

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 232, 240, and 249

[Release No. 34-49505; File No. S7-18-04]

RIN 3235-AJ20

### Proposed Rule Changes of Self-Regulatory Organizations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is proposing to amend certain requirements relating to rule changes proposed by self-regulatory organizations ("SROs"). Specifically, SRO proposed rule changes would be required to be filed electronically with the Commission, rather than in paper form. In addition, the Commission is proposing to require SROs to post all proposed rule changes, as well as current and complete sets of their rules, on their websites. The Commission is also proposing to make certain technical amendments to the requirements for SRO rule changes under the Securities Exchange Act of 1934 ("Act"). Together, the proposed amendments are designed to modernize the SRO rule filing process by making it more efficient and cost effective. The proposed amendments also should improve the transparency of the rule filing process and assure that all SRO members and other interested persons have ready access to an accurate, up-to-date version of SRO rules.

**DATES:** Comments should be submitted on or before June 4, 2004.

**ADDRESSES:** Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC website (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. All submissions should refer to file number S7-18-04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. We do not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

Under Section 19(b) of the Act, SROs generally must file proposed rule changes with the Commission for notice, public comment, and Commission approval, prior to implementation.<sup>1</sup> This requirement helps assure, through Commission review and the public comment process, that SROs' rules are consistent with the purposes of the Act.

The Commission is proposing changes to the rule filing process that should make it more efficient and transparent and reduce costs for the SROs and the public. First, the Commission would require SROs to file their proposed rule changes with the Commission electronically, rather than in paper format. By amending Rule 19b-4 and Form 19b-4 to require electronic filing, the rule filing process would be initiated more quickly and economically, to the benefit of both the Commission and the SROs, as well as SRO members, investors, and other

interested persons. In addition, the proposed amendments should permit the Commission to monitor and process proposed SRO rule changes more efficiently and effectively. Second, the Commission would mandate that SROs promptly post on their websites a copy of all proposed rule changes filed with the Commission. Website posting of SRO proposed rule changes should facilitate the ability of interested persons to comment on the proposals and save resources currently used to monitor the Commission's Public Reference Room for proposed rule changes. The Commission is also proposing that SROs maintain a current and complete version of their rules on their websites. Current practices in this area vary considerably among SROs, often resulting in confusion by SRO members, others seeking to comply with SRO rules, and other interested parties. Finally, the Commission is proposing to make certain technical amendments to clarify Rule 19b-4 and to reflect practice.

#### II. Background

Section 19(b)(1) of the Act<sup>2</sup> requires each SRO to file with the Commission its proposed rule changes,<sup>3</sup> accompanied by a concise general statement of the basis for, and purpose of, the proposed rule change.<sup>4</sup> Once an SRO files a proposed rule change, the Commission must publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it, or it is otherwise permitted to become effective under Section 19(b)(3)(A) or Section 19(b)(7) of the Act.<sup>5</sup>

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Section 19(b)(1) of the Act requires each SRO to file with the Commission "any proposed rule or any proposed change in, addition to, or deletion from the rules of \* \* \* [a] self-regulatory organization." See 15 U.S.C. 78s(b)(1).

<sup>4</sup> Many proposed rule changes are filed pursuant to Section 19(b)(1) of the Act for a 21-day notice and comment period. 15 U.S.C. 78s(b)(1). The Act requires the Commission, within 35 days of publication, to either issue an order approving a proposed rule change or to institute a proceeding to determine whether a proposed rule change should be disapproved. The Commission may extend this 35-day period up to 90 days if it publishes its findings for doing so. The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice in the **Federal Register** if the Commission finds good cause for doing so and publishes its reasons. 15 U.S.C. 78s(b)(2).

Section 19(b)(3)(A) of the Act and Section 19(b)(7) of the Act provide that, in certain circumstances, a proposed rule change may become effective without the approval procedures specified in Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(7); 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(7).

<sup>1</sup> 15 U.S.C. 78s(b). Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board ("MSRB"). Currently, there are 27 SROs that file proposed rule changes with the Commission. Section 107 of the Sarbanes-Oxley Act of 2002 provides that the Public Company Accounting Oversight Board ("PCAOB") shall file proposed rule changes with the Commission "as if the Board were a registered securities association for purposes of that section 19(b) \* \* \*." 15 U.S.C. 7217(b)(4). Because PCAOB rule filings are not tracked by the SRO Rule Tracking System ("SRTS"), the Division of Market Regulation's ("Division") internal tracking database for rule filings, the Commission is not requiring, at this time, the PCAOB to file electronically its proposed rules. Further, as the proposal for web posting of proposed and final SRO rules is designed to make the SRO rule filings in the SRTS accessible to the public in a uniform manner, the Commission does not intend for these proposed amendments to apply to the PCAOB.

The SRO rule filing process under the Act serves several important policy goals. First, the notice and comment requirement helps assure that interested persons have an opportunity to provide input into SRO actions that could have a significant impact on the market, market participants—both professionals and individual investors—and others.<sup>6</sup> Second, the rule filing process allows the Commission to review proposed rule changes to determine whether they are consistent with the Act, including the national market system goals of fair competition, price transparency, best execution, and investor protection. Finally, the rule filing process helps assure that SRO members, among others, are treated fairly in accordance with the Act, such that there is fair representation of members in the selection of the SRO's directors and the administration of its affairs, the equitable allocation of reasonable dues, fees, and other charges, and the appropriate and fair discipline of members.

### III. Proposed Amendments

#### A. Electronic Filing

The Commission proposes to modernize the rule filing process by requiring SROs to file proposed rule changes electronically with the Commission through a web-based system.<sup>7</sup> To implement electronic web-based filing of proposed SRO rule changes, the Commission would amend Rule 19b-4 and Form 19b-4 to require that all Forms 19b-4, and any amendments thereto, be submitted electronically to the Commission in accordance with the procedures, and in the format, specified therein. Each SRO would have access to a secure website that would enable authorized individuals at the SRO to file with the Commission an electronic Form 19b-4 on behalf of the SRO.<sup>8</sup> The current requirement in Form 19b-4 that SROs submit multiple, paper copies of proposed rule changes would be eliminated. Under the proposed amendments, a proposed rule change would be deemed filed with the Commission on the business day that it

is submitted electronically, so long as the Commission receives it on or before 5:30 p.m., Eastern Standard Time or Eastern Daylight Savings Time, and it is filed in accordance with the requirements of Rule 19b-4 and Form 19b-4, as amended.

Occasionally, an SRO may find it necessary to file documents that cannot be submitted in electronic format, such as pre-filing comment letters from SRO members or other exhibits. In addition, it may not be appropriate to require proprietary and other information subject to a request for confidential treatment to be filed electronically.<sup>9</sup> Accordingly, the proposed amendments to Rule 19b-4 and Form 19b-4 retain the flexibility to permit portions of a rule filing to be made in paper form under limited circumstances.

As to signature requirements, Form 19b-4 currently requires that a "duly authorized officer" of an SRO manually sign all rule filings.<sup>10</sup> The Commission proposes to amend Form 19b-4 so that SROs would be required to file their proposed rule changes with an electronic signature.<sup>11</sup> Furthermore, each duly authorized signatory would be required to obtain a "digital ID" in order to provide both the Commission and the SRO with assurances that the Form 19b-4 has been transmitted without external interference.<sup>12</sup> As with the EDGAR system, any required signatures with respect to an SRO proposed rule change would appear in

<sup>9</sup> In a similar context, Section 232.202(c) of Regulation S-T governing EDGAR filers permits paper filing of confidential treatment requests and the information with respect to which confidential treatment is requested. SROs sometimes submit confidential surveillance procedures or proprietary data to the Commission in connection with proposed rule changes, which may not be electronically accessible, and, in any event, is segregated from the public file pursuant to a Freedom of Information Act ("FOIA") exemption request.

<sup>10</sup> The signature requirement of Form 19b-4 states that "pursuant to the requirements of the Act, the [SRO] has caused the filing to be signed on its behalf by the undersigned thereunto duly authorized."

<sup>11</sup> The Commission notes that the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.* does not apply in this regard.

<sup>12</sup> A digital ID, sometimes called a "digital certificate," is a file on the computer that identifies the user. Computers can use a digital ID to create a digital signature that verifies both that the message originated from a specific person and that the message has not been altered either intentionally or accidentally. The user obtains a digital ID from a "Certificate Authority" ("CA") for a modest sum (currently approximately \$15 per year). When the SRO electronically sends the Form 19b-4 to the Commission, the digital ID will encrypt the data through a system that uses "key pairs." With key pairs, the SRO's software application uses one key to encrypt the document. When the Commission receives the SRO's electronic document, the Commission's software will use a matching key to decrypt the document.

typed form.<sup>13</sup> In addition, each signatory would be required to manually sign the Form 19b-4, authenticating, acknowledging, or otherwise adopting his or her electronic signature that is attached to or logically associated with the filing.<sup>14</sup> In accordance with Rule 17a-1 of the Act,<sup>15</sup> the SRO would be required to retain that manual signature page of the rule filing, authenticating the signatory's electronic signature, for not less than five years after the Form 19b-4 is filed with the Commission<sup>16</sup> and, upon request, furnish a copy of it to the Commission or its staff.<sup>17</sup>

In recent years, the Commission has been processing increasing volumes of SRO rule proposals, as both the number of SROs and SRO facilities,<sup>18</sup> and their rulemaking activity, has increased.<sup>19</sup> The Commission believes that requiring SROs to file proposed rule changes electronically would have several benefits.

First, electronic filing of proposed rule changes should speed the initiation of the rule filing process. In today's highly competitive market environment, SROs are under pressure to complete the rule filing process quickly.<sup>20</sup> Under

<sup>13</sup> See Rule 301 of Regulation S-T, 17 CFR 232.301. The Commission proposes defining "electronic signature" as an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. This definition is the same as the definition that governs EDGAR filings in Rule 302 of Regulation S-T, 17 CFR 232.302.

<sup>14</sup> See Rule 302(b) of Regulation S-T, which requires similar authentication, acknowledgement, or otherwise adoption of his or her signature that appears in typed form within the electronic filing, 17 CFR 232.302(b).

<sup>15</sup> 17 CFR 240.17a-1.

<sup>16</sup> *Id.*

<sup>17</sup> See Proposed Rule 19b-4(j). These requirements were adapted from Section 232.302 of Regulation S-T, 17 CFR 232.302 for EDGAR filers.

<sup>18</sup> For instance, in February 2000, the Commission approved the registration of the International Securities Exchange, Inc., and in October 2001, the Commission approved a proposed Pacific Exchange, Inc. ("PCX") rule change to create a facility of PCX, the Archipelago Exchange, LLC. In addition, in January 2004, the Boston Stock Exchange, Inc. ("BSE") created the Boston Options Exchange, LLC ("BOX") as a new electronic options facility of the BSE. Division staff also must quickly review effective-upon-filing rule changes from new notice-registered exchanges, such as One Chicago, LLC and NQLX, LLC.

<sup>19</sup> The Division has processed approximately 28% more rule filings since fiscal year 2001 and has processed approximately 60% more rule filings since fiscal year 1999.

<sup>20</sup> For example, SROs that operate securities markets are facing increased competition from electronic communication networks ("ECNs"), which as registered broker-dealers are not subject to the rule filing requirements that are imposed on SROs, and foreign markets, which may be subject

<sup>6</sup> For example, SROs exercise certain quasi-governmental powers over members through their ability to impose disciplinary sanctions, deny membership, and require members to cease doing business entirely or in specified ways.

<sup>7</sup> The Commission previously proposed electronic filing of SRO proposed rule changes in the Rule 19b-6 proposal. See Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001). The Commission has not taken action on this proposal.

<sup>8</sup> The SRO would determine which individuals would be supplied with User IDs and passwords to access the secure website. See *infra* Note 13.

the current system, SROs send paper copies of proposed rule changes to the Commission via messenger, overnight delivery, or U.S. mail. Once the Commission receives a proposed rule change, internal processing of paper filings may take several days before the rule filing is received by the staff person assigned to review it. Electronic filing would substantially reduce the time it takes to process SRO rule filings by eliminating paper delivery, copying and distribution.

Second, electronic rule filing should reduce costs for the SROs<sup>21</sup> and should also result in a more efficient use of Commission resources. The SROs no longer would incur delivery costs for paper filings or the SRO staff time currently devoted to preparing filing packages. The Commission also would benefit from reducing the personnel time currently associated with manually processing paper filings.

Finally, by integrating the electronic filing technology with SRTS, Commission staff could more easily monitor and process proposed SRO rule changes. Pertinent information regarding proposed rule changes, as well as amendments, would be captured automatically by SRTS.<sup>22</sup> As a result, the Commission would be able to monitor electronically the progress of SRO rule filings from initial receipt through final disposition, and thereby enhance its management of the rule filing process.

#### *B. Posting of Proposed Rule Changes on SRO Websites*

The Commission also is proposing to amend Rule 19b-4 to require each SRO to post all proposed rule changes, and any amendments thereto, on its public website no later than the next business day after filing with the Commission. The Commission has chosen the next business day to provide interested persons with quick access to the proposed rule change, while at the same time providing SROs with sufficient time to comply with this posting requirement. A copy of the complete proposed rule change would continue to be available in the Commission's Public Reference Room, but in electronic and paper format. The Commission believes that website accessibility of proposed SRO rule changes would facilitate the ability of interested persons to comment on the proposals and save SRO

resources currently used to monitor the Commission's Public Reference Room for competitors' proposed rule changes. By providing ready access to proposed SRO rule changes, effective public comment should be facilitated, thus enhancing the transparency of the rule filing process.<sup>23</sup> Although practices vary, several SROs now post selected rule filings on their websites. Nearly all of the SROs have informally indicated to Commission staff that they favor such increased accessibility to proposed rule filings, as long as it is a uniform requirement.

#### *C. Posting of Current and Complete Rule Text on SRO Websites*

In addition, the Commission proposes to amend Rule 19b-4 to require SROs to post and maintain a current and complete version of their rules on their websites. Under the proposal, each SRO would be required to update its public website to reflect rule changes no later than the next business day after it has been notified of Commission approval of the rule change or Commission notice of an effective-upon-filing SRO rule.<sup>24</sup> The Commission has chosen the next business day to provide interested persons with prompt access to the SROs' rules, while at the same time providing SROs with sufficient time to comply with this posting requirement. If an approved rule change is not effective for a certain period after Commission approval, the SRO would be required to indicate clearly the implementation date in the relevant rule text. Notification to the SRO would either be done electronically through SRTS or by faxing the Commission's approval order or the Commission's notice of effective-upon-filing SRO rules to the SRO. Current practices with respect to website availability of rules vary considerably among SROs, often resulting in confusion by SRO members and others seeking to comply with SRO rules, as well as other interested persons. Members and other interested parties often need prompt and accurate notification of SRO rule changes to be able to comply with such rules. The Commission believes that this proposal should help assure that current,

<sup>23</sup> It can take as long as seven to ten days for the notice of the proposed rule change to appear in the **Federal Register**. All SROs have websites, and the expeditious posting of the Form 19b-4 should facilitate the public comment process. If the SRO withdrew the proposed rule change, the SRO could remove the proposed rule change from its website.

<sup>24</sup> Practices vary among SROs as to the extent to which they post rule text on their websites and the timeliness with which such rule text is updated. Prompt posting of SRO rule changes' on a next business day basis should reduce confusion and facilitate compliance by market participants.

accurate, and complete versions of the rules of each SRO are readily accessible to interested parties, thus enhancing compliance with SRO rules.

#### *D. Amendments to Rule 19b-4*

The Commission is proposing to make two amendments to clarify Rule 19b-4 and reflect current practice. First, the Commission is proposing to amend Rule 19b-4(e), which addresses rule filing requirements applicable to "new derivative securities products," to clarify that that term does not include a single equity option or a security futures product.<sup>25</sup> Second, the Commission is proposing to amend Rule 19b-4(f)(2) to more clearly reflect the Commission's stated position that a proposed fee change applicable to non-members and non-participants must be filed under Section 19(b)(2) of the Act for full notice and comment, and not filed under Section 19(b)(3)(A)(ii) of the Act.<sup>26</sup>

#### *E. Technical Amendments to Regulation S-T*

Regulation S-T<sup>27</sup> currently states that all Exchange Act filings, except for Form 25,<sup>28</sup> must be submitted in paper. Therefore, the Commission is proposing to make a technical amendment to Regulation S-T to reflect that the Form 19b-4 will be filed electronically.

#### *F. Form 19b-4 Amendments; Commission Policy*

##### *1. Form 19b-4 Amendments*

Form 19b-4 would be amended to eliminate the required submission of nine paper copies and instead require electronic filing of Form 19b-4.<sup>29</sup> To access the secure Internet site for web-based filing of the Form 19b-4, the SRO

<sup>25</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) ("New Product Release"). As the options markets already had listing standards for single equity options that addressed relevant regulatory concerns, the Commission did not intend for SROs to comply with Rule 19b-4(e) for single equity options. Similarly, the Commission did not intend to include traditional issuer warrants and traditional convertible securities in the definition of "new derivative securities product." *Id.* at 70956.

<sup>26</sup> See Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994). ("[A]s a matter of general policy, an SRO proposed rule change that establishes or changes a due, fee or other charge applicable to a non-member or non-participant must be filed under Section 19(b)(2) for full notice and comment." *Id.* at 66697; see also Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906 (November 7, 1980)(footnote 40). The terms "member" and "participant" are defined in Section 3(a)(3)(A) and Section 3(a)(24), respectively, of the Act.

<sup>27</sup> 17 CFR 232.101.

<sup>28</sup> 17 CFR 249.25.

<sup>29</sup> The proposed amendments to Form 19b-4 are attached as Appendix A.

to less rigorous regulatory requirements in their home jurisdictions.

<sup>21</sup> See Section VI, *infra*.

<sup>22</sup> Such data would include whether the proposed rule change is filed pursuant to Section 19(b)(3)(A) or Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(2).

would submit to the Commission an External Application User Authentication Form ("EAUF")<sup>30</sup> to register each individual at the SRO who will be submitting Forms 19b-4 on behalf of the SRO. Upon receipt and verification of the information in the EAUF process, the Commission would issue each such person a User ID and Password to permit access to the Commission's secure website. As Form 19b-4 will be electronic, initially the authorized user at an SRO would access a screen containing a filing template, referenced as Page 1, in which it could identify the SRO and the statutory section pursuant to which the rule filing would be submitted (*i.e.*, Section 19(b)(2), Section 19(b)(3)(A), or Section 19(b)(3)(B)).<sup>31</sup> Page 1 of Form 19b-4 will also require a brief description of the proposed rule change, as well as an indication whether a pilot is being proposed. The SRO would provide contact information and place the electronic signature of a duly authorized officer on this Page 1 initial screen.<sup>32</sup> The second screen of the electronic Form 19b-4 would provide the SRO with a means to attach the proposed rule change and related exhibits in Microsoft Word format.<sup>33</sup> SRO users would have electronic access to the general instructions for using the Form, as adapted for electronic filing.<sup>34</sup> Finally, the SRO would use the electronic Form 19b-4 to amend or withdraw a rule filing pending with the Commission or to file an extension of the statutory period in Section 19 of the Act in which the Commission is required to act on the rule filing.<sup>35</sup>

<sup>30</sup> This Commission web-based application currently exists and allows authorized external users to access select Commission systems.

<sup>31</sup> The authorized user also would be able to indicate if there would be a separate filing of any hard copy exhibits that are unable to be submitted electronically.

<sup>32</sup> As noted in Section III. A. above, a "duly authorized officer" at the SRO would be required to place his or her "electronic signature" on the Form 19b-4 before it is transmitted electronically to the Commission.

<sup>33</sup> Exhibits 2 and 3 may not be available in Microsoft Word and could be submitted in another acceptable electronic format or in paper.

<sup>34</sup> For example, the SRO would click separate boxes on the second screen to attach one Microsoft Word document containing Items I through IV of the Form 19b-4 and other documents for the different exhibits: the completed notice of the proposed rule change for publication in the **Federal Register**; copies of notices issued by the SRO soliciting comment and copies of all written comments; copies of transcripts or summaries of any public meeting; copies of any form, report, or questionnaire; marked copies of amendments; and separate rule text, if the SRO wishes to attach such rule text as an exhibit, instead of including it in Item I of the Form 19b-4.

<sup>35</sup> 15 U.S.C. 78s(b)(2).

In addition, the Commission notes that, generally, Form 19b-4 requires, and will continue to require, an SRO to: (1) Submit a complete description of the terms of its proposal; (2) describe the impact of the proposed rule change on various segments of the market, including members, member constituencies, and non-members; and (3) describe how the filing relates to existing rules of the SRO.<sup>36</sup> In addition, a proposed rule change must provide an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, including its consistency with the Act and rules thereunder, and its impact on competition, if any, as well as a summary of any written comments received by the SRO. The proposed rule change must be consistent with the existing rules of the SRO, including any other proposed rule changes. Form 19b-4 also contains certain technical requirements so that information presented in the Form is comprehensible. Finally, as stated, the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must electronically sign the Form 19b-4.

#### 2. Commission Policy: Accurate, Consistent, and Complete Forms 19b-4

The Commission firmly believes that, to provide the public with a meaningful opportunity to comment, a proposed rule change must be accurate, consistent, and complete. Form 19b-4 states that "[t]his form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The SRO must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner."<sup>37</sup> The Commission, however, receives many SRO proposed rule changes that are not carefully prepared in accordance with Form 19b-4.

Currently, Commission staff devotes significant time to processing proposed rule changes, reviewing them for accuracy and completeness, and preparing them for publication. The Commission encourages SRO staff to review carefully proposed rule changes to ensure, among other things, that the

filings: (1) Contain a properly completed Form 19b-4; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; and (4) state that the proposal is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended. As described in the current Form 19b-4, filings that do not comply with the foregoing are deemed not filed and returned to the SRO. Consistent with the requirements of Rule 19b-4 and Form 19b-4, electronically filed proposed rule changes that do not comply with the foregoing will continue to be returned to the SRO, but in electronic format, and, consistent with current practice, will be deemed not filed with the Commission until all required information has been provided.

#### IV. Request for Comment

The Commission requests the views of commenters on all aspects of the proposed amendments, discussed above, to Rule 19b-4 and Form 19b-4 under the Act. In particular, the Commission requests comment on the following:

1. Are there positive or negative implications, in addition to those discussed above, of the Commission requiring SROs to file all proposed rule changes electronically?

2. Is there a need for additional exceptions to the electronic rule filing requirement for SROs? For example, should express accommodation be made for paper filings in emergency situations when web-based, electronic filing may be temporarily unavailable? If so, what specific situations should be excepted, and what accommodations should be made? Should the existing Rule and Form requirements be available for use in such a situation?

3. Is the requirement that SROs post all proposed rule changes, and any amendments, on their websites no later than the next business day after filing with the Commission appropriate? Should this time period be longer or shorter?

4. If the SRO proposed rule change is incomplete because it does not comply with the requirements of Rule 19b-4 and Form 19b-4 and deemed not properly filed and returned to the SRO, should the SRO inform the public of the status of the proposed rule change? Similarly, if the SRO withdraws a proposed rule change, should the SRO inform the public of the withdrawal? Should that information be required to be maintained on the SRO's website?

<sup>36</sup> 17 CFR 249.819.

<sup>37</sup> *Id.*

The Commission believes such requirement may be necessary to provide needed information to those monitoring the proposed rule change.

5. Is the requirement that SROs update their websites to reflect rule changes no later than the next business day after notification of Commission approval appropriate? Should this time period be longer or shorter? Is the proposed process for Commission notification to the SRO of its approval order of a SRO proposed rule or the Commission's notice of an effective-upon-filing SRO rule, through SRTS or facsimile, adequate? If an SRO rule change is not effective until a certain period after Commission approval, should the website update be delayed until the effective date?

6. Are the SRO recordkeeping requirements for the page containing the manual signature of the Form 19b-4 appropriate?

7. There are currently seven national market system plans that have been approved by the Commission. Three of these plans are also transaction reporting plans. In the equity securities market, there are four plans. The Intermarket Trading System ("ITS") Plan governs trading of exchange-listed securities by exchanges and Nasdaq market makers. The ITS Operating Committee administers the ITS Plan. The Consolidated Tape Association ("CTA") administers two plans: the Consolidated Tape Plan<sup>38</sup> and the Consolidated Quotation Plan. These plans address how trades in exchange-listed equity securities are reported and how quotations for these securities are made public. The OTC/UTP Plan<sup>39</sup> addresses how both transaction and quotation information in Nasdaq-listed securities is consolidated and disseminated.

In the options market, there are three plans. The Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan") is the transaction reporting plan for options. The Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Linkage Plan") governs inter-market trading of options. The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options ("Options Listing

Procedures Plan" or "OLPP") governs the listing of standardized options. The OPRA Plan is administered by the Options Price Reporting Authority ("OPRA"), the Linkage Plan is administered by the Options Linkage Authority ("OLA"), and the OLPP is administered by The Options Clearing Corporation and the options exchanges.

Should the plan administrators for each of these plans post on their websites or on a separate plan website a current version of the plans as well as proposed amendments to these plans within the time periods proposed for SROs?

#### V. Paperwork Reduction Act

Certain provisions of the proposed rule and form contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.<sup>40</sup> The Commission has submitted the information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to submit the current collection of information titled "Rule 19b-4 Under the Securities Exchange Act of 1934" (OMB Control Nos. 3235-0045, 3235-0504). The Commission is also proposing to submit the current collection of information titled "Form 19b-4 Under the Securities Exchange Act of 1934" (OMB Control No. 3235-0045). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

##### A. Summary of Collection of Information

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 calls for 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 currently calls for 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. The proposed amendments would not change the information currently required by Rule 19b-4 or Form 19b-4; the proposed amendments would only require that such information be submitted

electronically. The proposed amendments, however, would require website posting of all proposed rule changes, and any amendments thereto. In addition, the proposed amendments would require SROs to post a current and complete set of their rules on their websites. Several SROs currently post some of this information on their websites. SROs are required by Sections 6(b)(1),<sup>41</sup> 15A(b)(2),<sup>42</sup> 17A,<sup>43</sup> and 15B<sup>44</sup> of the Act to enforce compliance with their rules. Presumably, each SRO maintains a current and complete set of its rules to facilitate compliance with this requirement.

##### B. Proposed Use of Information

The information provided via EAUF, as required by the proposed amendments to Form 19b-4, would be used by the Commission to verify the identity of the SRO individual and provide such individual access to a secure Commission website for filing of the Form 19b-4. The Commission proposes to require that SROs post their proposed rule changes on their websites so that these proposals could be viewed by the general public, SRO members, competing SROs, other market participants, and Commission staff. The information would enable interested parties to more easily access SRO rules and rule filings, which would facilitate public comment on proposed SRO rules. Additionally, SRO staff, members, industry participants, and Commission staff would utilize the accurate and current version of SRO rules that are posted on the SRO website to facilitate compliance with such rules.

##### C. Respondents

There are currently 27 SROs subject to the collection of information, though that number may vary owing to the consolidation of SROs or the introduction of new entities. In fiscal year 2003, these respondents filed 769 rule change proposals and 510 amendments to those proposed rule change proposals, for a total of 1279 filings that are subject to the current collection of information. Of these 769 proposed rule changes filed by SROs, 705 ultimately became effective because the SROs withdrew 64 proposed rule changes.

##### D. Total Annual Reporting and Recordkeeping Burden

The proposed amendments to Rule 19b-4 and Form 19b-4 are designed to

<sup>38</sup> The Consolidated Tape Plan is also a transaction reporting plan.

<sup>39</sup> The formal name of the OTC/UTP Plan is: Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis. The OTC/UTP Plans is also a transaction reporting plan.

<sup>40</sup> 44 U.S.C. 3501 *et seq.*

<sup>41</sup> 15 U.S.C. 78f(b)(1).

<sup>42</sup> 15 U.S.C. 78o-3(b)(2).

<sup>43</sup> 15 U.S.C. 78q-1.

<sup>44</sup> 15 U.S.C. 78o-4.

modernize the SRO rule filing process and to make the process more efficient by conserving both SRO and Commission resources. Rule 19b-4 and Form 19b-4 would be amended to require SROs to electronically file their proposed rule changes. In addition, Form 19b-4 would be revised to accommodate electronic submission. The Commission expects that an electronic form would reduce by one hour the amount of SRO clerical time required to prepare the average filing. The proposed amendments would also require SROs to post all proposed rule changes, and any amendments, on their websites, as well as maintain a current and complete set of their rules on their websites. The Commission staff estimates that it would take an SRO 30 minutes to post a filing on its website, irrespective of whether this filing is an SRO rule change proposal, amendment, or final SRO rule.

An SRO rule change proposal is generally filed with the Commission after an SRO's staff has obtained approval by its Board. 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. However, several SROs have estimated at 35 hours the amount of time required to complete an average rule filing using present Form 19b-4. This figure includes an estimated 25 hours of in-house legal work and ten hours of clerical work. The amount of time required to prepare amendments varies because some amendments are comprehensive, while other amendments are submitted in the form of a one-page letter. The Commission staff estimates that, under current rules, four hours is the amount of time required to prepare an amendment to the rule proposal. This figure includes an estimated two hours of in-house legal work and two hours of clerical work.

With the proposed electronic filing, the Commission staff estimates that 34 hours is the amount of time that would be required to complete an average rule filing and at three hours the amount of time required to complete an average amendment. These figures reflect the one hour in savings in clerical hours that would result from the use of an electronic form for both the rule filings and the amendments.<sup>45</sup> The Commission staff estimates that the reporting burden for filing rule change

proposals and amendments with the Commission under the proposed amendments would be 27,676 hours (769 rule change proposals  $\times$  34 hours + 510 amendments  $\times$  3 hours).

The Commission staff estimates that 30 minutes is the amount of time that would be required to post a proposed rule on an SRO's website and that 30 minutes is the amount of time that would be required to post an amendment on an SRO's website. The Commission staff estimates that the reporting burden for posting rule change proposals and amendments on the SRO websites would be 640 hours (769 rule change proposals<sup>46</sup>  $\times$  0.5 hours + 510 amendments  $\times$  0.5 hours).

The Commission staff estimates that one hour would be the amount of time required to post an SRO's current rules on its website. Currently, 22 of the 27 SROs have posted their rules on their websites; five have not.<sup>47</sup> The Commission staff estimates that the total reporting burden for posting current rules on the SROs' websites would be 27 hours (27 SROs  $\times$  1 hour) because each SRO should have a current version of its rules available for posting on its website.

The Commission staff estimates that two hours is the amount of time that would be required to update the SRO's website when the SRO's proposed rule becomes effective. Therefore, each time the Commission approves an SRO rule change or does not abrogate an SRO effective-upon-filing rule change (total of 705 rules in fiscal year 2003), the Commission staff estimates that the reporting burden for updating the already website posted SRO rules on the SRO website would be 1410 hours (705 SRO Commission approved or non-abrogated rules  $\times$  2 hours).

The Commission staff estimates that the total annual reporting burden under the proposed rule would be 29,753 hours (27,676 hours for filing proposed rule changes and amendments + 640 hours for posting proposed rule changes and amendments on the SROs' websites + 27 hours for initial posting of accurate SRO rule text on SRO websites + 1410

hours for updating SRO final rules on SRO websites).

The Commission does not expect that the proposed amendments with regard to electronic filing would impose any material additional costs on SROs. Instead, the Commission believes that the proposed amendments to Rule 19b-4 and Form 19b-4, on balance, would reduce paperwork costs related to the submission of SRO proposed rule changes. The technology for electronic filing would be web-based; therefore, the SROs should not have any technology expenditures for electronic filing because all SROs currently have access to the Internet.

However, each SRO would be required to obtain a digital ID from a certifying authority. The Commission staff estimates the annual cost of the ID to be \$15 for each SRO. The Commission staff estimates that SROs would purchase two such digital IDs for their staff. Thus, the annual cost of the ID for all SROs would be \$810 (27 SROs  $\times$  \$15  $\times$  2).

As previously stated, the SROs could incur nominal costs on posting on their website their proposed rules, amendments thereto, no later than the next business day after filing with or approval by the Commission. With regard to posting of accurate and complete text of SRO final rules, the Commission notes that most of the SROs currently post some of this information, if not all of this information, on their websites. Some SROs currently rely on CCH, Incorporated ("CCH") to maintain a current version of their rules, and a cost may be involved in expediting prompt publication of rule changes with CCH. However, the Commission notes that SROs are required by Sections 6(b)(1),<sup>48</sup> 15A(b)(2),<sup>49</sup> 17A,<sup>50</sup> and 15B<sup>51</sup> of the Act to enforce compliance with their rules. Therefore, at all times, each SRO should maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs would incur material costs in simply posting this information on their websites.

#### *E. Retention Period of Recordkeeping Requirements*

The SROs would be required to retain records of the collection of information (the manually signed signature page of the Form 19b-4) for a period of not less than five years, the first two years in an easily accessible place, according to the

<sup>46</sup> This number includes SRO proposed rule changes that the Commission notices pursuant to Section 19(b)(3)(A) of the Act, which are effective-upon-filing, and SRO proposed rule changes that the Commission notices and accelerates approval in the same document pursuant to Section 19(b)(2) of the Act, along with notices issued by the Commission pursuant to Section 19(b)(2) of the Act.

<sup>47</sup> The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), Chicago Stock Exchange, Inc., Boston Stock Exchange Clearing Corporation, INET Futures Exchange, LLC, and Pacific Clearing Corporation do not appear to post their final rules on their websites.

<sup>48</sup> 15 U.S.C. 78f(b)(1).

<sup>49</sup> 15 U.S.C. 78o-3(b)(2).

<sup>50</sup> 15 U.S.C. 78q-1.

<sup>51</sup> 15 U.S.C. 78o-4.

<sup>45</sup> The SROs' one hour time savings would result from the elimination of tasks such as making multiple copies of the Form 19b-4 and amendments, arranging for couriers, and making follow-up telephone calls to ensure Commission receipt.

current recordkeeping requirements set forth in Rule 17a-1 of the Act.<sup>52</sup> The SROs would be required to retain proposed rule changes, and any amendments, on their websites until the proposal is either approved or disapproved. The SRO would be required at all times to maintain an accurate and up-to-date copy of all of its rules on its website.

#### *F. Collection of Information Is Mandatory*

Any collection of information pursuant to the proposed amendments to Rule 19b-4 and Form 19b-4 to require electronic filing with the Commission of SRO proposed rule changes would be a mandatory collection of information filed with the Commission as a means for the Commission to review, and, as required, take action with respect to SRO proposed rule changes. Any collection of information pursuant to the proposed amendments to require website posting by the SROs of their proposed and final rules would also be a mandatory collection of information; however, it would not be a collection of information filed with the Commission upon which the Commission would review and take action.

#### *G. Responses to Collection of Information Will Not Be Kept Confidential*

Other than information for which an SRO requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, and the posting of proposed and final rules on the SRO website, and thus not information filed with the Commission, the collection of information pursuant to the proposed amendments to Rule 19b-4 and Form 19b-4 under the Act would not be confidential and would be publicly available.<sup>53</sup>

#### *H. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- (1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

<sup>52</sup> SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a-6 of the Act. 17 CFR 240.17a-6.

<sup>53</sup> However, consistent with applicable law, proposed SRO rule changes containing proprietary or otherwise sensitive information may be kept confidential and nonpublic.

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609 with reference to File No. S7-18-04. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-18-04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

#### **VI. Costs and Benefits of the Proposed Rulemaking**

The Commission is considering the costs and benefits of the proposed amendments to Rule 19b-4 and Form 19b-4 discussed above. As noted above, the Commission staff estimates that the total annual paperwork reporting burden under the proposed rule would be 29,753 hours. The Commission staff, however, believes that there would be an overall reduction of costs based on the proposed amendments.<sup>54</sup> The Commission encourages commenters to identify, discuss, analyze, and supply relevant data regarding any such costs or benefits.

<sup>54</sup> As noted in the Paperwork Reduction Act analysis, the Commission staff based this total reporting burden of 29,753 hours on 27,676 hours for filing proposed rule changes and amendments + 640 hours for posting proposed rule changes and amendments on the SROs' websites + 27 hours for initial posting of accurate SRO rule text on SROs' websites + 1410 hours for updating SRO final rules on SROs' websites.

#### *A. Benefits*

The proposed amendments are designed to modernize the filing, receipt, and processing of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. The Commission believes that the proposed changes to Rule 19b-4 and Form 19b-4 would permit SROs to file proposed rule changes with the Commission more quickly and economically. For example, SROs are currently required to pay for delivery costs of multiple paper copies to the Commission as well as the costs associated with monitoring the Commission's Public Reference Room for competitors' rule filings. Requiring SROs to file electronically proposed rule changes should reduce expenses associated with clerical time, postage, and copying and should increase the speed, accuracy, and availability of information beneficial to investors, other SROs, and financial markets.

Because Commission staff would no longer manually process the receipt and distribution of SRO rule filings, electronic filing would also expedite the Commission's receipt of SRO proposed rule changes and provide the SROs with the certainty that the Commission has received the proposed rule changes and has captured pertinent information about the rule changes in SRTS. The Commission believes that integrating the electronic filing technology with SRTS should also enhance the Commission's ability to monitor and process SRO proposed rule changes.

Moreover, requiring SROs to post proposed rule changes on their websites no later than the next business day after filing with the Commission should increase availability of SRO proposed rules, and thereby facilitate the ability of interested parties to comment on proposed rule changes. For instance, the posting of proposed rule changes would provide the public with access to the filings on the SROs' websites and thereby reduce the burden on SRO and Commission staff of providing information about proposed rule changes to interested parties. The Commission believes that the posting of the proposed rule changes would also save SRO resources that are currently being used to monitor the Commission's Public Reference Room for competitors' proposed rule changes. Furthermore, requiring an SRO to post and maintain on its website a current and complete set of its rules could eliminate the confusion among SROs, members of the industry, and the public regarding the accuracy of SRO rule text and facilitate

immediate availability of an SRO's rule text.

#### B. Costs

As noted, the Commission staff estimates that there would be paperwork reporting costs of 29,753 hours under the proposed rule. The Commission, however, does not expect that the proposed amendments would impose additional costs on SROs. Instead, the Commission believes that the proposed amendments to Rule 19b-4 and Form 19b-4, on balance, would reduce costs related to the submission of SRO proposed rule changes. The technology for electronic filing would be web-based; therefore, the SRO should not have any technology expenditures for electronic filing because all SROs currently have access to the Internet. Most of the information that would be required to be submitted by the SROs electronically is currently submitted in multiple paper copies to the Commission. There are personnel and delivery costs associated with paper filings that would not be incurred with electronic filing. Accordingly, the Commission believes that the proposed amendments to Rule 19b-4 and Form 19b-4, by requiring the SROs to submit proposed rule changes in electronic format, would reduce their costs.

If the proposed changes were adopted, the Commission believes that SROs could incur some costs associated with training their personnel about the procedures for submitting proposed rule changes in electronic format and submission of the information via EAUF. However, the Commission believes that such costs would be one-time costs and insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and would only be required to submit the same information electronically under this proposal. The Commission staff believes that the SROs could also incur some minimal costs (currently \$15 per year) associated with purchasing digital IDs for each duly authorized officer electronic signatories.<sup>55</sup> The Commission also believes that the SROs would have to make temporary adjustments to their recordkeeping procedures since, under the proposal, the SROs would be required to print out the Form 19b-4 signature block, manually sign proposed rule changes, and retain the manual signature for not less than five years.

However, there should be no additional costs associated with such recordkeeping as SROs are currently required to retain the Form 19b-4 for not less than five years. The Commission requests comment on the anticipated costs, if any, on SROs to comply with the proposed requirement of retaining a manual signature of each proposed rule change submitted electronically.

Moreover, the Commission believes that the proposed requirement that SROs post proposed rule changes, as well as a current and complete version of their rules, on their websites would impose some but not substantial costs on most SROs. The Commission notes that most of the SROs currently post some of this information, if not all of this information, on their websites. Some SROs currently rely on CCH to maintain a current version of their rules, and a cost could be involved in expediting prompt publication of rule changes with CCH or maintaining a current version of their rules at the SRO. However, the Commission notes that SROs are required by Sections 6(b)(1),<sup>56</sup> 15A(b)(2),<sup>57</sup> 17A,<sup>58</sup> and 15B<sup>59</sup> of the Act to enforce compliance with their rules. Therefore, at all times, each SRO should maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs would incur substantial costs in simply posting this information on their websites because if the SRO does not currently maintain a current and complete set of its rules, it should have done so and have provided for such administrative costs.

#### C. Request for Comment

The Commission requests data to quantify the costs and the benefits above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, which could result from the adoption of these proposed amendments to Rule 19b-4 and Form 19b-4. Specifically, the Commission requests commenters to address whether proposed amendments to Rule 19b-4 and Form 19b-4 that would require electronic filing of SRO proposed rule changes, the posting of these proposed rule changes on the SROs' websites, as well as the posting and maintenance of current and complete sets of rules on the SROs' websites, would generate the anticipated benefits or impose any

unanticipated costs on the SROs and the public.

#### VII. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Act<sup>60</sup> requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Act<sup>61</sup> requires the Commission, when promulgating rules under the Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed amendments to Rule 19b-4 and Form 19b-4 are intended to modernize the receipt and review of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. They also are intended to improve the transparency of the SRO rule filing process and facilitate access to current and complete sets of SRO rules. All of these changes should help to foster innovation, increase competition, efficiency, and capital formation and thereby benefit investors.

The Commission generally requests comment on the competitive or anticompetitive effects of these amendments to Rule 19b-4 and Form 19b-4 on any market participants if adopted as proposed. The Commission also requests comment on what impact the amendments, if adopted, would have on efficiency and capital formation. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

#### VIII. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act<sup>62</sup> requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>63</sup> Twenty-

<sup>55</sup> The Commission staff estimates that each SRO will purchase two of their staff such digital IDs. Thus, the annual cost of the digital ID for all SROs would be \$810 (27 SROs × \$15 × 2).

<sup>56</sup> 15 U.S.C. 78f(b)(1).

<sup>57</sup> 15 U.S.C. 78o-3(b)(2).

<sup>58</sup> 15 U.S.C. 78q-1.

<sup>59</sup> 15 U.S.C. 78o-4.

<sup>60</sup> 15 U.S.C. 78c(f).

<sup>61</sup> 15 U.S.C. 78w(a)(2).

<sup>62</sup> 5 U.S.C. 603(a).

<sup>63</sup> 5 U.S.C. 605(b).



seven SROs<sup>64</sup>—the 13 national securities exchanges, the 11 clearing agencies, and the two national securities associations and the Municipal Securities Rulemaking Board—would be required to provide the Commission with information pursuant to Rule 19b-4 and Form 19b-4. Rule 19b-4 and Form 19b-4 apply only to SROs and no SRO is a small entity. Accordingly, the Commission certifies that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>65</sup>

**IX. Statutory Basis and Text of Proposed Amendments**

The amendments to Regulation S-T under the Securities Act of 1933, Rule 19b-4 and Form 19b-4 under the Act are being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(26), 3(a)(27), 3(b), 6, 15A, 15B, 17A, 19(b), 23(a) and 36(a) of the Act.

**List of Subjects in 17 CFR Parts 232, 240, and 249**

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

<sup>64</sup> American Stock Exchange LLC, Boston Stock Clearing Corporation, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Mercantile Exchange, Inc., Chicago Stock Exchange, Inc., The Depository Trust Co., Emerging Markets Clearing Corporation, Fixed Income Clearing Corporation, INET Futures Exchange, LLC, International Securities Exchange, Inc., Midwest Clearing Corporation, Midwest Securities Trust Co., Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., National Futures Association, National Securities Clearing Corporation, The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), New York Stock Exchange, Inc., NQLX, LLC, One Chicago, LLC, The Options Clearing Corporation, Pacific Exchange, Inc., Pacific Clearing Corporation, Pacific Securities Depository Trust, Co., Philadelphia Stock Exchange, Inc., and Stock Clearing Corporation of Philadelphia.

<sup>65</sup> See 17 CFR 240.0-10(d) and (e). Paragraph (d) of Rule 0-10 of the Act states that the term “small business,” when referring to a clearing agency, means a clearing agency that: (1) Compared, cleared and settled less than \$500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10. Paragraph (e) of Rule 0-10 states that the term “small business,” when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 11Aa3-1 under the Act, 17 CFR 2450.11Aa3-1, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10. The Commission also has found that the NASD is not a small business.

**PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

1. The authority citation for part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

- \* \* \* \* \*
- 2. Section 232.101 is amended by:
  - a. Removing the word “and” at the end of paragraph (a)(1)(vii);
  - b. Removing the period at the end of paragraph (a)(1)(viii) and in its place adding “; and”;
  - c. Adding paragraph (a)(1)((ix); and
  - d. Revising paragraph (c)(9).

The additions and revisions read as follows:

**§ 232.101 Mandated electronic submissions and exceptions.**

- (a) \* \* \*
- (1) \* \* \*
- (ix) Form 19b-4 (§ 249.819 of this chapter).
- \* \* \* \* \*
- (c) \* \* \*
- (9) Exchange Act filings submitted to the Division of Market Regulation, except for Form 19b-4 (§ 249.819 of this chapter).
- \* \* \* \* \*

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

- \* \* \* \* \*
- 4. Section 240.19b-4 is amended by:
  - a. Adding a preliminary note;
  - b. Revising paragraph (a), the introductory text of paragraph (e), paragraph (f)(2); and
  - c. Adding paragraphs (j), (k), (l), and (m).

The additions and revisions read as follows:

**§ 240.19b-4 Filings with respect to proposed rule changes by self-regulatory organizations.**

*Preliminary Note:* A self-regulatory organization must also refer to Form 19b-4 (17 CFR 249.819) for further requirements with respect to the filing of proposed rule changes.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rules changes by self-regulatory organizations submitted pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7), shall be made electronically on Form 19b-4 (17 CFR 249.819).

\* \* \* \* \*

(e) For the purposes of this paragraph, *new derivative securities* product means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

\* \* \* \* \*

(f) \* \* \*

(2) Establishing or changing a due, fee, or other charge applicable only to a member;

\* \* \* \* \*

(j) Filings with respect to proposed rule changes by a self-regulatory organization submitted on Form 19b-4 (17 CFR 249.819) electronically shall contain an electronic signature. For the purposes of this section, the term *electronic signature* means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Each signatory to an electronically submitted rule filing shall manually sign a signature page or other document, in the manner prescribed by Form 19b-4, authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the rule filing is electronically submitted and shall be retained by the filer in accordance with § 240.17a-1.

(k) If the conditions of this section and Form 19b-4 (17 CFR 249.819) are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the next business day.

(l) The self-regulatory organization shall post the proposed rule change, and any amendments thereto, on its website no later than the next business day after the filing of the proposed rule change,

and any amendments thereto, with the Commission.

(m) The self-regulatory organization shall post and maintain a current and complete version of its rules on its website. The self-regulatory organization shall update its website to reflect rule changes no later than the next business day after it has been notified of the Commission's approval of a proposed rule change filed pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)) or of the Commission's notice of a proposed rule change filed pursuant to section 19(b)(3)(A) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(3)(A) or 15 U.S.C. 78s(b)(7)). If a rule change is not effective for a certain period, the self-regulatory organization shall clearly indicate the effective date in the relevant rule text.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

6. Section 249.819 and Form 19b-4 are revised to read as follows:

[**Note:** Form 19b-4 is attached as Appendix A to this document.]

### § 249.819 Form 19b-4, for electronic filing with respect to proposed rule changes by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file electronically proposed rule changes with the Commission pursuant to section 19(b) of the Act and § 240.19b-4 of this chapter.

By the Commission.

Dated: March 30, 2004.

**Margaret H. McFarland,**  
Deputy Secretary.

[**Note:** Appendix A to the preamble will not appear in the Code of Federal Regulations.]

## Appendix A—General Instructions for Form 19b-4

### A. Use of the Form

All self-regulatory organization proposed rule changes, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7)<sup>66</sup> of the Securities Exchange Act of 1934 ("Act"), shall be filed in an electronic

<sup>66</sup> Because section 19(b)(7)(C) of the Act states that filings abrogated pursuant to this section should be re-filed pursuant to paragraph (b)(1) of section 19 of the Act, SROs are required to file electronically such proposed rule changes in accordance with this form.

format through the SRO Rule Tracking System ("SRTS") operated by the Commission. This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Act, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act. National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form.

### B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0-3 under the Act (17 CFR 240.0-3).

### C. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of the Form 19b-4 Page 1, numbers and captions for all items, responses to all items, and exhibits required in Item 9. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the Form 19b-4 with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year (*i.e.*, SRO-YYYY-XX). If the SRO is filing Exhibit 2 and 3 via paper, the exhibits must be filed within 5 days of the electronic submission of all other required documents.

### D. Amendments

If information on this form is or becomes inaccurate before the Commission takes action on the proposed rule change, the self-regulatory organization shall file amendments correcting any such inaccuracy. Amendments shall be filed as specified in Instruction F.

Amendments to a filing shall include the Form 19b-4 Page 1 marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended response to Item 3 shall explain the purpose of the amendment and,

if the amendment changes the purpose or basis for the proposed rule change, the amended response shall also provide a revised purpose and basis statement for the proposed rule change. Exhibit 1 shall be re-filed if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Item 1(a) using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the amendment alters the text of the proposed rule change as it appeared in the immediately preceding filing (even if the proposed rule change does not alter the text of an existing rule), the amendment shall include, as Exhibit 4, the entire text of the rule as altered. This full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (*i.e.*, partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

If, after the rule change is filed but before the Commission takes final action on it, the self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed as Exhibit 2. If information in the communication makes the rule change filing inaccurate, the filing shall be amended to correct the inaccuracy. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

### E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

The Commission will not approve a proposed rule change before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law). Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all

such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) or Section 19(b)(7)(D) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

*F. Signature and Filing of the Completed Form*

All proposed rule changes, amendments, and withdrawals of proposed rule changes shall be filed through the SRTS. In order to file Form 19b-4 through SRTS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting the Market Regulation Administrator located on our website (<http://www.sec.gov>). E-mail will be sent to the requestor that will provide a link to a secure

website where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b-4 as indicated on Page 1 of the form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b-4, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall also file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board shall also file copies of the form, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

*G. Procedures for Submission of Paper Documents for Exhibits 2 and 3*

To the extent that Exhibits 2 and 3 cannot be filed electronically in accordance with Instruction F, four copies of Exhibits 2 and 3 shall be filed with the Division of Market

Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001. Page 1 of the electronic Form 19b-4 shall accompany paper submissions of Exhibits 2 and 3. If the SRO is filing Exhibit 2 and 3 via paper, they must be filed within five days of the electronic filing of all other required documents.

*H. Withdrawals of Proposed Rule Changes*

If a self-regulatory organization determines to withdraw a proposed rule change, it must complete Page 1 of the Form 19b-4 and indicate by selecting the appropriate check box to withdraw the filing.

*I. Procedures for Granting an Extension of Time for Commission Final Action*

After the Commission publishes notice of a proposed rule change, if a self-regulatory organization wishes to grant the Commission an extension of the time to take final action as specified in Section 19(b)(2), the self-regulatory organization shall indicate on the Form 19b-4 Page 1 the granting of said extension as well as the date the extension expires.

**BILLING CODE 8010-01-P**

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	
Estimated average burden hours per response.....	34

Page 1 of <input type="text"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. SR - <input type="text"/> - <input type="text"/> Amendment No. <input type="text"/>
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Proposed Rule Change by  Select SRO

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name

Title

E-mail

Telephone  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By

(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the SRTS Online Filing website.	
<b>Form 19b-4 Information</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	<p>The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.</p>
<b>Exhibit 1 - Notice of Proposed Rule Change</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	<p>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).</p>
<b>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/> Exhibit Sent As Paper Document <input type="checkbox"/>	<p>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</p>
<b>Exhibit 3 - Form, Report, or Questionnaire</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/> Exhibit Sent As Paper Document <input type="checkbox"/>	<p>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</p>
<b>Exhibit 4 - Marked Copies</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	<p>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</p>
<b>Exhibit 5 - Proposed Rule Text</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	<p>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.</p>
<b>Partial Amendment</b> <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	<p>If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.</p>

*Information To Be Included in the Completed Form ("Form 19b-4 Information")*

1. Text of the Proposed Rule Change

(a) Include the text of the proposed rule change. Changes in, additions to, or deletions from, any existing rule shall be set forth with brackets used to indicate words to be deleted and underscoring used to indicate words to be added.

If any form, report, or questionnaire or the completion of such is

(i) proposed to be used in connection with the implementation or operation of the proposed rule change, or

(ii) prescribed or referred to in the proposed rule change, or

(iii) voluntary or required pursuant to an existing rule of the self-regulatory organization, such form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3. If the form, report, or questionnaire cannot be filed electronically in accordance with

Instruction F, the documents shall be filed in accordance with Instruction G.

(b) If the self-regulatory organization reasonably expects that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change on the application of such other rule.

(c) Include the file numbers for prior filings with respect to any existing rule specified in response to Item 1(b).

## 2. Procedures of the Self-Regulatory Organization

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the self-regulatory organization (by amendment if initial filing is prior to completion of final action). See Instruction E.

## 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (e.g., brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and

(b) With respect to the proposed rule changes filed pursuant to both Sections 19(b)(1) and 19(b)(2) of the Act, explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to a proposed rule change filed pursuant to Section 19(b)(1) of the Act that has been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its

custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

**Note 1: National Securities Exchanges and Registered Securities Associations.** Under Sections 6 and 15A of the Act, rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. Rules of a registered securities association may not fix minimum profits or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

Under Section 11A(c)(5) of the Act, a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

**Note 2: Registered Clearing Agencies.** Under Section 17A of the Act, rules of a registered clearing agency may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A of the Act or the administration of the clearing agency, and may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

**Note 3: Municipal Securities Rulemaking Board.** Under Section 15B of the Act, rules of the Municipal Securities Rulemaking Board may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, may not fix minimum profits, or impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act with respect to municipal securities or the administration of the Board.

## 4. Self-Regulatory Organization's Statement on Burden on Competition

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and

respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization. The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition.

## 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issue is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.

## 6. Extension of Time Period for Commission Action

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

**Note:** The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until it shall file an amendment which specifically states that the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act shall begin to run on the date of filing such amendment.

## 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) If the proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragraph (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) establishes or changes a due, fee, or other charge applicable only to a member,

(iii) is concerned solely with administration of the self-regulatory organization,

(iv) effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the

service, and set forth the basis on which such designation is made.

(v) effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or

(vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. If it is requested that the proposed rule change become operative in less than 30 days, provide a statement explaining why the Commission should shorten this time period.

(c) In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires that the proposed rule change should be put into effect summarily by the Commission.

**Note:** The Commission has the power under Section 19(b)(3)(C) of the Act to abrogate summarily within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

#### 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

State whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule, as the filing self-regulatory organization understands it. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.

#### 9. Exhibits

List of exhibits to be filed, as specified in Instructions C and D:

*Exhibit 1.* Completed Notice of Proposed Rule Change for publication in the **Federal Register**. Amendments to Exhibit 1 should be filed in accordance with Instruction D and F.

*Exhibit 2.* (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments. If such notices and comments cannot be filed electronically in accordance with Instruction F, the notices and comments shall be filed in accordance with Instruction G.

(b) Copies of any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a copy of the summary of comments on the proposed rule change made at such meeting. If such transcript of comments or summary of comments cannot be filed electronically in accordance with Instruction F, the transcript of comments or summary of comments shall be filed in accordance with Instruction G.

(c) If after the proposed rule change is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed in accordance with Instruction F. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

*Exhibit 3.* Copies of any form, report, or questionnaire covered by Item 1(a). If such form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the form, report, or questionnaire shall be filed in accordance with Instruction G.

*Exhibit 4.* For amendments to a filing, marked copies, if required by Instruction D, of the text of the proposed rule change as amended.

*Exhibit 5.* The SRO may choose to attach as Exhibit 5 proposed changes to rule text in

place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

#### Specific Instructions for Exhibit 1—Notice of Proposed Rule Change

##### Exhibit 1

##### Securities and Exchange Commission

[Release No. 34- ; File No. SR ]

##### Self-Regulatory Organizations

Proposed Rule Change By (Name of Self-Regulatory Organization) Relating to (brief description of subject matter of proposed rule change)

#### General Instructions

##### A. Format Requirements

Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

##### B. Need for Careful Preparation of the Notice

The self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. The Commission cautions self-regulatory organizations to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b-4 it accompanies. Any filing that does not comply with the requirements of Form 19b-4, including the requirements applicable to the notice, may, at any time before the Commission issues a notice of filing, be returned to the self-regulatory organization. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b-4.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on (date),<sup>67</sup> the (name of self-regulatory organization) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Information to Be Included in the Completed Notice

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Supply a brief statement of the terms of substance of the proposed rule change. If the

<sup>67</sup>To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. See Instruction B to Form 19b-4.

proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underlined for words to be added.)

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, and 5 of Form 19b-4, redesignating them as (A), (B), and (C), respectively.)

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2), the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so

finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3) and subparagraph (f) of Securities Exchange Act Rule 19b-4, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) After consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC website (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. All submissions should refer to file number XX; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>68</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 04-7538 Filed 4-2-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>68</sup> 17 CFR 200.30-3(a).