

## SUPPORTING STATEMENT

### For the Paperwork Reduction Act Information Collection Submission for

### Rule 19b-4 Filings with Respect to Proposed Rule Changes, Securities-Based Swap Submissions, and Advance Notices by Self-Regulatory Organizations and the Security-Based Swap Stay of Clearing Requirement

#### A. JUSTIFICATION

##### 1. Information Collection Necessity

###### A. Rule 19b-4 and Form 19b-4

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 persons associated therewith, and the Municipal Securities Rulemaking Board is responsible for establishing rules for certain transactions in municipal securities. The Exchange Act charges the Securities and Exchange Commission (“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 requires an SRO to submit each proposed rule change on 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. An SRO is required to submit Form 19b-4 to the Commission electronically, post a copy of the proposed rule change on its public website within two business days of its filing, and post and maintain a current and complete set of its rules on its website. In the event that an SRO does not post its proposal on its website on the same day that it files the proposal with the Commission, then the SRO must inform the Commission of the date on which it posted such proposal on its website. This requirement allows the Commission to comply with Section 19(b)(2)(E) of the Exchange Act, which provides that the “publication date” of a proposed rule change is the date of Federal Register publication as long as the Commission sends the notice to the Federal Register for publication within 15 days of the date on which the SRO publishes the proposal on its website.

The Commission is required to publish a notice in the Federal Register of each proposed rule change filing (such notices are prepared by the SROs themselves) to give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. Certain proposals are subject to Commission approval before they can become effective (such proposals are filed under Section 19(b)(2) of the Exchange Act), while others become immediately effective upon filing with the Commission (such proposals, which are outlined under Rule 19b-4(f), are filed under Section 19(b)(3)(A) of the Exchange Act). The comment period is generally 21 days.

For those filings that are subject to approval, the Commission may not approve such proposed rule change prior to 30 days after publication of the notice in the Federal Register unless it finds good cause for doing so and publishes its reasons. The Commission must either approve or disapprove a proposed rule change, or institute proceedings to consider whether a proposal should be disapproved, within 45 days after the date of publication of the notice in the Federal Register. Either the Commission or the SRO may extend the 45-day period by up to an additional 45 days. The Commission may extend the period only if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In order to approve a proposed rule change, the Commission must publish a release that makes affirmative findings that the proposed rule change is consistent with the Exchange Act and the rules thereunder applicable to the SRO. If it cannot make such findings, then the Commission must publish a release that disapproves the proposal.

Filings that are not subject to Commission approval instead become effective upon filing with the Commission, subject to the Commission's authority to summarily temporarily suspend such proposed rule changes within 60 days of the filing date. In addition, one category of immediately effective filings (those submitted pursuant to Rule 19b-4-(f)(6)) is subject to a 30-day operative delay, which period may be shortened by the Commission if consistent with the protection of investors and the public interest.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")<sup>1</sup> was enacted to, among other purposes, promote the financial stability of the United States by improving accountability and transparency in the financial system and by providing for enhanced regulation and oversight of institutions designated as systemically important.<sup>2</sup> Titles VII and VIII of the Dodd-Frank Act were intended to further these goals and mitigate systemic risk in part by imposing new requirements with respect to clearing agencies. As noted above, registered clearing agencies are SROs under the Exchange Act and must file proposed rule changes with the Commission on Form 19b-4.

Section 763(a) and Section 806(e) of the Dodd-Frank Act, and the rules adopted by the Commission to implement Section 763(a) and Section 806(e) of the Dodd-Frank Act, impose

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<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, H.R. 4173).

<sup>2</sup> See Pub. L. No. 111-203, Preamble.

collection of information requirements on registered clearing agencies. These reporting requirements are in addition to the information previously required by Rule 19b-4 and Form 19b-4. In adopting the rules to implement Section 763(a) and Section 806(e) of the Dodd-Frank Act, the Commission required the information to be collected on Form 19b-4 in order to utilize existing resources.

Section 763(a) of the Dodd-Frank Act added Section 3C to the Exchange Act (“Exchange Act Section 3C”). Exchange Act Section 3C requires a clearing agency to submit for Commission determination whether a security-based swap (or group, category, type or class of security-based swap) is required to be cleared (“Security-Based Swap Submissions”) and provide notice to its members of such submissions.<sup>3</sup> The Commission adopted Rule 19b-4(o) in furtherance of the requirements set forth in Exchange Act Section 3C.<sup>4</sup> Section 806(e) requires that any financial market utility designated as systemically important by the Financial Stability Oversight Council (“Council”), file with the Commission advance notices (“Advance Notices”) of proposed changes to its rules, procedures, or operations that could, as defined by the rules of each Supervisory Agency, materially affect the nature or level of risk presented by the financial market utility.<sup>5</sup> Clearing agencies registered with the Commission are financial market utilities as defined in Title VIII of the Dodd-Frank Act and the Commission may be the Supervisory Agency to a clearing agency that is designated as systemically important by the Council (“designated clearing agency”).<sup>6</sup> A designated clearing agency must comply with the notice process as soon as the Council designates the clearing agency as systemically important. The Commission adopted Rule 19b-4(n) in furtherance of the requirements set forth in Section 806(e).

The Commission anticipates that in many cases, a clearing agency will be required to make a Security-Based Swap Submission under Exchange Act Section 3C or file an Advance Notice

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<sup>3</sup> 15 U.S.C. 78c-3 et seq.

<sup>4</sup> With respect to the compliance date for Rule 19b-4(o), the Commission recognized that clearing agencies would require a transition period, and determined that the compliance date would begin 60 days after the date the Commission issues its first written determination, pursuant to Section 3C(b)(2)(C)(ii) of the Exchange Act, of whether a security-based swap, or group, category, type, or class of security-based swaps, is required to be cleared. 77 FR 41602, 41626 (July 13, 2012). As of the date of this publication, the Commission has not yet issued its written determination pursuant to Section 3C(b)(2)(C)(ii) of Exchange Act.

<sup>5</sup> 12 U.S.C. 5465(e).

<sup>6</sup> Pursuant to Section 803(8) of the Dodd-Frank Act, the Commission is the Supervisory Agency for any financial market utility that is a Commission-registered clearing agency and the CFTC is the Supervisory Agency for any financial market utility that is a CFTC-registered derivatives clearing organization (“DCO”). To the extent that an entity is both a Commission-registered clearing agency and a CFTC-registered DCO, the statute requires the two agencies to agree on one agency to act as the Supervisory Agency, and if the agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of Title VIII of the Dodd-Frank Act. 12 U.S.C. 5462(8).

under Section 806(e) of the Dodd-Frank Act when it is already required to file a proposed rule change under Section 19(b) of the Exchange Act. Clearing Agencies can meet one or more of these filing requirements by submitting a single Form 19b-4.

Exchange Act Section 3C requires that a clearing agency provide as part of the Security-Based Swap Submission a statement that includes, but is not limited to: (i) how the submission is consistent with Section 17A of the Exchange Act; (ii) information that will assist the Commission in the quantitative and qualitative assessment of the factors specified in Exchange Act Section 3C; and (iii) how the rules of the clearing agency meet the criteria for open access.

Section 806(e) of the Dodd-Frank Act requires that the Advance Notice include a description of the nature of the proposed change and the expected effects on risks to the designated clearing agency, its participants, or the market and it must provide a description of how the designated clearing agency will manage any identified risks.

In addition, a clearing agency is required to post certain information on its website.<sup>7</sup> Security-Based Swap Submissions and Advance Notices, and any amendments thereto, must be posted on a clearing agency's website within two business days of filing the information with the Commission.<sup>8</sup> The information generally shall remain posted on the clearing agency's website until a determination is made with respect to the Security-Based Swap Submission or until the Advance Notice becomes effective. A clearing agency also must post notice on its website of the effectiveness of any change to its rules, procedures, or operations filed as an Advance Notice within two business days of the effective date determined in accordance with Section 806(e) of the Dodd-Frank Act.<sup>9</sup>

Under Rule 19b-4, Security-Based Swap Submissions and Advance Notices must be submitted electronically on Form 19b-4.<sup>10</sup> In addition, a clearing agency must indicate whether it is filing under Exchange Act Section 3C, Section 806(e) of the Dodd-Frank Act, Section 19(b) of the Exchange Act, or a combination of the three (in order to avoid duplicative filings and to streamline the process and burden on clearing agencies and the Commission). However, each filing requirement is distinct and subject to different statutory standards for Commission review.

Rule 19b-4 provides that proposed rule changes that primarily affect products that are not securities are eligible to become effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act.<sup>11</sup> The content of a rule filing made pursuant to Section

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<sup>7</sup> Rule 19b-4(l). See also supra note 4.

<sup>8</sup> Rule 19b-4(n)(3) and Rule 19b-4(o)(5).

<sup>9</sup> Rule 19b-4(n)(4).

<sup>10</sup> Rule 19b-4(o)(2). See also supra note 4.

<sup>11</sup> Rule 19b-4(f).

19(b)(3)(A) is virtually identical to that of a filing made pursuant to Section 19(b)(2). A clearing agency seeking to use the “fair and orderly markets” provision<sup>12</sup> is required to make a separate filing under Section 19(b)(3)(A) of the Exchange Act in addition to the Section 19(b)(2) filing.

The General Instructions for Form 19b-4 require the respondent clearing agency to cite the statutory basis for filing a proposed rule change pursuant to Section 19(b)(3)(A) of the Exchange Act in accordance with Rule 19b-4(f). The Commission does not believe that the reporting and recordkeeping provisions in Rule 19b-4(f)(4)(ii) contain “collection of information requirements” within the meaning of the PRA because fewer than ten persons are expected to rely on Rule 19b-4(f)(4)(ii).

#### B. Rule 3Ca-1

Exchange Act Section 3C states that, after making a determination that a security-based swap (or group, category, type, or class of security-based swap) is required to be cleared, the Commission, on application of a counterparty to a security-based swap or on the Commission’s own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap and the clearing arrangement.<sup>13</sup> Pursuant to Rule 3Ca-1, a counterparty to a security-based swap subject to the clearing requirement wishing to apply for a stay of the clearing requirement is required to submit a written statement to the Commission that includes (i) a request for a stay of the clearing requirement, (ii) the identity of the counterparties to the security-based swap and a contact at the counterparty requesting the stay, (iii) the identity of the clearing agency clearing the security-based swap, (iv) the terms of the security-based swap subject to the clearing requirement and a description of the clearing arrangement, and (v) the reasons a stay should be granted and the security-based swap should not be subject to a clearing requirement, specifically addressing the same factors a clearing agency must address in its Security-Based-Swap Submission pursuant to Rule 19b-4(o)(3).

## 2. **Information Collection Purpose and Use**

#### A. Proposed Rule Changes Filed by SROs

Rule 19b-4 implements the requirements of Section 19(b) of the Exchange Act by requiring SROs to file their proposed rule changes electronically on Form 19b-4<sup>14</sup> and by clarifying which

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<sup>12</sup> See Rule 19b-4(f)(4)(ii), which provides that a proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if the change affects an existing service of a registered clearing agency with respect to products that are not securities, and the change significantly affects the securities clearing operations of the clearing agency or the rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service, but is necessary to maintain fair and orderly markets for products that are not securities.

<sup>13</sup> See 15 U.S.C. 78c-3(c)(1) (as added by Section 763(a) of the Dodd-Frank Act).

<sup>14</sup> 17 CFR 249.819.

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 Exchange 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 and to provide information sufficient to elicit meaningful public comment on each proposal. The information received is made available to members of the public who may wish to comment on a particular proposed rule change. The information collected by the Commission with respect to the date on which the SRO posted a proposed rule change on its website (if such posting date is not the same as the filing date) will be used to inform the Commission of the date by which the Commission must send the SRO notice to the Federal Register for publication.

The federal securities laws generally require that, for those proposals that are subject to Commission approval, an SRO's proposed rule change must be approved by the Commission before it may take effect. With respect to these types of filings, the Commission has two options: (1) it may approve or disapprove a proposed rule change or (2) it may institute proceedings to determine whether a proposed rule change should be disapproved. The legal standard the Commission must use to approve a proposal is set forth in Section 19(b)(2) of the Exchange Act. Section 19(b)(3)(A) of the Exchange Act provides that, notwithstanding the provisions of Section 19(b)(2) of the Exchange Act, a proposed rule change may take effect upon filing with the Commission if appropriately designated by the SRO as meeting the criteria set forth in Section 19(b)(3)(A) of the Exchange Act, as expanded in Rule 19b-4(f). If the Commission believes that an immediately effective proposed rule change may not meet the statutory standards, it summarily may temporarily suspend the proposal and institute proceedings to determine whether a proposed rule change should be disapproved.

B. Security-Based Swap Submissions and Advance Notices Filed by Certain Clearing Agencies

The information provided by clearing agencies pursuant to Rule 19b-4 and Form 19b-4 is used by the Commission to evaluate Security-Based Swap Submissions and Advance Notices. The Commission uses the information filed on Form 19b-4 as a Security-Based Swap Submission to determine whether the security-based swap or any group, category, type, or class of security-based swaps described in the Security-Based Swap Submission should be required to be cleared pursuant to Exchange Act Section 3C(a)(1).

The Commission uses the information on Form 19b-4 relating to Advance Notices to determine the effect on the nature or level of risks that would be presented by a designated clearing agency based on a proposed change to its rules, procedures, or operations, and the expected effects on risk to the designated clearing agency, its participants, and the market and to determine whether the Commission should make an objection to the proposed change. The rules provide that clearing agencies are required to provide copies of all Advance Notices and any additional information relating to the Advance Notice to the Board of Governors of the Federal Reserve System ("Board").

The information filed on Form 19b-4 relating to Exchange Act Sections 3C and 806(e) of the Dodd-Frank Act is, with certain exceptions, published for notice and comment. In addition, pursuant to Exchange Act Section 3C, a clearing agency is required to provide its members with notice of the Security-Based Swap Submission. Interested parties can use the information to comment on the Security-Based Swap Submission or Advance Notice.

The information required by Rule 3Ca-1 will be used by the Commission to determine whether to grant the stay of the clearing requirement sought by a counterparty and to review whether the clearing requirement will continue to apply to such security-based swap, or group, category, type, or class of security-based swaps.

### **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 use of email 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 information required for review of each proposed rule change reflects the complexity of the SROs' businesses. The Commission believes that use of technology, specifically electronic filing of proposed rule changes, and posting of proposed rule changes and SRO rules on SRO websites 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 the SRO Rule Tracking System ("SRTS") is the internal Commission system used to process and manage SRO proposed rule changes.

In 2013, the Commission began using EFFS and Form 19b-4 for Security-Based Swap Submissions and Advance Notice filings, which utilizes the existing information technology for filing of proposed rule changes, and thereby conserves both clearing agency and Commission resources.<sup>15</sup>

### **4. Duplication**

Each proposed rule change by an SRO must be treated on an individual basis. In the case of SROs that are clearing agencies, a clearing agency may also be required to file a Security-Based Swap Submission under Exchange Act Section 3C or an Advance Notice under Section 806(e) of the Dodd-Frank Act. The Commission sought to avoid duplicative filings and to streamline the filing processes and burden on clearing agencies and the Commission for these filings by requiring that all such filings be made electronically on Form 19b-4. However, the filing requirements of Exchange Act Section 3C, Section 806(e) of the Dodd-Frank Act, and Section 19(b) of the Exchange Act are distinct from each other and subject to different statutory standards for Commission review.

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<sup>15</sup> See 77 FR 73302 (December 10, 2012) and Items 12B(IV) and (V) below.

**5. Effect on Small Entities**

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 Collection**

As explained in Section A.1, by statute, the collection of information is required with respect to any proposed rule change, Security-Based Swap Submission, Advance Notice, or stay of clearing application. Commission regulations facilitate the implementation of these statutory requirements by requiring the information to be submitted on Form 19b-4. Therefore, the Commission is obligated to collect this information, and not conducting the collection would violate federal statutes and Commission regulations.

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

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

**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.

**10. Confidentiality**

Not applicable to proposed rule changes of SROs. An SRO's proposed rule change when filed with the Commission is public information. With respect to SROs that are clearing agencies, except for any information contained in an Advance Notice for which a designated clearing agency has requested confidential treatment following the procedures set forth in §240.24b-2, a clearing agency's Security-Based Swap Submission or Advance Notice when filed with the Commission is public information. While there is a general requirement that information be made publicly available, SROs may request confidential treatment of certain information in accordance with the Freedom of Information Act.<sup>16</sup>

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<sup>16</sup> 5 U.S.C. 552.



## 11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (“PII”).

## 12. Information Collection Burden

### A. Rule 19b-4 and Form 19b-4

#### I. Electronic Filing of Proposed Rule Changes

An SRO rule change proposal is filed with the Commission after an SRO’s staff has obtained approval from its board of directors or otherwise after any persons delegated by the board of directors with such authority have approved of the filing of the proposal. 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 a PRA analysis conducted in 2004 in connection with amendments to Rule 19b-4 and Form 19b-4 (“2004 PRA”), 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 filing.<sup>17</sup> The Commission used these estimates in subsequent requests for approval to extend the existing collection of information provided for in Rule 19b-4 and Form 19b-4 in 2011 and 2013.<sup>18</sup>

In calendar year 2015, 34 SRO respondents filed a total of 1,935 rule change proposals subject to the current collection of information. Of this total, and based on the Commission’s staff experience in reviewing SRO proposed rule change filings and past estimates for Rule 19b-4 and Form 19b-4, the Commission estimates that 97 proposed rule changes could be characterized as novel or complex and 1,838 (1,935 proposed rule changes – 97 proposed rule changes that could be characterized as novel or complex) proposed rule changes could be characterized as average. The average number of proposed rule changes filed in 2015, per SRO, was 57.<sup>19</sup> For calendar year 2016, 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 86,697 hours (39

<sup>17</sup> See Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004).

<sup>18</sup> See Submissions for OMB review; comment requests, 76 FR 22740 (April 22, 2011) and 76 FR 37161 (June 24, 2011); Submissions for OMB review; comment requests, 78 FR 11701 (February 19, 2013) and 78 FR 24443 (April 25, 2013).

<sup>19</sup> This figure is calculated as follows: 1,935 proposed rule change filings divided by 34 SROs in 2015 resulting in an average of 56.91 proposed rule change filings per respondent per year (rounded to 57). Of these 57 average rule changes, 2.85 were, on average, novel or complex rule changes (97 novel or complex proposed rule changes ÷ 34 SROs), while 54.06 were average (1,838 average proposed rule changes ÷ 34 SROs).

respondents<sup>20</sup> × 57 proposed rule changes per SRO per year × 39 hours per filing).<sup>21</sup> This is an ongoing reporting burden.

## II. SRO Website Posting of Proposed Rule Change Filings

The Commission previously estimated that an SRO would take four hours to post proposed rule change proposals and amendments under Section 19(b) of the Exchange Act on its website and four hours to update the posted SRO rules on its website once the proposed rules became effective.<sup>22</sup> Accordingly, the total annual reporting burden for SROs to post proposed rule change proposals on their websites will be approximately 8,892 hours (39 SRO respondents × 57 proposed rule change filings per respondent per year × four hours per filing to update SRO website). This is an ongoing third-party disclosure burden.

## III. SRO Website Posting of Rules and Rule Amendments

The total annual reporting burden for SROs to update their posted rules on their websites once the proposed rules become effective will be approximately 7,764 hours (39 SRO respondents × 49.77<sup>23</sup> effective proposed rule change filings per respondent per year × four hours per filing to update SRO website). This is an ongoing third-party disclosure burden.

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<sup>20</sup> In 2015, there were 34 SROs. Effective December 17, 2015, the Chicago Mercantile Exchange Inc.'s registration as a clearing agency under Section 17A of the Exchange Act was withdrawn. Securities Exchange Act Release No. 76678 (December 17, 2015), 80 FR 79983 (December 23, 2015). In January 2016, an additional SRO registered with the Commission (as a national securities exchange). The Commission expects five additional respondents to register during the three-year period for which this Paperwork Reduction Act extension is applicable (three as registered clearing agencies and two as national securities exchanges), bringing the total number of respondents to 39.

<sup>21</sup> As noted above, “average” filings are estimated to take 34 hours to prepare, while “novel and complex” filings are estimated to take 129 hours to prepare. Using the numbers provided in footnote 19 that estimate 2.85 filings out of 57 are novel or complex while the rest are “average”, the estimated burden for 57 filings per year is 38.7 hours per filing (((2.85 × 129) + (54.06 × 34)) ÷ 57) (rounded to 39 hours).

<sup>22</sup> See *supra* note 18.

<sup>23</sup> This figure is calculated as follows: (2,223 effective proposed rule change filings per year – 275 withdrawn filings – 7 disapproved filings) divided by 39 SROs resulting in an average of 49.77 effective proposed rule change filings per respondent per year. For 34 SROs, 240 withdrawn filings in 2015 is approximately 7.06 filings per SRO. For 39 SROs, the figure would increase to 275 withdrawn filings. For 34 SROs, six disapproved filings in 2015 is approximately 0.18 filings per SRO. For 39 SROs, the figure would increase to seven disapproved filings.

## B. Clearing Agencies

Currently, two clearing agencies are registered to clear security-based swaps. The Commission estimates that one additional clearing agency will clear security-based swaps in the future, resulting in a total of three clearing agencies that will be respondents to the applicable collection of information requirements.

The Commission estimates that four clearing agencies, which currently clear non-security-based swap securities, will be respondents to the applicable collection of information requirements with respect to Advance Notices. The Commission calculated the burden for the requirements related to Advance Notices assuming that they will apply to four clearing agencies and the burden for the requirements related to Security-Based Swap Submissions assuming they will apply to three clearing agencies.

### I. Training of Security-Based Swap Clearing Agency Staff to use EDFS

Based on staff discussions with the clearing agencies prior to issuing the proposing release (“Proposing Release”)<sup>24</sup>, the Commission estimated that each newly-registered clearing agency would spend approximately 20 hours training all staff members who will use EDFS to submit Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes electronically. Accordingly, the Commission estimated that the total one-time burden of training staff members of security-based swap clearing agencies to use EDFS will be 20 hours (one anticipated clearing agency × 20 hours), or 6.7 hours annualized over three years. The Commission did not receive any comments on the burden estimates in the Proposing Release and used such estimates for the rules as adopted and this PRA analysis. This is a one-time recordkeeping burden.

### II. Drafting and Implementing Internal Policies and Procedures for Using EDFS by Newly-Registered Security-Based Swap Clearing Agencies

Based on staff discussions with the clearing agencies, the Commission estimates that there will be a one-time paperwork burden of 130 hours for each newly-registered clearing agency to draft and implement internal policies and procedures relating to using EDFS to submit Security-Based Swap Submissions and proposed rule changes with the Commission, for a total of 130 hours (one anticipated clearing agency × 130 hours) or 43.3 hours annualized over three years. This is a one-time recordkeeping burden.

### III. Annual Training to Update SRO Staff on Use of EDFS

The Commission estimates that each SRO will spend approximately 10 hours annually training new compliance staff members and updating the training of existing compliance staff members to use EDFS. The Commission believes that only a minimal amount of EDFS training

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<sup>24</sup> See Securities Exchange Act Release No. 63557 (December 15, 2010), 75 FR 82490 (December 30, 2010).

will be submission-specific and that training a person to submit either a proposed rule change, Security-Based Swap Submission, or Advance Notice will generally be sufficient to allow such person to make one or more of the other types of submissions. The Commission estimates that the total annual burden will be 390 hours (39 respondent SROs  $\times$  10 hours). This is an ongoing recordkeeping burden.

#### IV. Rule 19b-4(o)(1) Security-Based Swap Submissions

The Commission estimates based on previous discussions with staff from clearing agencies that the amount of time that a clearing agency will require to internally prepare, review, and submit a Security-Based Swap Submission to comply with Rule 19b-4(o)(1) will be 140 hours. The Commission also estimates that each clearing agency will submit 20 Security-Based Swap Submissions annually based on previous discussions with staff from clearing agencies. Accordingly, the Commission estimates that the total annual reporting burden for clearing agencies submitting Security-Based Swap Submissions electronically with the Commission under Rule 19b-4(o)(1) will be 8,400 hours (three respondent clearing agencies  $\times$  20 Security-Based Swap Submissions per year  $\times$  140 hours per response). This is an ongoing reporting burden.

#### V. Rule 19b-4(n)(1) Advance Notice Filings

The Commission estimates that the amount of time that designated clearing agency representatives require to internally prepare, review, and electronically file each Advance Notice with the Commission will be 90 hours. This estimate is based on the staff's previous discussions with staff from the clearing agencies.

The Commission estimates that each designated clearing agency submitting Advance Notices will submit five Advance Notices to the Commission annually.<sup>25</sup> Accordingly, the Commission estimates that the total annual reporting burden on designated clearing agencies submitting Advance Notices electronically with the Commission will be 1,800 hours (four designated clearing agencies  $\times$  5 Advance Notices per year  $\times$  90 hours per response). This is an ongoing reporting burden.

#### VI. Rule 19b-4(n)(5) Submission of Copies of Advance Notices to the Board

The Commission estimates that two hours should be added to the time required to prepare each Advance Notice to comply with the requirement contained in Rule 19b-4(n)(5) to provide to the Board copies of all materials submitted to the Commission relating to an Advance Notice contemporaneously with such submission to the Commission. As noted above, the Commission estimates that four designated clearing agencies will submit five Advance Notices to the Commission annually. Accordingly, the Commission estimates that the total annual reporting burden on designated clearing agencies to comply with the requirement to provide to the Board

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<sup>25</sup> This figure is calculated as follows: 20 Advance Notice filings in 2015 divided by 4 respondents in 2015 resulting in an average of 5 Advance Notice filings per respondent per year.

copies of all materials submitted to the Commission relating to an Advance Notice contemporaneously with such submission to the Commission will be 40 hours (four designated clearing agencies × 5 Advance Notices per year × 2 hours per response). This is an ongoing reporting burden.

VII. Updating Clearing Agencies Websites to Provide Capability to Post Security-Based Swap Submissions, Advance Notices, and Proposed Rule Changes

The Commission believes that clearing agencies could incur some one-time costs associated with posting Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes on their websites. The Commission estimates that each clearing agency that makes Security-Based Swaps Submissions, Advance Notices, or proposed rule changes will spend approximately 15 hours creating or updating its existing website in order to provide the capability to post these submissions online. Because the Commission anticipates three additional registered clearing agencies, the Commission estimates a one-time total burden of 45 hours (3 anticipated clearing agencies × 15 hours per website update) or 15 hours annualized over three years for the three future clearing agencies to update their websites to enable them to post Security-Based Swaps Submissions, Advance Notices, or proposed rule changes. This is a one-time third-party disclosure burden.

VIII. Rule 19b-4(o)(5) Posting of Security-Based Swap Submissions on Security-Based Swap Clearing Agency Websites

The Commission estimates that four hours are required by a clearing agency to post a Security-Based Swap Submission on its website.<sup>26</sup> This figure is based on the current estimate for the requirement that SROs post proposed rule changes on their websites under Rule 19b-4(l) given the similarities between the two requirements.<sup>27</sup> The Commission estimates that the total annual reporting burden for clearing agencies to post Security-Based Swap Submissions on their websites will be 240 hours (three clearing agencies × 20 Security-Based Swap Submissions per year × four hours per website posting). This is an ongoing third-party disclosure burden.

IX. Rule 19b-4(n)(3) Posting of Advance Notices on Designated Clearing Agency Websites

The Commission estimates that four hours are required by a designated clearing agency to post an Advance Notice on its website. This figure is based on the current estimate for the requirement that SROs post proposed rule changes on their websites under Rule 19b-4(l) given the

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<sup>26</sup> See supra note 4.

<sup>27</sup> See Securities and Exchange Commission, Submission for OMB Review, Comment Request, 76 FR 37161 (June 24, 2011). The Supporting Statement containing the detailed estimates for Rule 19b-4 and Form 19b-4 is available at: [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201104-3235-013](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-3235-013).

similarities between the two requirements.<sup>28</sup> The Commission estimates that the total annual reporting burden for designated clearing agencies to post Advance Notices on their websites will be 80 hours (4 designated clearing agencies × 5 Advance Notices per year × 4 hours per website posting). This is an ongoing third-party disclosure burden.

X. Rule 19b-4(n)(4) Designated Clearing Agency Website Posting of Notice of Change to Rules, Procedures, or Operations Referred to in Advance Notices

The Commission estimates that four hours are required by a designated clearing agency to post notice on its website of any change to its rules, procedures, or operations referred to in an Advance Notice once it has been permitted to take effect. This figure is based on the current estimate for the requirement that SROs post proposed rule changes on their websites under Rule 19b-4(l) given the similarities between the two requirements.<sup>29</sup> Accordingly, the Commission estimates that the total annual reporting burden for designated clearing agencies to post Advance Notices on their websites will be 80 hours (4 designated clearing agencies × 5 Advance Notices per year × 4 hours per website posting). This is an ongoing third-party disclosure burden.

XI. Rule 3Ca-1 Stay of Clearing Requirement Information

Pursuant to Section 3C(c)(1) of the Exchange Act, the Commission on its own initiative or on the application of a counterparty may stay the clearing requirement in Section 3C(a)(1) of the Exchange Act until it completes a review of the terms of the security-based swap and the clearing arrangement. The Commission is unable to estimate accurately the number of times it may stay a clearing requirement pursuant to Section 3C(c)(1) of the Exchange Act because it has not yet made any mandatory clearing determinations and it does not know what counterparties may object to a determination or when they would make an application for a stay. However, the Commission recognizes that there will likely be some applications for stays from any clearing requirements made pursuant to a Commission determination and, for purposes of the Proposing Release, the Commission estimated there would be five applications for stays of a clearing requirement per clearing agency per year.<sup>30</sup> This figure would represent one quarter of the estimated number of Security-Based Swap Submissions from each clearing agency per year.

The Commission estimates that a clearing agency will spend approximately 18 hours to retrieve, review, and submit the information associated with the stay of the clearing requirement. The Commission also estimates that each clearing agency will be required to provide information

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<sup>28</sup> See id.

<sup>29</sup> See id.

<sup>30</sup> Prior to issuing the Proposing Release, Commission staff contacted eight clearing agencies that could be subject to a stay of the clearing requirement and related review under Rule 3Ca-1. The Commission used those discussions to estimate the collection of information for this rule. However, the clearing agencies emphasized that the estimated burdens would depend in large part on the number of stays requested annually and the scope of the information requested by the Commission in the course of the related review.

requested by the Commission in the course of its reviews of five requests for a stay of the clearing requirement, resulting in a total annual reporting burden of 270 hours (3 clearing agencies × 5 stay of clearing applications per year × 18 hours to retrieve, review, and submit the stay of clearing information). This is an ongoing reporting burden.

C. Amendment to Conform to Section 916 of the Dodd-Frank Act

Based on its experience receiving and reviewing proposed rule changes filed by SROs, the Commission estimates that SROs will fail to post proposed rule changes on their websites on the same day as the filing was made with the Commission in 1% of all cases, or 19 times each year based on the 1,935 proposed rule change filings submitted by SROs in 2015. For 2016, the Commission estimates that SROs will file 2,223 proposed rule change filings (39 respondents x 57 proposed rule change filings per respondent). The Commission estimates that each SRO will spend approximately one hour preparing and submitting notice to the Commission of the date on which it posted the proposed rule change on its website, resulting in a total annual burden of 22 hours (22 amendments × 1 hour per amendment). This is an ongoing reporting burden.

D. Summary of Hourly Burdens

The table below summarizes, the Commission's estimates of the total hourly reporting burden for all SROs, including clearing agencies, under Rule 19b-4, Form 19b-4, and Rule 3Ca-1.

<b>Nature of Information Collection Burden</b>	<b>Annualized Hourly Burden Estimate</b>
Electronic filing of proposed rule changes	86,697
SRO website posting of proposed rule change filings	8,892
SRO website posting of effective proposed rule change filings	7,764
Training of Security-Based Swap clearing agency staff to use EFFF	6.7
Drafting and implementing procedures for using EFFF by newly-registered Security-Based Swap clearing agencies	43.3
Annual training to update SRO staff on use of EFFF	390
Rule 19b-4(o)(1) Security-Based Swap Submissions	8,400
Rule 19b-4(n)(1) Advance Notice Filings	1,800

Rule 19b-4(n)(5) submission of copies of Advance Notices to the Board	40
Updating clearing agencies websites to provide capability to post Security-Based Swap Submissions, Advance Notices, and proposed rule changes	15
Rule 19b-4(o)(5) posting of Security-Based Swap Submissions on security-based swap clearing agency websites	240
Rule 19b-4(n)(3) posting of Advance Notices on designated clearing agency websites	80
Rule 19b-4(n)(4) designated clearing agency website posting of notice of change to rules, procedures, or operations referred to in Advance Notices	80
Rule 3Ca-1 stay of clearing requirement information	270
Amendment to conform to Section 916 of the Dodd-Frank Act	22
<b>TOTAL</b>	114,740

### 13. Costs to Respondents

#### A. Rule 19b-4 and Form 19b-4

Except for the hourly burdens identified in Item 12 above, the Commission does not expect SROs, including clearing agencies, to incur any additional costs in connection with the preparation and electronic submission of proposed rule changes.

#### B. Clearing Agencies

##### I. Training of Security-Based Swap Clearing Agency Staff to use EDFS

Except for the hourly burdens identified in Item 12 above, the Commission does not expect the clearing agencies to incur any one-time or ongoing additional costs in connection with training their personnel about the procedures for submitting Security-Based Swap Submissions and/or Advance Notices in electronic format through EDFS.

##### II. Drafting and Implementing Internal Policies and Procedures for Using EDFS by Newly-Registered Security-Based Swap Clearing Agencies



Except for the hourly burdens identified in Item 12 above, the Commission does not expect newly-registered clearing agencies to incur any one-time or ongoing additional costs in connection with drafting and implementing internal policies and procedures relating to using EFFS to submit Security-Based Swap Submissions, Advance Notices, and proposed rule changes with the Commission.

III. Drafting and Implementing Modifications to Existing Internal Policies and Procedures for Using EFFS for Security-Based Swap Submissions and/or Advance Notices

Except for the hourly burdens identified in Item 12 above, the Commission does not expect clearing agencies to incur any one-time or ongoing additional costs in connection with drafting and implementing modifications to existing internal policies and procedures for using EFFS in order to update them for submitting Security-Based Swap Submissions and/or Advance Notices with the Commission.

IV. Annual Training to Update SRO Staff on Use of EFFS

Except for the hourly burdens identified in Item 12 above, the Commission does not expect clearing agencies to incur any one-time or ongoing additional costs in connection with the annual training of new compliance staff members or updates to the training of existing compliance staff members to use EFFS.

V. Rule 19b-4(o)(1) Security-Based Swap Submissions

The Commission estimates that a clearing agency will require 60 hours of outside legal work to prepare, review, and submit a Security-Based Swap Submission based on previous discussions with staff from the clearing agencies.<sup>31</sup> The Commission also estimates that each clearing agency will submit 20 Security-Based Swap Submissions annually. Assuming an hourly cost of \$406.80 for an outside attorney,<sup>32</sup> the total annual cost in the aggregate for the three clearing agencies to meet these requirements will be \$1,464,480 (3 respondent clearing agencies × 20 Security-Based Swap Submissions per year × 60 hours per response × \$406.80 per hour for an outside attorney).

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<sup>31</sup> See supra note 4.

<sup>32</sup> The hourly rate for an outside attorney is an adjusted estimate used by the Commission for these services in the “Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million Under Management, and Foreign Private Advisers” final rule. See Release No. IA-3222 (June 22, 2011), 76 FR 39646 (July 6, 2011). Based on information from the Commission’s Division of Economic and Risk Analysis, the adjustment factor from 2013 to 2016 is 1.7%.

VI. Rule 19b-4(n)(1) Advance Notice Filings

With respect to Advance Notices, the Commission estimates that a designated clearing agency will require 40 hours of outside legal work to prepare, review, and electronically file each Advance Notice with the Commission. The Commission estimates that four designated clearing agencies will submit five Advance Notices to the Commission annually. Assuming an hourly cost of \$406.80 for an outside attorney,<sup>33</sup> the total annual cost for the four clearing agencies to meet these requirements will be \$325,440 (4 designated clearing agencies × 5 Advance Notice filings per year × 40 hours per response × \$406.80 per hour for an outside attorney).

VII. Rule 19b-4(n)(5) Submission of Copies of Advance Notices to the Board

The Commission does not expect clearing agencies to incur any additional costs in connection with the requirement to provide to the Board copies of all materials submitted to the Commission relating to an Advance Notice contemporaneously with such submission to the Commission.

VIII. Updating Clearing Agencies Websites to Provide Capability to Post Security-Based Swap Submissions, Advance Notices, and Proposed Rule Changes on Clearing Agencies Websites

Except for the hourly burdens identified in Item 12 above, the Commission does not expect clearing agencies to incur any additional costs in connection with creating or updating their existing websites in order to provide the capability to post Security-Based Swap Submissions, Advance Notices, or proposed rule changes on their websites.

IX. Rule 19b-4(o)(5) Posting of Security-Based Swap Submissions on Security-Based Swap Clearing Agency Websites

Except for the hourly burdens identified in Item 12 above, the Commission does not expect clearing agencies to incur any additional costs in connection with posting Security-Based Swap Submissions on their websites.

X. Rule 19b-4(n)(3) Posting of Advance Notices on Designated Clearing Agency Websites

Except for the hourly burdens identified in Item 12 above, the Commission does not expect designated clearing agencies to incur any additional costs in connection with the posting of Advance Notices on their websites.

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<sup>33</sup>

Id.

XI. Rule 19b-4(n)(4) Designated Clearing Agency Website Posting of Notice of Changes to Rules, Procedures, or Operations Referred to in Advance Notices.

Except for the hourly burdens identified in Item 12 above, the Commission does not expect designated clearing agencies to incur any additional costs in connection with the posting of notices of changes to rules, procedures or operations referred to in Advance Notices.

XII. Rule 3Ca-1 Stay of Clearing Requirement Information

i. Security-Based Swap Clearing Agencies

The Commission estimates that a clearing agency will require seven hours of outside legal work to retrieve, review, and submit the information associated with the stay of the clearing requirement. The Commission also estimates that each clearing agency will be required to provide information requested by the Commission in the course of its reviews of five requests for a stay of the clearing requirement. These figures were based on the Commission's staff discussions with the clearing agencies prior to issuing the Proposing Release. Assuming an hourly cost of \$406.80 for an outside attorney,<sup>34</sup> the total estimated annual cost in the aggregate for the three clearing agencies to meet these requirements will be \$42,714 (3 respondent clearing agencies × 5 stay of clearing applications per year × 7 hours per response × \$406.80 per hour for an outside attorney).

ii. Counterparties

The Commission estimates that 100 hours of outside legal counsel would be required by a counterparty to a security-based swap to prepare and submit an application requesting a stay of the clearing requirement. The Commission drew a comparison between the amount of time it will take for a clearing agency to prepare a Security-Based Swap Submission and the amount of time it will take a counterparty to prepare an application of a stay of a clearing requirement, given that each filing will likely address similar issues related to the clearing of the particular security-based swap. This 100 hours estimated for the application of the stay of clearing requirement is less than the 140 hours the Commission estimates it will take for a clearing agency to prepare a Security-Based Swap Submission because the Commission believes that an application for a stay will take less time to prepare than a new submission, due to the fact that some of the information addressed in the application for a stay will have already been provided with the Security-Based Swap Submission when it was published for notice and comment. The Commission estimates that counterparties to security-based swaps transactions will submit 15<sup>35</sup> applications requesting stays of the clearing requirement. Assuming an hourly cost of \$406.80 for an outside attorney,<sup>36</sup> the total annual cost in

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<sup>34</sup> Id.

<sup>35</sup> This figure is calculated as follows: 3 respondent clearing agencies multiplied by 5 stay of clearing applications per year equals 15 stay of clearing applications per year.

<sup>36</sup> See supra note 32.

the aggregate for the respondent counterparties to meet these requirements will be \$610,200 (15 stay of clearing applications × 100 hours per response × \$406.80 per hour for an outside attorney).

C. Amendment to Conform to Section 916 of the Dodd-Frank Act

Except for the hourly burdens identified in Item 12 above, the Commission does not expect an SRO to incur any additional costs in connection with informing the Commission of the date on which it posted a proposed rule change on its website (if the posting did not occur on the same day that the SRO filed the proposal with the Commission).

D. Summary of Cost Burdens

Except for the hourly burdens identified in Item 12 above, the Commission does not expect SROs other than clearing agencies to incur any material additional costs in connection with Rule 19b-4, Form 19b-4, and Rule 3Ca-1. The table below summarizes the Commission's estimates of the reporting burdens for the clearing agencies under Rule 19b-4 and Form 19b-4 and Rule 3Ca-1.

<b>Nature of Information Collection Burden</b>	<b>Burden Estimate in Dollars</b>
Rule 19b-4(o)(1) Security-Based Swap Submissions	\$1,464,480
Rule 19b-4(n)(1) Advance Notice filings	\$325,440
Rule 3Ca-1 stay of clearing requirement information – Security-Based Swap Clearing Agencies	\$42,714
Rule 3Ca-1 stay of clearing requirement information – Counterparties	\$610,200
<b>TOTAL</b>	<b>\$2,442,834</b>

#### 14. Costs to Federal Government

The Commission's estimate of the cost to the Federal Government of reviewing Security-Based Swap Submissions, Advance Notice, and proposed rule change filings for all SROs pursuant to Section 19(b) and Rule 19b-4 is calculated as follows:

Type of Filing	No. of Filings	Review Time Per Filing (Hours)	Total (Hours)
Security-Based Swap Submission	60	720	43,200
Advance Notice	20	480	9,600
Average Proposed Rule Change <sup>37</sup>	2,108	20	42,160
Complex Proposed Rule Change <sup>38</sup>	111	600	66,600
<b>TOTAL</b>			161,560

Related cost (161,560 hours of review time at \$100.34/hour)<sup>39</sup> \$16,210,930.40

Printing costs (Federal Register) \$300,000.00

Total Estimated Recurring Annual Cost to the Federal Government \$16,510,930.40

<sup>37</sup> This figure is calculated as follows: 54.06 average proposed rule change filings per SRO in 2015 multiplied by 39 projected respondents in 2016. See supra notes 20-21.

<sup>38</sup> This figure is calculated as follows: 2.85 novel or complex rule changes per SRO in 2015 multiplied by 39 projected respondents in 2016. See supra notes 20-21.

<sup>39</sup> Based on an attorney at SK-14, as adjusted for special SEC pay rates and fringe benefits.

Therefore, the total estimated annual cost to the Federal Government for reviewing Security-Based Swap Submissions, Advance Notice, and proposed rule change filings is \$16,510,930.40.

**15. Changes in Burden**

The Commission staff has revised its estimate of the total annual reporting burden for filing proposed rule changes and Advance Notices based on the number of proposed rule changes and Advance Notices it has received. The Commission has revised the number of respondents based on deregistrations of previously existing SROs, new registrations of SROs, and expected new registrations of SROs. The Commission has revised the number of security based swap clearing agencies based on the number of clearing agencies currently clearing security based swaps and an expected new registration of a security based swap clearing agency. The Commission has revised the number of clearing agencies subject to Advance Notice filing requirements based on the current number of designated clearing agencies.

**16. Information Collections Planned for Statistical Purposes**

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

**17. Approval to Omit OMB Expiration Date**

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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.