

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
17 CFR 240.19b-4(e) and Form 19b-4(e)

A. JUSTIFICATION

1. Necessity of Information Collection

The Securities Exchange Act of 1934, as amended (“Act”)¹ 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 rule or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, “proposed rule change”). The Commission is required to publish notice of the proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the Act.

Rule 19b-4 implements the requirements of Section 19(b) of the Act by requiring SROs to file their proposed 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.

The Commission has exercised its rulemaking authority² by promulgating paragraphs (b), (c) and (d) of Rule 19b-4 under the Act, which interpret the terms “stated

¹ 15 U.S.C. 78a et seq.

² Sections 3(a)(26), 3(a)(27), 3(a)(28) and 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. 35123 (Dec. 20, 1994) 59 FR 66692 (Dec. 28, 1994)). In addition, in 1996, Congress granted the Commission the authority, under Section 36(a), to exempt, among other things,

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, among other things, 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 by an SRO would not be deemed a proposed rule change if the Commission has approved the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.

The Commission believes that, when the Commission has approved, pursuant to Section 19(b) of the Act, an SRO’s trading rules, procedures 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 is reasonably and fairly implied by the SRO’s existing trading rules, procedures and listing standards. The Commission therefore deemed the listing and trading of new derivative securities products to not be proposed rule changes pursuant to Rule 19b-4(c)(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 1995³ 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.

2. Purpose and Use of the Information Collection

Rule 19b-4(e) permits an SRO to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets 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 on the SROs, Rule 19b-4(e) requires an SRO to file a summary form, Form 19b-4(e), to notify the Commission when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Form 19b-4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, Rule 19b-4(e) requires an SRO to maintain, on-site, a copy of Form 19b-4(e) for a prescribed period of time.

any class of person, security or transaction from any provision of the Act. Pub. L. No. 104-290, 110 Stat. 3416 (1996).

³ 44 U.S.C. 3501 et seq.

This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e). The Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs.

3. Consideration Given to Information Technology

The collection of information does not involve the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology. The instructions for completing Form 19b-4(e) direct SROs to file the original and nine copies with the Commission.

4. 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 Not Conducting Collection

If the Commission did not collect this information or collected it less frequently, it would not be able to maintain an accurate and timely record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes consistent with its statutory oversight obligations.

7. Inconsistencies With Guidelines in 5 CFR 1320.5(d)(2)

Rule 19b-4(e) permits an SRO to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets 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 on the SROs, Rule 19b-4(e) requires an SRO to file a summary form, Form 19b-4(e), to notify the Commission when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Form 19b-4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, Rule 19b-4(e) requires an SRO to maintain, on-site, a copy of Form 19b-4(e) for a period of not less than 5 years.

This collection of information is designed to allow the Commission to maintain an accurate and timely record of all new derivative securities products traded on the SROs

that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e). The Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs. 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.

The instructions for completing Form 19b-4(e) direct SROs to file the original and nine copies with the Commission. Because it is necessary to share the form internally among at least three offices (the Division of Trading and Markets, the Office of Compliance Inspections and Examinations, and the Public Reference Room) and multiple staff members, it is helpful to have multiple copies of the form.

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

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

10. 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. Burden of Information Collection

As of March 2013, there are 17 SROs that 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 3,879.⁴

⁴ 3,879 is based on the average annual number of new derivative securities products accounted for on Forms 19b-4(e) received by the Commission in years 2010,

The Commission estimates, therefore, that, based on an average of 3,879 annual responses from up to 17 respondents, the total annual cost burden is 3,879 for all respondents combined. At an average hourly cost of \$63, the aggregate related cost of compliance with Rule 19b-4(e) is \$244,377 (3,879 burden hours multiplied by \$63/hour).

13. Cost to Respondents

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.

14. Costs to 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 forms submitted by respondents. The staff estimates that it devotes approximately 259 hours of staff time (approximately four minutes per form multiplied by an average of 3,879 forms per year) to the annual administration of Rule 19b-4(e), which, at \$279/hour,⁵ has a related annual cost of \$72,261.

15. Changes in Burden

The Commission staff has revised its estimate of the overall number of respondents from 12 to 17. The Commission staff notes that there are currently 17 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 3,180 to 3,879. Based on the number of new derivative securities products that were reported to the Commission in years 2010, 2011 and 2012, 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.

2011 and 2012. 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.

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

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.. The OMB control number will be displayed.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.