

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 6h-1

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 (“Commission”) in this framework is primarily one of oversight; the Exchange Act charges the Commission 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 Commission 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 Commission 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 opportunity for price manipulation; and (2) the rules of an SRO that trades security

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.

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 and Use of the Information Collection

Rule 6h-1 result in proposed rule changes being filed by an SRO that is a national securities exchange or national securities association with the Commission pursuant to Section 19(b) of the Exchange Act⁸ that wishes to trade security futures products. The Commission reviews these rule changes to ascertain whether the SRO's security futures product 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; thereby providing the public with the opportunity to review and offer input on the SRO's proposed rule changes.

3. Consideration Given to Information Technology

SROs file proposed rule changes pursuant to Section 19(b) of the Exchange Act electronically with the Commission through SRTS. The preparation and filing of the proposed rule changes relating to listing standards for security futures products, and the extent to which such proposed rule changes involve the use of information technology, reflect the complexity of the SRO's business. Improved technology, therefore, would not reduce the respondents' burden in making these filings.

4. Duplication

The Commission 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 Not Conducting Collection

If an SRO did not file its listing standards for security futures products with the Commission, the Commission 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)

⁸ 15 U.S.C. 78s(b).

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultation 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 SRO rule filing would be published in the Federal Register.

11. Sensitive Questions

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

12. Burden of Information Collection

A national securities exchange or national securities association that lists or trades security futures products would incur a one-time burden to comply with the collection of information request contained in Rule 6h-1 at the time it seeks to list or trade security futures products. The Commission estimates that there will be one respondent to the collection of information request per year. There are currently five futures markets that have registered as national securities exchanges under Section 6(g) of the Exchange Act⁹ (“Futures Markets”) and must already comply with Rule 6h-1. These existing Futures Markets will incur no new collection of information burden pursuant to Rule 6h-1. In addition, a designated contract market not already registered as a national securities exchange under Section 6(g) of the Exchange Act may register with the Commission to list and trade security futures products. Accordingly, the Commission estimates that one such entity will seek to list or trade security futures products each year and thereby incur a one-time burden to comply with the collection of information request contained in Rule 6h-1. The Commission believes that the entity would have to devote some professional resources to review Rule 6h-1 and to ensure that its listing standards (and the rule filings to implement them) are consistent with Rule 6h-1. The Commission estimates that this burden, per respondent, would be as follows:

$$10 \text{ hours of legal work at } \$379/\text{hour}^{10} = \$3,790$$

⁹ 15 U.S.C. 78f(g).

¹⁰ \$379/hour figure for an Attorney is from the SIFMA’s Management & Professional Earnings in the Securities Industry 2012, 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.

The Commission estimates that the total hourly burden for all respondents would be 10 hours (10 hours/respondent x 1 respondent). The Commission estimates that the total internal cost of compliance associated with such hours burden for all respondents would be \$3,790 (\$3,790/respondent x 1 respondent). The Commission believes that these are one-time burdens that would not recur.

13. Costs to Respondents

Not applicable. The Commission 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. Costs to the Federal Government

The Commission 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 Commission a proposed rule change under Section 19(b) of the Exchange Act¹¹ to establish listing standards for such products. Rule 6h-1 may affect the content of these filings, but not their number or length.

15. Changes in Burden

The Commission has changed its estimate of the number of respondents from 18 per year to one per year. In the last collection of information, the Commission estimated that every national securities exchange registered under Section 6(a) of the Exchange Act¹² (“Exchange”) and every Futures Market would incur an information collection burden under Rule 6h-1. Given the fact that the burden incurred pursuant to Rule 6h-1 is only a one-time burden rather than a recurring burden, and that only one newly-registered Futures Market has sought to trade security futures products since the last collection of information was approved, the Commission no longer believes it is reasonable to estimate that every Exchange and Futures Market will incur a burden under Rule 6h-1. The Commission now estimates that one designated contract market not already registered as a national securities exchange under Section 6(g) of the Exchange Act will seek to list or trade security futures products each year. This change in the number of respondents accounts for the decrease in the burden estimate from 180 hours to 10 hours.

16. Information Collected Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

¹¹ 15 U.S.C. 78s(b).

¹² 15 U.S.C. 78f(a).

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. This collection does not involve statistical methods.