on their websites once the proposed

² In a PRA analysis conducted in 2004 in connection with amendments to Rule 19b-4 and Form 19b-4, the Commission estimated that 34 hours is the amount of time that would be required to complete an average proposed rule change filing and 129 hours is the amount of time required to complete a novel or complex proposed rule change. See Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004). In light of the changes made to Exchange Act Section 19(b) pursuant to Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which provides for new deadlines by which the Commission must publish and act upon proposed rule changes, the Commission has decided to revert to the figures contained in the PRA analysis conducted in 2004 and preliminarily estimates that it will take 34 hours to complete an average proposed rule change filing and 129 hours to complete a complex proposed rule change filing. Specifically, the shortened time period by which proposed rule changes will be reviewed by the Commission is likely to cause the SROs to spend additional time preparing and checking the filing, as there will be less time for them to correct a filing after it has been made, justifying the use of the more conservative estimates.

³ Currently, there are 25 registered SROs.

⁴ See supra note 2.

⁵ Previously, the Commission was able to “abrogate” an immediately effective filing and require the SRO to refile the proposal for consideration, notice, and public comment pursuant to Section 19(b)(2). The Dodd-Frank Act eliminated the concept of “abrogation.” Instead, an immediately effective filing may be temporarily suspended, in which case the Commission would be required to institute proceedings to determine whether to disapprove the proposal.

rules become effective will be 9,904 hours ((1,071 approved or not temporarily suspended rules X four hours) = 4,284 hours) + ((1,405 rule change proposals X four hours) = 5,620 hours).

The table below summarizes, the Commission's preliminarily estimates of the total hourly reporting burden pursuant to Rule 19b-4 and Form 19b-4.

Nature of Information Collection Burden	Annualized Time Burden Estimate
Proposed rule change filings	53,470
Posting of proposed rules changes and updating posted rules on websites once the proposed rules become effective	9,904
TOTAL	63,374

13. Estimate of Total Annual Cost Burden

The Commission does not expect any additional material costs on SROs.

14. Estimate of Cost to the Federal Government

The Commission estimates that the cost of reviewing approximately 1405 filings pursuant to Section 19(b) and Rule 19b-4 is \$5,772,300. This figure was derived as follows:

Review by Type of Filing

average filings	
1345 x 20 hours legal review time	26,900 hours
complex filings	
60 x 600 hours legal review time	<u>36,000 hours</u>
total legal review time	62,900 hours

Related Cost

62,900 hours of legal work at \$87/hour ⁶	\$5,264,370
printing costs (Federal Register)	<u>300,000</u>
	\$5,772,300

The Commission does not expect any additional cost on the Federal Government.

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

15. Explanation of Changes in Burden

As indicated above in Item 12, the Commission staff has revised its estimate of the time to complete each response since the collection of information was previously submitted to OMB for approval. The Commission accordingly adjusted the respondent reporting burden to reflect this change.

16. Information Collections Planned for Statistical Purposes

Not applicable. The information collections above are not planned for statistical purposes.

17. Explanation as to Why Expiration Date Will Not Be Displayed

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

Not applicable. The collection of information does not employ statistical methods.