

Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone: (816) 329-2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Hannibal, MO. An examination of controlled airspace for Hannibal, MO revealed that the Hannibal Municipal Airport ARP used in the legal description for this Class E airspace area is incorrect and that the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also identified that the description and dimensions of the extension to the Class E airspace area are not in compliance with FFA Order 8260.19C, Flight Procedures and Airspace.

This action expands the Hannibal, MO Class E airspace area extending upward from 700 feet above the surface from a 6-mile radius to a 6.5-mile radius of Hannibal Municipal Airport, corrects the ARP in the legal description, decreases the width of the extension from 2.6 to 2.5 miles each side of centerline, defines the extension in terms of the Hannibal nondirectional radio beacon (NDB), includes the Hannibal NDB in the legal description and brings the legal description of the airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or

negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2004-18827/Airspace Docket No. 04-ACE-53." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and is unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Hannibal, MO

Hannibal Municipal Airport, MO
(Lat. 39°43'28" N., long. 91°26'37" W.)
Hannibal NDB
(Lat. 39°43'38" N., long. 91°26'55" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hannibal Municipal Airport and within 2.5 miles each side of the 159° bearing from the Hannibal NDB extending from the 6.5-mile radius of the airport to 7 miles southeast of the NDB.

Issued in Kansas City, MO, on September 29, 2004.

Paul J. Sheridan,

Manager, Air Traffic Division, Central Region.
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34-50486; File No. S7-18-04]

RIN 3235-AJ20

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting rule amendments that require self-regulatory organizations (“SROs”) to file proposed rule changes electronically with the Commission, rather than in paper form. In addition, the Commission is requiring SROs to post all proposed rule changes, as well as current and complete sets of their rules, on their Web sites. The Commission is also requiring all participants in National Market System Plans (“NMS Plans”) to arrange for posting on a designated Web site a current and complete version of the NMS Plan. Finally, the Commission is making certain technical amendments to the requirements for SRO rule changes. Together, the amendments are designed to modernize the SRO rule filing process by making it more efficient and cost effective. The 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: Effective November 8, 2004, except § 240.11Aa3–2(b)(8) and § 240.19b–4(m), shall be effective May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Florence Harmon, Senior Special Counsel (202–942–0773); Elizabeth Badawy, Accountant (202–942–0740); Joseph Morra, Special Counsel (202–942–0781); Sonia Trocchio, Special Counsel (202–942–0753); Cyndi N. Rodriguez, Special Counsel (202–942–4163); Michael L. Milone, Special Counsel (202–942–0179) (clearance and settlement SROs); Timothy Fox, Attorney (202–942–0146); Molly Kim, Attorney (202–942–8987), Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 30, 2004, the Commission proposed changes to the process by which SROs file proposed rule changes with the Commission that were designed to make the process more efficient and transparent, while reducing costs for the SROs and the public.¹ The Commission proposed amending Rule 19b–4 and Form 19b–4 to (1) require SROs to file proposed rule changes with the Commission electronically, rather than in paper format; (2) mandate that SROs promptly post on their Web sites a copy of all

proposed rule changes filed with the Commission; (3) require SROs to maintain a current and complete version of their rules on their Web sites; and (4) make certain technical amendments to clarify Rule 19b–4 and to reflect current practice. The Commission also solicited comment on whether the participants in NMS Plans should be required to post on a public Web site to be designated by the Plan participants a current version of the applicable Plans, as well as amendments to such Plans, no later than the next business day after effectiveness of such Plan or amendment.

The Commission received 21 comment letters in response to its request for comments.² Commenters expressed general support for the proposal, commending the Commission’s efforts to make the rule filing process more efficient and transparent and to reduce costs,³ and

² See letters and emails to Jonathan G. Katz, Secretary, Commission, from: James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated May 14, 2004 (“Angel”); Barry S. Augenbraun, Senior Vice President, Raymond James Financial, Inc., dated April 22, 2004 (“Raymond James”); Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, America’s Community Bankers, dated June 3, 2004 (“ACB”); R. Gerald Baker, Compliance and Regulatory Consultant, dated June 4, 2004 (“Baker”); Kim Bang, President, Bloomberg Tradebook LLC, dated June 8, 2004 (“BT”); Donald F. Donahue, President, National Securities Clearing Corporation, dated July 16, 2004 (“NSCC”); Dorothy M. Donohue, Associate Counsel, Investment Company Institute, dated June 4, 2004 (“ICI”); Edward S. Knight, Executive Vice President, The Nasdaq Stock Market, Inc., dated June 14, 2004 (“Nasdaq”); Michael L. Kosoff, dated June 16, 2004 (“Kosoff”); Joanne Moffic-Silver, General Counsel and Corporate Secretary, Chicago Board Options Exchange, Inc., dated June 16, 2004 (“CBOE”); William H. Navin, Executive Vice President, General Counsel and Secretary, The Options Clearing Corporation, dated May 27, 2004 (“OCC”); Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc., dated June 4, 2004 (“CHX”); Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated May 4, 2004 (“Peake”); Edward L. Pittman, Esq., Thelen Reid & Priest LLP, dated May 28, 2004 (“Thelen”); John Polanin, Jr., Chairman, SIA Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated June 4, 2004 (“SIA”); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange LLC, dated June 15, 2004 (“Amex”); Thomas W. Sexton, Vice President and General Counsel, National Futures Association, dated June 4, 2004 (“NFA”); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated June 4, 2004 (“ISE”); Joseph Smith, Feldman Weinstein LLP, dated April 13, 2004 (“Smith”); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated July 14, 2004 (“NYSE”); and Elisse B. Walter, Executive Vice President, Regulatory Policy and Programs, National Association of Securities Dealers, Inc., dated June 7, 2004 (“NASD”).

³ CBOE at 1; BT at 1; Amex at 1; Nasdaq at 1; NASD at 1; CHX at 1; NFA at 1; ACB at 1; Thelen at 1; OCC at 1; NYSE at 1; SIA at 1–2; ISE at 1; Baker at 1; Angel at 1; Peake at 1; Raymond James at 1; Smith at 1; ICI at 1; Baker at 1.

suggested other ways to improve the process. The Commission has determined to adopt the amendments substantially as proposed, with some modifications to address some of the comments the Commission received. Twenty-seven SROs⁴— the 13 national securities exchanges, the 11 clearing agencies, and the two national securities associations and the Municipal Securities Rulemaking Board—are subject to these amendments. The Commission also is providing further clarification and guidance on the application of amended Rule 19b–4.

II. Amendments to Rule 19b–4

A. Electronic Filing

The Commission proposed to modernize the rule filing process by requiring SROs to file proposed rule changes electronically with the Commission through a Web-based system. To implement electronic filing of SRO proposed rule changes, the Commission proposed to amend Rule 19b–4 and Form 19b–4 to require SROs to file all proposed rule changes on Form 19b–4, and any amendments to Form 19b–4, electronically with the Commission in accordance with the procedures and in the format specified in Rule 19b–4 and Form 19b–4. Each SRO would be given access to a secure Web site, the Electronic Form 19b–4 Filing System (“EFFS”), which would enable authorized individuals at the SRO to file with the Commission an electronic Form 19b–4 on behalf of the SRO. Each SRO would determine which individual or individuals to supply with User IDs and passwords to allow access to the secure Web site. The current requirement in Form 19b–4 that SROs submit multiple paper copies of proposed rule changes to the Commission would be eliminated. Under the proposal, a proposed rule change would be deemed filed with the Commission on the business day that the SRO electronically submits the

⁴ 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.

¹ Securities Exchange Act Release No. 49505 (March 30, 2004), 69 FR 17864 (April 5, 2004).

proposed rule change to the Commission, as long as (1) the Commission receives the proposed rule change on or before 5:30 p.m., eastern standard time or eastern daylight saving time, whichever is currently in effect; and (2) the SRO files the proposed rule change in accordance with the requirements of Rule 19b-4 and Form 19b-4, as amended.

On the rare occasion where an SRO may be unable to file documents electronically, such as comment letters that the SRO received in advance of filing the proposed rule change with the Commission, exhibits, and proprietary information subject to a request for confidential treatment, the Commission's proposal retained the flexibility to allow SROs to file portions of a proposed rule change in paper format under limited circumstances.

Regarding signature requirements, the Commission proposed to amend Form 19b-4 so that a "duly authorized officer" of an SRO would be required to file proposed rule changes with an electronic signature. Additionally, the proposal would require each duly authorized signatory to obtain a digital ID to provide both the Commission and the SRO with further assurances about the authenticity and integrity of the electronically-submitted Form 19b-4. Each signatory also 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. In accordance with Rule 17a-1 under the Securities Exchange Act of 1934 ("Act"), 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, and, upon request, furnish a copy of it to the Commission or its staff.

Generally, commenters embraced the concept of electronic filing of proposed rule changes with the Commission.⁵ Some commenters offered suggestions of ways they believe the Commission's proposal could be improved. For example, six commenters believe that SROs should retain the ability to file paper copies of proposed rule changes with the Commission in limited circumstances, such as instances where there are computer malfunctions or systems outages.⁶ Three commenters

suggested the Commission extend the requirement for electronic filing to include other types of proposed rule changes and filings with the Commission.⁷ Four commenters offered suggested revisions to electronic Form 19b-4 as proposed.⁸

A number of commenters focused on the proposal's requirement that a paper signature page of the Form 19b-4 be manually signed by a duly authorized signatory and retained by an SRO.⁹ While one commenter did not object to the record keeping requirements for the hard copy of a signature page,¹⁰ other commenters objected to the requirement that a duly authorized signatory sign and an SRO retain a paper signature page, saying the requirements were unnecessary.¹¹

The Commission is adopting the amendments regarding electronic filing of SRO proposed rule changes substantially as proposed.¹² The Commission believes that requiring SROs to file proposed rule changes electronically will have many benefits, including (1) a reduction in the amount of time and labor required to process

SRO from filing a proposed rule change electronically, an SRO should be excluded from posting the proposed rule change on its Web site if the same technical issues involve its Web site. CHX at 2. Another commenter suggested the Commission include an explicit exemption for the posting of proprietary information on the SRO's Web site. NSCC at 2.

⁷ NFA requests that the requirement for electronic filing be extended to include proposed rule changes filed pursuant to Form 19b-7. NFA at 1-2. ACB encourages the Commission to require the PCAOB to file proposed rule changes electronically. ACB at 2. One commenter suggested that all filings by SROs and alternative trading systems, including Forms 1 and periodic supplemental filings, should be electronic and available to the public on EDGAR. Angel at 1-3.

⁸ CBOE at 4; Nasdaq 2; NFA at 2; NYSE at 3.

⁹ See generally, CBOE at 2; NASD at 3; CHX at 2; OCC at 3; NYSE at 3.

¹⁰ NFA at 4.

¹¹ See, e.g., NASD at 3; CHX at 2; NYSE at 3.

¹² 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.

SRO rule filings by eliminating paper delivery, photocopying, and distribution; (2) a reduction in costs for SROs; (3) more efficient use of Commission resources; and (4) more efficient and accurate monitoring by Commission staff of proposed rule changes due to the integration of SRO electronic filing with the SRTS, the internal Commission database that tracks these filings.

Therefore, as of 5:30 p.m. eastern standard time on November 5, 2004, the Commission will no longer accept SRO proposed rule changes in paper format. Beginning at 9 a.m. eastern standard time on November 8, 2004, SROs will be required to file all Forms 19b-4 and any amendments to Forms 19b-4 electronically, according to the procedures and in the format described in Rule 19b-4 and Form 19b-4, as amended. SROs will gain access to a secure Web site to enable authorized individuals to file proposed rule changes with the Commission electronically. Proposed rule changes will be deemed filed on the business day the Commission receives the proposed rule change electronically, provided the Commission receives the filing before 5:30 p.m. eastern standard time or eastern daylight saving time, whichever is in effect at the time of filing, and it is filed in accordance with Rule 19b-4 and Form 19b-4 as amended.¹³ The Commission has eliminated the requirement that SROs submit multiple paper copies of proposed rule changes.

The Commission recognizes that in rare circumstances SROs may be unable to file certain documents electronically with the Commission. Therefore, under limited circumstances, the Commission

¹³ The Commission believes that to be filed, a proposed rule change must be accurate, consistent, and complete in order to provide the public with an opportunity to meaningfully comment on the proposal. SROs must provide all of the information requested in Form 19b-4, including the exhibits, and must present the information in a clear and comprehensible manner. 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 proposed 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. Currently, filings that do not comply with these conditions 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, electronically, and consistent with current practice, will be deemed not filed with the Commission until all required information has been provided.

⁵ CBOE at 1-2; ICI at 1-2; Amex at 1; CHX at 1; NASD at 2; ISE at 1; NFA at 2.

⁶ CBOE at 2; NASD at 3; CHX at 1-2; NFA at 2; OCC at 1-2; NYSE at 1. Similarly, one commenter suggested that if technical difficulties prevent an

will allow SROs to file documents in paper format.¹⁴ For example, the Commission will allow SROs to file materials for which confidential treatment is requested in paper format. In addition, the Commission will allow SROs to file, in paper format, comment letters that the SRO received from its members before the SRO filed the proposed rule change with the Commission, so long as the SRO has demonstrated it is unable to convert the comment letters to electronic format. However, the Commission notes that, given advances in technology, it is increasingly simple and economical for SROs to scan paper documents for conversion to electronic format, so the ongoing need for this exception should be limited and of relatively short duration.

The Commission has determined that an explicit exception from the electronic rule filing requirements for "emergency" situations is unnecessary. Proposed rule changes are usually not so time-sensitive that failure to file them with the Commission on a particular date will result in negative consequences to SROs, their members, or investors.¹⁵ In the rare situation where an SRO can demonstrate to the Commission that its inability to file a proposed rule change electronically on that particular date will cause harm to the SRO, its members, or investors, the Commission would consider appropriate relief to enable the SRO to file the proposed rule change in paper format. In such emergency situations, the Commission could consider an SRO's exemption request from the electronic rule filing requirements of section 19(b) of the Act pursuant to Rule 0-12 of the Act¹⁶ and section 36(a)(1) of the Act¹⁷ "to the extent that such

exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." In making such findings, the Commission would consider important the existence of factors such as (1) an extended electronic outage at the SRO facility or at the Commission; (2) a pressing need for implementation of the proposed rule change; and (3) a failure of back-up facilities.¹⁸ The Commission notes that SROs, in their business continuity planning, should ensure that they have appropriate back-up facilities to accommodate electronic filing of proposed rule changes.

Some commenters objected to the proposed provision that would require each duly authorized signatory to a proposed rule change to manually sign the Form 19b-4, authenticating, acknowledging, or otherwise adopting his or her electronic signature, and the requirement that the SRO retain that manual signature page of the rule filing for not less than five years after the Form 19b-4 is filed with the Commission pursuant to Rule 17a-1 under the Act. With the advent of electronic filing, the administrative burden on SROs should be significantly reduced. The Commission believes the authentication and related recordkeeping requirements are necessary to assure the integrity of the electronic rule filing process and does not believe they are unduly burdensome. Accordingly, the Commission has determined to adopt the provisions as proposed.

B. Posting of Proposed Rule Changes on SRO Web Sites

The Commission also proposed to amend Rule 19b-4 to require each SRO to post all proposed rule changes, and any amendments thereto, on its public Web site no later than the next business day after filing with the Commission. Under the proposal, a copy of the complete proposed rule change would continue to be made available in the Commission's Public Reference Room. The Commission stated that requiring SROs to post proposed rule changes and amendments on their public Web sites promptly after filing with the Commission would (1) provide interested persons with quick access to

proposed rule changes; (2) facilitate the ability of interested persons to comment on proposed rule changes; (3) eliminate SRO expenses currently used to monitor the Commission's Public Reference Room for proposed rule changes filed by other SROs; and (4) enhance the transparency of the rule filing process by providing ready access to proposed rule changes and facilitating public comment on them. The Commission also solicited comment on whether the SRO should update its Web site to reflect proposed rule filings that are deemed not properly filed and returned to the SRO or withdrawn by the SRO.

In general, commenters supported the proposed requirement that SROs post their proposed rule changes and amendments to proposed rule changes on their Web sites, citing greater public access to information on a uniform basis,¹⁹ improved ability to monitor and comment on proposed SRO rule changes,²⁰ and improved ability to inform SRO members, investors, regulators, and other interested parties about SRO rulemaking efforts.²¹

With regard to the proposed provision that SROs post on their public Web sites all proposed rule changes and amendments no later than the next business day after filing them with the Commission, the commenters' response was varied. Two commenters expressed general support for this requirement,²² and one commenter stated a one-day grace period for proposals that are filed pursuant to section 19(b)(3)(A) of the Act is too long.²³ One commenter asked for clarification to determine whether a proposed rule change filed after 5:30 p.m. must be posted on its Web site the following business day or after two business days.²⁴

Four commenters stated that the next business day posting requirement is too short a timeframe for SROs to reasonably comply.²⁵ Instead, these

¹⁴ This exception from electronic filing does not apply to the Form 19b-4 and Exhibit 1 but will only be applicable to Exhibits 2 and 3 of the Form and any documents filed pursuant to a request for confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. 552.

¹⁵ Most proposed rule changes filed pursuant to section 19(b)(2) of the Act are published for notice and comment and approved not sooner than the 30th day after notice of filing of the proposed rule change appeared in the *Federal Register*. With regard to proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, the Commission believes that the failure to file these proposed rule changes on a particular date will not result in harm to SROs, their members, or investors. If an SRO wishes to extend an existing pilot program by filing a proposed rule change pursuant to section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6) thereunder, the SRO should file the proposed rule change in advance of the last business day before the pilot's expiration, to ensure that the Commission receives the proposed extension in a timely fashion to prevent a lapse in the pilot's operation.

¹⁶ 17 CFR 240.0-12.

¹⁷ 15 U.S.C. 78mm(a)(1).

¹⁸ Additionally, in emergency situations, where an SRO can demonstrate that implementation of a proposed rule change is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds, section 19(b)(3)(B) of the Act permits the Commission to put the proposed rule change into effect summarily. In such situations, the SRO will be required to file the proposed rule change promptly thereafter pursuant to section 19b(3)(B) of the Act. 15 U.S.C. 78s(b)(3)(B).

¹⁹ ISE at 1.

²⁰ SIA at 2.

²¹ NASD at 7.

²² SIA at 2; ICI at 1-2.

²³ Thelen at 2. The commenter said that there are instances where "SROs will begin assessing fees based on the new rules before any members of the industry affected by the filing have had a chance to review them." *Id.* According to the commenter, proposed rule changes should be given the same transparency as Commission rule proposals and the electronic filings of public companies. *Id.*

²⁴ CBOE at 2. The Commission notes that a proposed rule change filed after 5:30 p.m. would not be considered filed on that business day. Thus, determination of the time period for Web site posting of the proposed rule change would be calculated from the next business day.

²⁵ NASD at 7-8; CHX at 2; NFA at 2-3; OCC at 3.

commenters suggested alternatives ranging from two to five days.²⁶

The Commission has decided to adopt an amendment requiring SROs to post proposed rule changes on their public Web sites within two business days, instead of within one business day as proposed. The Commission believes all market participants, investors, and other interested parties should have access to SRO proposed rule changes filed with the Commission, and any amendments, as soon as practicable and, given the concerns expressed by commenters, that a two-business-day timeframe strikes the appropriate balance. The Commission notes that an SRO controls the timing of filing proposed rule changes and amendments and can assure that its technology staff is prepared to post the proposed rule change on the SRO's public Web site within two business days of filing with the Commission.²⁷ The Commission is also adopting amendments requiring SROs to remove proposed rule filings that are deemed not properly filed and returned to SROs or withdrawn by SROs from their Web sites within two business days from Commission notification of improper filing or SRO withdrawal of the proposed rule.²⁸

C. Posting of Current and Complete Rule Text on SRO Web Sites

The Commission proposed to amend Rule 19b-4 to require SROs to post and maintain a current and complete version of their rules on their public Web sites. Under the proposal, each SRO would be required to update its public Web site to reflect changes to its rules no later than the next business day after it has been notified by the Commission that the Commission has approved a proposed rule change, or in the case of proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, that the Commission has issued a release providing notice of filing and immediate effectiveness of a proposed rule change.

²⁶ NASD at 7-8 (five days); CHX at 2 (three days); NFA at 2-3 (two or three days); OCC at 3 (suggests Commission rules provide SROs with additional time to post proposed rule changes when an SRO's Web site is unavailable for modifying content, such as during unexpected maintenance which could affect its ability to post a rule filing within the required timeframe).

²⁷ Once the Commission has approved a proposed rule change filed pursuant to section 19(b)(2) of the Act or the 60-day abrogation period has expired of a proposed rule change filed pursuant to section 19(b)(3)(A) of the Act, and the SRO has updated its rules posted on its Web site pursuant to Rule 19b-4(m), the Commission would not require SROs to continue posting the Form 19b-4 on their Web sites. An SRO, of course, may elect to archive such documents on the SRO's Web site.

²⁸ A screen within EFFFs will indicate that a rule filing has not been properly filed and has been returned to the SRO.

The Commission proposal that one business day be the timeframe for posting changes to SRO rules was designed to ensure that interested persons would have prompt access to accurate and complete SRO rules, while allowing SROs sufficient time to comply with the posting requirement.²⁹

The Commission believes that prompt posting of current and complete rule text on SRO Web sites will enhance compliance with SRO rules and provide interested parties with easy access to current, reliable, and complete versions of SRO rules.

Eleven commenters expressed general support for requiring SROs to post and maintain a current and complete version of their rules on their public Web sites.³⁰ Some commenters provided additional suggestions relating to the posting of SRO rules on SRO Web sites.³¹

While there was support for requiring SROs to update their Web sites to reflect changes to their rules within one business day after Commission notification of the Commission's approval of proposed rule changes,³² several commenters believe that the requirement does not provide the SROs with enough time to comply.³³ The commenters offered many alternatives to the one-business-day posting requirement, ranging from three business days³⁴ to 15 business days.³⁵ Others suggested that the Commission allow SROs the flexibility to decide when to update their Web sites with approved rules or effective-upon-filing rule changes.³⁶

The Commission has determined to adopt an amendment requiring SROs to post and maintain a current and complete version of their rules on their public Web sites within two business days after electronic notification by the Commission that the Commission has approved a proposed rule change, or in

²⁹ Under the proposal, if the Commission approved a proposed rule change, but an SRO does not intend to implement the change upon approval, an SRO would be required to indicate clearly the implementation date in the pertinent rule text.

³⁰ CBOE at 2; Amex at 1; NASD at 9; CHX at 3; ICI at 2; Thelen at 2; Raymond James at 1; NYSE at 2; SIA at 4; ISE at 1; NFA at 3.

³¹ See, e.g., Kosoff at 1-2 (extend requirement to include access to an archive of past rules and regulations and provide a link to their rules from the SEC's Web site; also, require SRO Web sites to provide links to all relevant Securities Acts). See also NYSE at 3 (SEC may wish to post all of the SROs' rules on the Commission's Web site).

³² ICI at 2.

³³ See Amex at 2; Nasdaq at 2; NASD at 9-10; CHX at 3-4; NFA at 3; OCC at 2-3; NYSE at 2.

³⁴ CHX at 3-4.

³⁵ NASD at 10.

³⁶ See, e.g., Nasdaq at 2; NASD at 9-10, NYSE at 2.

the case of proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, that the Commission has issued a release providing notice of filing and immediate effectiveness of a proposed rule change. The Commission believes it is critical to assure interested persons have prompt access to accurate and complete SRO rules and does not believe that a two-business-day timeframe is impractical or unduly burdensome on SROs. An SRO is well aware of rule language it has proposed in advance of Commission approval. During the notice and comment period, the SRO should take steps to ensure that its Web site will be updated to reflect the new rule language within two business days of electronic notification by the Commission that it has approved the proposed rule change.

Four commenters expressed concern about the manner in which the Commission will provide notice to an SRO that the Commission has approved a proposed rule change or issued notice of a proposed rule change filed pursuant to section 19(b)(3)(A) of the Act.³⁷ In this regard, the Commission has determined to and will develop an affirmative electronic notification to SROs via EFFFs, the Web-based electronic rule filing system, that a proposed rule change has been approved or an effective-upon-filing rule change has been noticed by the Commission. The Commission expects to have an electronic notification to be made through a specific EFFF screen that provides multiple users at the SRO access to an electronic version of the Commission's approval order or notice of effective-upon-filing rule. To allow time for development of such electronic notification process, the Commission is delaying effectiveness of the requirement for SRO rules to be updated on the relevant Web site within two business days following notification of approval or notice by the Commission.³⁸ With such electronic notification in place, the Commission believes that the proposed amendments will provide an efficient and prompt procedure for it to notify SROs of approval of a proposed rule change or notice of an effective-upon-filing rule.

Accordingly, an SRO should have immediate notice of the event that triggers its duty to update its rules within two business days. The

³⁷ Amex at 1-2; NASD at 10-11; OCC at 2; NYSE at 2.

³⁸ Despite the delayed effective date for implementation of Web site posting of complete and current rule text, the Commission encourages SROs to seriously consider posting updated rule text on their Web sites as soon as possible to further transparency and the other goals described herein.

requirement to update Web site rule text will run from the business day that the SRO receives an electronic notification via EFFS from the Commission, not the date of the Commission order or notice of proposed rule change filed pursuant to section 19(b)(3)(A) of the Act. To accommodate the systems changes necessary to commence electronic notification to the SROs through EFFS, however, the Commission is delaying implementation of this requirement until May 9, 2005.

D. Electronic Posting of National Market System Plans

In the Proposing Release, the Commission requested comment on whether plan administrators for each of the seven NMS Plans³⁹ should post on their Web sites or on a separate Plan Web site a current version of the NMS Plans, as well as proposed amendments to these Plans within the one-business-day timeframe proposed for SROs.

The Commission received five comments on this issue.⁴⁰ All of the commenters supported the general idea of making the NMS Plans available on public Web sites,⁴¹ whether it is through the Plan administrator,⁴² the Commission's Web site,⁴³ or through hyperlinks from SRO Web sites to a central Web site where NMS Plan information will be maintained.⁴⁴ While supporting the concept of Web posting of NMS Plans, two commenters expressed concerns about the applicable timeframe for updating on-line NMS Plan information and the need for flexibility to accommodate unusual circumstances.⁴⁵

The Commission has decided to adopt a rule that will require each participant in an effective NMS Plan to ensure that a current and complete version of the Plan is posted on a Plan Web site or on a Web site designated by Plan participants within two business days after notification by the Commission of effectiveness of such Plan. Each participant in any effective NMS Plan also will be required to ensure that the Web site is updated to reflect amendments to such Plan no later than two business days after the Plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to Rule

11Aa3-2(c) of the Act.⁴⁶ If the amendment is not effective for a certain period, the Plan participants will be required to clearly indicate the effective date in the relevant text of the Plan. The Plan participants will also be required to post any proposed amendments filed pursuant to Rule 11Aa3-2(b) of the Act⁴⁷ on a Plan Web site or a designated Web site within two business days after the filing of the proposed amendments with the Commission.⁴⁸ The Plan participants will be required to remove from the Web site within two business days any proposed amendment that they determine to withdraw. Each Plan participant will be required to provide a link to the Web site with the current version of the Plan. The Commission, however, is delaying implementation of these requirements until May 9, 2005, to allow Plan participants to make arrangements for proper compliance with these provisions.⁴⁹

E. Amendments to Rule 19b-4

The Commission received no comments on the proposed amendment to Rule 19b-4(e) and is adopting it as proposed. Rule 19b-4(e) establishes the rule filing requirements for "new derivative securities products." The amendment clarifies that the term "new derivative securities product" does not include a single equity option or a security futures product. Regarding the proposed amendment clarifying that fee changes applicable to non-members and non-participants must be filed under section 19(b)(2) of the Act and not section 19(b)(3)(A)(ii), the Commission received three comments.⁵⁰ One commenter expressed support for the amendment, stating the clarification is important because the rationale for automatically effective fees (that SRO members would already have had an

opportunity to review and pass on fee changes before they were filed with the Commission) does not apply to fees assessed on non-members.⁵¹ One commenter stated the proposed amendment is inconsistent with the plain meaning of the Act, which makes no distinction between members and non-members.⁵² Another commenter said the Commission failed to provide any rationale for the proposed amendment and that there are certain fees for which there is no reason to require Commission approval.⁵³ The commenter cites (1) fees charged to non-participants for services available to participants at the same price; (2) fees charged to non-participants for compilations of information available from other sources; and (3) fees charged to non-participants for services not incidental to its business (e.g., rent for unused space) as examples.⁵⁴

The Commission is adopting as proposed these amendments to clarify Rule 19b-4 and reflect current practice. First, the Commission is amending 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.⁵⁵ Second, in 1979, the Commission stated that it would require notice and comment before a proposed rule change becomes operative that establishes or charges a due, fee, or other charge applicable to non-members of, or non-participants in an SRO because "[n]on-members or non-participants do not have a direct voice in the selection of the governing body of the self-regulatory organization proposing the rule change or the administration of the organization's affairs."⁵⁶ As the Commission explained, "the first opportunity [of non-members and non-participants] to comment generally occurs only after the proposed rule change has become effective under section 19(b)(3)(A)(ii)."⁵⁷ The Commission wants to assure that these persons have

⁴⁶ 17 CFR 240.11Aa3-2(c). A Plan participant encountering difficulties in ensuring that a current and complete Plan is posted pursuant to the rule may apply to the Commission for appropriate relief.

⁴⁷ 17 CFR 240.11Aa3-2(b).

⁴⁸ Once the Commission has approved pursuant to Rule 11Aa3-2(c) an amendment to an NMS Plan filed pursuant to Rule 11Aa3-2(b), and the NMS Plan participants have updated the Plan posted on the Web site pursuant to Rule 11Aa3-2(b)(8), the Commission would not require NMS Plan participants to continue posting the amendment on the Web site. NMS Plan participants, of course, may elect to archive such documents on the Web site.

⁴⁹ The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at <http://www.optionsclearing.com>. Despite the delayed effective date for implementation of the Web site posting requirements, the Commission would encourage NMS plan participants to seriously consider Web site posting of NMS Plans, and any amendments, as soon as possible to further transparency and the other goals described herein.

⁵⁰ BT; Nasdaq; NSCC.

⁵¹ BT at 1.

⁵² Nasdaq at 2.

⁵³ NSCC at 3.

⁵⁴ *Id.*

⁵⁵ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). 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.

⁵⁶ See Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979).

⁵⁷ *Id.*

³⁹ 69 FR 17864, 17868.

⁴⁰ NASD at 7; Thelen at 3; OCC at 2; BT at 2; NYSE at 2.

⁴¹ NASD at 7; Thelen at 3; OCC at 2; BT at 2; NYSE at 2.

⁴² See, e.g., NASD at 7.

⁴³ See, e.g., Thelen at 3.

⁴⁴ NYSE at 2.

⁴⁵ NYSE at 2; OCC at 2.

a meaningful opportunity to comment before the effective date of the proposed rule change, even when member or participant fees are equivalent or are for items the SRO views as incidental or available from other sources. The changes to Rule 19b-4(f)(2) codify the Commission's previously 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.⁵⁸

F. Technical Amendments to Regulation S-T

Regulation S-T⁵⁹ currently states that all Exchange Act filings, except for Form 25,⁶⁰ must be submitted in paper format. The Commission is adopting as proposed a technical amendment to Regulation S-T to reflect that the Form 19b-4 will be filed electronically.

III. Paperwork Reduction Act

Rule 19b-4 and Form 19b-4 contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.⁶¹ Accordingly, the Commission 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. OMB approved the new collection of information titled "Rule 19b-4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations" (OMB Control Nos. 3235-0045). OMB also approved the collection of information titled "Rule 19b-4(e) under the Securities Exchange Act of 1934" (OMB Control No. 3235-0504). Compliance with Rule 19b-4 and Form 19b-4 is mandatory.⁶² 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. Any information filed with the Commission will be made publicly available.

In the Proposing Release, the Commission solicited comments on the collection of information

⁵⁸ 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.

⁵⁹ 17 CFR 232.101.

⁶⁰ 17 CFR 249.25.

⁶¹ 44 U.S.C. 3501 *et seq.*

⁶² See 44 U.S.C. 3512(a).

requirements.⁶³ NASD and CHX specifically addressed the Commission's burden estimates made in the PRA portion of the Proposing Release.⁶⁴ For example, NASD stated that the Commission underestimated the time it would take to complete an average rule filing.⁶⁵ Several commenters expressed concern that the implementation of the requirement to post proposed rule changes the next business day following filing the Form 19b-4 with the Commission and an updated version of their own rules on their Web site, updated the business day following Commission approval (or Commission notice of immediately effective filings) would be unduly burdensome.⁶⁶ Commenters stated similar concerns about the Web site posting of proposed amendments to NMS Plans and updated versions of NMS Plans. The Commission is making certain adjustments to its initial burden estimate, discussed below, taking into account these comments and concerns discussed by commenters.

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 or others. The amendments do not change the information currently required by Rule 19b-4 or Form 19b-4; the amendments only require that such information be submitted electronically.

The amendments to Rule 19b-4, however, require Web site posting of all proposed rule changes, and any amendments thereto. In addition, the amendments require SROs to post a current and complete set of their rules on their Web sites. Several SROs currently post a set of their own rules and selected proposed rule changes that they have submitted to the Commission.

⁶³ See Proposing Release, 69 FR 17864, 17870 (April 5, 2004).

⁶⁴ See NASD and CHX Letters.

⁶⁵ See NASD Letter, p. 9.

⁶⁶ See Amex, CBOE, CHX, ISE, NASD, Nasdaq, NFA, and OCC Letters.

The amendments to Rule 11Aa3-2(b) similarly require Web site posting of proposed amendments and current and complete NMS Plans.

B. Use of Information

The information provided via External Account User Administration Form ("EAUF"), as required by the amendments to Form 19b-4, will be used by the Commission to verify the identity of the SRO individual and provide such individual access to the EFFS, the secure Commission Web site for filing of the Form 19b-4. The proposed rule change posted by SROs on their Web sites will be able to be viewed by the general public, SRO members, competing SROs, other market participants, and Commission staff. The information provided on the SRO Web sites will enable interested parties to more easily access SRO rules and rule filings, which will facilitate public comment on proposed SRO rules. Similarly, plan participants and other interested parties will be able to more easily access the text of NMS Plans and proposed amendments to such plans. In addition, the Commission believes that SRO staff, members, industry participants, and Commission staff will utilize the accurate and current version of SRO rules that are posted on the SRO Web site and current and accurate versions of NMS Plans that are posted on a public Web site to facilitate compliance with such rules and plans.

C. Respondents

There are currently 27 SROs and 7 NMS Plans subject to the collection of information. In fiscal year 2003, these SRO respondents filed 769 rule change proposals and 510 amendments to those proposed rule change proposals, for a total of 1,279 filings that are subject to the current collection of information. In 2003, 705 proposed rule changes ultimately became effective. In 2003, 12 amendments to NMS Plans were filed and became effective.

D. Total Annual Reporting and Recordkeeping Burden

(1) Background

The proposed amendments to Rule 19b-4 and Form 19b-4 are designed to modernize the SRO rule filing process and to make the process more efficient by conserving both SRO and Commission resources. As amended, Rule 19b-4 and Form 19b-4 require SROs to electronically file their proposed rule changes. Form 19b-4 is revised to accommodate electronic submission. The proposed amendments to Rule 19b-4 will also require the SROs

to post on their Web sites any proposed rule changes, and amendments, submitted to the Commission within two business days of filing with the Commission. In addition, the amendments to Rule 19b-4 require SROs to post a current and complete set of their rules on their Web sites. The Commission is proposing similar Web site posting requirements for NMS Plans and proposed amendments thereto.

(2) Rule 19b-4 and Form 19b-4

The Commission does not expect that the amendments to Rule 19b-4 and Form 19b-4 relating to electronic filing of proposed rule changes and amendments will impose any material upfront costs on SROs. The technology for electronic filing will be web-based; therefore, the SROs should not have any material upfront technology expenditures for electronic filing because all SROs currently have access to the Internet.

However, each SRO will be required to obtain a digital ID from a certificating authority. The Commission staff estimates the upfront and annual cost of the ID to be \$15 for each SRO.⁶⁷ One commenter observed that the Commission's estimate of two digital IDs per SRO underrepresented the actual number of such IDs that the commenter, an SRO, anticipates that it would have to purchase.⁶⁸ Instead, the commenter stated that it expects to obtain between five and ten digital IDs. The Commission notes that the commenter, the NASD, has historically filed more proposed rule changes pursuant to Rule 19b-4 than any other SRO. For example, the NASD filed 202 proposed rule changes in 2003, more than double the number of any other SRO. Although the Commission believes the NASD's expectations with respect to the number of authorized digital ID holders may be uniquely high, the Commission believes that it is appropriate to adjust the average number of IDs per SRO to five digital IDs per SRO. Accordingly, the annual cost of the ID for all SROs will be \$2,025 (27 SROs × \$15 × 5).

In addition, 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 EFFS. However, the Commission believes that such costs will be one-time costs and relatively

insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and will only be required to submit the same information electronically under this proposal. The Commission estimates that each SRO will spend approximately two hours training each staff member who will use the EFFS to submit the proposed rule changes electronically. Accordingly, the Commission estimates that the upfront cost of training SRO staff members to use EFFS will be 270 hours (27 SROs × 2 hours × 5 staff members).

An SRO proposed rule change is generally filed with the Commission after an SRO staff member 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. In the Proposing Release, the Commission stated that several SROs estimated 35 hours to be 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 Commission also stated that 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 estimated that, under current rules, four hours is the amount of time required to prepare an amendment to a proposed rule change. This figure included an estimated two hours of in-house legal work and two hours of clerical work.

One commenter, NASD, noted that the Commission significantly underestimated the time it took NASD to complete an average filing or amendment.⁶⁹ The NASD subsequently stated that 20 of its 2003 proposed rule filings were complex and required 130 hours on the average to prepare.⁷⁰ Given this estimate, Commission staff also estimated that 13 of other SRO proposed rule filings in 2003 were similarly complex and required 130 hours on average to prepare. Commission staff also spoke with several other SROs subsequent to the Proposing Release. Although there was no consensus as to the typical amount of time expended in a proposed rule change, most of the other SROs, with which the Commission staff spoke, agreed that the

Commission's 35 hour estimate provided in the Proposing Release was reasonable and accurately reflected their experiences. Accordingly, the Commission will use the same 35 hour estimate for preparation of all SRO proposed rule changes, except the Commission will use an estimate of 130 hours for the 33 complex proposed rules.

The Commission expects that an electronic form will reduce by one hour the amount of SRO clerical time required to prepare the average filing and amendment. Following the effectiveness of the proposed electronic filing, the Commission staff estimates that 34 hours is the amount of time that will be required to complete an average rule filing, 129 hours is the amount of time required to complete a complex rule filing, and three hours is the amount of time required to complete an average amendment. These figures reflect the one-hour in savings in clerical hours that will result from the use of an electronic form for both the rule filings and the amendments.⁷¹ The Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments will be 30,811 hours (736 rule change proposals × 34 hours + 33 complex rule proposal × 129 hours + 510 amendments × 3 hours). Thus, on average, the reporting burden for filing proposed rule changes is 38 hours, while the reporting burden for filing amendments is 3 hours.

(3) Posting of SRO Rules and Proposed Rule Changes on SRO Web Sites.

(a) SRO Rule Text

The Commission noted in the Proposing Release that most of the SROs currently post some or all of the text of their rules on their Web sites. Some SROs currently rely on CCH, Incorporated ("CCH") to maintain a current version of their rules; others maintain the rules themselves on their Web site; while the remaining SROs do not provide their rules on their Web site. One commenter that currently does not post its rules on its Web site observed that, after discussing the issue with CCH, CCH might offer web-hosting arrangements for an annual cost of approximately \$45,000.⁷² The commenter anticipated that doing the

⁷¹ 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.

⁷² See CHX Letter, page 4.

⁶⁷ See <http://www.verisign.com/support/tlc/per/clientHelp/help/index.htm> for information on the digital ID that the Commission will employ.

⁶⁸ See NASD Letter at 6.

⁶⁹ See NASD Letter p. 6.

⁷⁰ Telephone conference between Stephanie Dumont, Vice President and Associate General Counsel, NASD, with Florence Harmon, Senior Special Counsel, Commission, on September 16, 2004.

work internally would be more cost-effective.

In the Proposing Release, the Commission staff estimated that an SRO, on average, would take two hours to update the rules published on the SRO's Web site when the SRO's proposed rule becomes effective. One commenter stated that it believed that the Commission's two-hour estimate did not accurately reflect the amount of time necessary for an SRO to incorporate recently approved or effective-upon-filing rule changes into its online manual, explaining that the process of reviewing the final rule text and communication with the publishing vendor can take ten or more business days.⁷³ Several other commenters implied that their Web site update of their SRO rules typically takes more than two hours by explaining that the process occurs over a series of days following Commission approval of a recent proposed rule change.⁷⁴

The Commission notes that SROs need not use CCH to maintain a correct version of their rules on their Web sites. For example, ISE posts its rules on its Web site in the form of a PDF file, which the ISE can easily change when amending its rules. In response to the commenters' concerns regarding the Commission's two-hour estimate of the time required to update an SRO's Web site after the proposed rule change becomes effective, the Commission is raising its estimate from two hours to four hours as the amount of time necessary to update an SRO-maintained document containing the SRO's rules and post it on the SRO's Web site. Therefore, each time the Commission approves an SRO rule change or notices an effective-upon-filing rule change (total of 705 rules in fiscal year 2003), the Commission staff estimates that the reporting burden for updating the posted SRO rules on the SRO Web site will be 2,820 hours (705 SRO Commission approved or non-abrogated rules \times 4 hours).

The Commission notes that only 6 of the 27 SROs do not currently post their rules on their Web site.⁷⁵ In addition, the Commission notes that SROs are required by sections 6(b)(1),⁷⁶

15A(b)(2),⁷⁷ 15B,⁷⁸ and 17A⁷⁹ of the Act to enforce compliance with their rules. The Commission believes that an SRO must have a complete, updated version of its rules in order to enforce them. The Commission does not believe the SROs that currently do not post their rules on their Web sites will incur material costs in simply posting this information on their Web sites. The Commission staff estimates that four hours will be the amount of time required to post an SRO's current rules on its Web site. Accordingly, the Commission staff estimates that the total reporting burden for initially posting current rules on the SROs' Web sites will be 24 hours (6 SROs that do not already post their rules \times 4 hours) because each SRO should have a current version of its rules available internally for posting on its Web site.

(b) Proposed Rule Changes

In the Proposing Release, the Commission stated that it believed that the SROs could incur nominal costs in being required to post on their Web site their proposed rules, and amendments thereto, no later than the next business day after filing with the Commission. In the Proposing Release, the Commission staff estimated that 30 minutes is the amount of time that will be required to post a proposed rule on an SRO's Web site and that 30 minutes is the amount of time that will be required to post an amendment on an SRO's Web site. The Commission received one comment on the subject of the Commission's 30-minute estimate.⁸⁰ The commenter, the NASD, suggested that the estimate was too low,⁸¹ given the fact that the NASD's Communication Department must, each time they post a proposed rule change to their Web site, convert the file to PDF format, copy it to a development server to be processed, link it to the NASD's Rule Filing web page, return the PDF file to the department within the NASD that is responsible for the filing to ensure that no errors occurred in the conversion to the PDF format, and then wait for it to be returned so that the Department can activate the web link. Although the Commission believes that most of the procedures that the NASD describes are mechanical functions that should not take as long as the NASD estimates, the Commission has no other comments or data from which to draw to substantiate its belief. Accordingly, the Commission is raising its estimate to

four hours for the amount of time it takes for an SRO to post rule change proposals and amendments on its Web site. The Commission estimates that the reporting burden for posting rule change proposals and amendments on the SRO Web sites will be 5,116 hours (769 rule change proposals \times 4 hours + 510 amendments \times 4 hours).

(4) Web Site Posting of NMS Plans and Proposed Amendments

The Commission has decided to adopt a provision that will require the participants in any effective NMS Plan to post on a public Web site to be designated by the plan participants a current version of the plans, as well as proposed amendments to these plans, within two business days after effectiveness of such plan or filing of any proposed amendments. Each plan participant will be required to provide a link to the designated Web site with the current version of the plan. The Commission is delaying implementation of these requirements, to allow plan participants to make arrangements for compliance with these provisions.

Commission staff estimates that an SRO, on average, will take four hours to update its Web site postings of the SROs' rules. One of the participants of each of the seven NMS Plans would update a public Web site posting of their plans when the Commission approves plan amendments. In fiscal year 2003, the participants in the seven NMS Plans filed 12 amendments to the plans. Therefore, the Commission estimates that the reporting burden for updating NMS Plans on the designated NMS Plan Web site will be 48 hours (12 NMS Plan amendments per year \times 4 hours).

The NMS Plan participants will also have to post proposed amendments to NMS Plans on a public Web site. Consistent with its estimate for SRO Web site posting of proposed rules, the Commission estimates four hours as the amount of time for NMS Plan participants to post proposed amendments on a designated Web site. Therefore, the Commission estimates that the reporting burden for posting proposed rules will be 48 hours (12 amendments \times 4 hours).

The Commission notes that only one of the seven NMS Plans is currently

⁸² 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.

⁷³ NASD Letter, page 9.

⁷⁴ Amex Letter 1-2, CBOE 3-4, CHX 3-4, ISE 2, NFA 3, OCC 2-3, and Nasdaq 2.

⁷⁵ 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 rules on their Web sites. The New York Stock Exchange does not have its rules on its Web site; however, the New York Stock Exchange does post its Listed Company Manual on its Web site.

⁷⁶ 15 U.S.C. 78f(b)(1).

⁷⁷ 15 U.S.C. 78o-3(b)(2).

⁷⁸ 15 U.S.C. 78o-4.

⁷⁹ 15 U.S.C. 78q-1.

⁸⁰ See NASD Letter, p. 8.

⁸¹ The NASD suggested that the estimate should have been four hours instead of 0.5 hours.

posted on a public Web site.⁸³ As with the posting of SRO rules, the Commission's staff estimates that one hour will be the amount of time required to post the NMS Plan on the designated Web site. NMS Plan participants should know the current version of their effective NMS Plan because Rule 11Aa3-2(b)(1) requires filing of the plan and any amendments with the Commission. In addition, the Commission notes that SRO plan participants are required to enforce compliance with the terms of the plans by their members. Rule 11Aa3-2(d) states that each SRO shall comply with the terms of any effective NMS Plan of which it is a sponsor or a participant. Each SRO also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members. The Commission believes that NMS Plan participants must have a complete, updated version of their plans in order to enforce them. The Commission does not believe the SRO participants in NMS Plans will incur material costs in simply posting this information on a designated Web site. The Commission staff estimates that one hour will be the amount of time required to post the NMS Plan on a public Web site. Accordingly, the Commission staff estimates that the total reporting burden for initially posting current NMS Plans on public Web sites will be 24 hours (6 NMS Plans × 4 hours) because each participant in an NMS Plan should have a current version of the plan available for posting on a public Web site.

Thus, the Commission staff estimates that the total annual reporting burden under the proposed rule will be 38,891 hours (30,811 hours for filing proposed rule changes and amendments + 5,116 hours for posting proposed rule changes and amendments on the SROs' Web sites + 24 hours for initial posting of accurate SRO rule text on SRO Web sites + 2,820 hours for updating SRO final rules on SRO Web sites + 48 hours for updating NMS Plans on NMS Plan Web sites + 48 hours for posting proposed amendments on NMS Plan Web sites + 24 hours for initial Web site posting of current NMS Plans).

E. Retention Period of Recordkeeping Requirements

The SROs will 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 current recordkeeping requirements set forth in Rule 17a-1 of the Act.⁸⁴ The SRO is required to retain proposed rule changes, and any amendments, on its Web site until the proposal is either approved or disapproved. The SRO is also required at all times to maintain an accurate and up-to-date copy of all of its rules on its Web site. NMS Plan participants are subject to similar requirements for Web site posting of NMS Plans and proposed amendments to such plans.

Several commenters suggested that the proposed requirement for the SROs to maintain the manually signed signature page of the Form 19b-4 for at least five years, the first two of which in an easily accessible place, is unnecessary and inconsistent with administrative efficiency.⁸⁵ The Commission believes that maintaining the physical signature page will enable interested parties, including the Commission, to access a record of the authority under which a particular proposed rule change was filed. The Commission notes that the retention of the physical signature page is an existing maintenance requirement for SROs. The Commission further notes that a similar manual signature retention requirement exists for EDGAR filers.⁸⁶

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 is a mandatory collection of information. Any collection of information pursuant to the proposed amendments to require Web site posting by the SROs of their proposed and final rules, and by NMS Plan participants of the plans and proposed amendments, is also a mandatory collection of information.

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. 552, the collection of information

pursuant to the proposed amendments to Rule 19b-4 and Form 19b-4 and Rule 11Aa3-2(b) under the Act is not confidential and is publicly available.⁸⁷ The Commission notes that the posting of proposed and final rules on the SRO Web site (or the posting of NMS Plans and proposed amendments on a public Web site) is not information filed with the Commission but is information that is being made public by the SROs.

IV. Consideration of Costs and Benefits

In the Proposing Release, the Commission identified certain costs and benefits associated with the proposed amendments to Rule 19b-4 and Form 19b-4 and requested comments on the Commission's preliminary analysis, as well as any costs and benefits not previously identified. Specifically, the Commission requested commenters to address whether the proposed amendments requiring electronic filing of SRO proposed rule changes, posting proposed rule changes on SRO Web sites, and posting and maintaining current and complete sets of rules on SRO Web sites would generate the anticipated benefits or impose any unanticipated costs on SROs and the public. The Commission received nine comments relating to the costs and benefits of the proposed amendments.⁸⁸ The Commission also engaged in informal discussions with a number of SROs following the publication of the amendments in the **Federal Register**. After a careful consideration of the comments received and the discussions held with SROs, the Commission believes that the benefits of the amendments justify the costs that they will impose.

A. Benefits

The proposed amendments to Rule 19b-4 and Form 19b-4 are designed to modernize the filing, receipt, and processing of SRO proposed rule changes by making the SRO rule filing process more transparent, efficient, and cost effective. For instance, the Commission believes that electronic filings will expedite the submission of proposed rule changes by eliminating paper delivery and also reduce SROs' clerical costs. Specifically, the Commission staff estimates that it currently takes an SRO 10 hours of

⁸⁷ However, consistent with applicable law, proposed SRO rule changes containing proprietary or otherwise sensitive information may be kept confidential and nonpublic, including requests submitted pursuant to the protection afforded for such information in the Freedom of Information Act. 5 U.S.C. 552.

⁸⁸ See NASD, CHX, OCC, Amex, CBOE, CHX, ISE, NFA, and Nasdaq Letters.

⁸³ The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at <http://www.optionsclearing.com>.

⁸⁴ 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.

⁸⁵ See NASD Letter, p. 3, CHX Letter, p. 2, and OCC Letter, p. 3.

⁸⁶ 17 CFR 232.302(b).

clerical time to prepare an average rule filing and 2 hours of clerical time to prepare an amendment to an average rule filing. The Commission staff expects that electronic filings will reduce by 1 hour the clerical time necessary for such rule filings and amendments, saving SROs 1,279 hours of clerical time, annually (1 hour \times 769 proposed rule filings + 1 hour \times 510 amendments). Furthermore, SROs currently pay the delivery cost of submitting multiple paper copies of proposed rule changes to the Commission. The Commission staff estimates that electronic filing will save SROs \$19,185, annually, in delivery cost (\$15 \times 769 proposed rule filings + \$15 \times 510 amendments). The Commission believes that certain SROs will also save the expense of monitoring the Commission's Public Reference Room for competitors' proposed rule change, which one SRO estimated at \$12,000 per year.⁸⁹ Accordingly, the Commission staff estimates that the equity and options exchanges incur such costs and will save approximately \$108,000 annually (8 SROs \times \$96,000) as a result of obviating the need for such monitoring.

The Commission also expects that the amendments to Rule 19b-4 and Form 19b-4 will help conserve Commission resources. With electronic filings, the Commission staff will no longer manually process the internal receipt and distribution of SRO rule filings. The Commission staff estimates that electronic filings would save the Commission 1 hour of clerical time for each proposed rule change and amendment. Annually, this will be a saving of 1,279 hours of the Commission's clerical time (1 hour \times 769 proposed rule filings + 1 hour \times 510 amendments). Moreover, the Commission believes that the electronic filing system provides certainty to SROs that proposed rule changes have been received because SROs will be able to confirm on EFFS that rule filings have been received. Lastly, the Commission anticipates that integrating the electronic filing technology with SRTS will enhance the Commission's ability to monitor and process rule filings by automatically capturing pertinent information about the rule changes in SRTS.

The Commission believes that there are certain benefits to requiring SROs to post proposed rule changes on SRO Web sites no later than two business days

after filing with the Commission. For example, online accessibility of proposed SRO rule changes will enhance the transparency of the rule filing process. Also, the posting requirement will facilitate interested parties' ability to comment on proposed rule changes. Further, the Commission anticipates that the posting requirement will reduce the burden placed on SROs and the Commission of having to provide information about rule filings to interested parties. The Commission also believes that posting proposed rule changes will save SRO resources currently being used to monitor the Commission's Public Reference Room for competitors' filings.⁹⁰

The Commission believes that there are a number of benefits to requiring SROs to post and maintain a current and complete set of rules on their Web sites. The Commission believes that this requirement will facilitate prompt availability of SRO rule texts following the approval of proposed rule changes pursuant to Rule 19b-4. The Commission also believes that the requirement will enhance compliance with SRO rules by eliminating confusion among interested parties regarding the accuracy of SRO rule texts. Finally, the Commission anticipates that online availability of a current and complete set of SRO rule texts should promote competition among SROs by providing quick and cost-efficient access to competitors' rules.

The Commission also believes that there are a number of benefits to requiring the posting on a public Web site designated by the participants of the current and complete text of NMS Plans and any proposed amendments to such plans. The Commission believes that this requirement will facilitate prompt availability of NMS Plans, or any proposed amendment to the plans. The Commission also believes that the requirement will enhance compliance with NMS Plans by eliminating confusion among plan participants regarding the requirements of the plans.

B. Costs

The Commission staff estimates that there will be a total annual paperwork reporting burden of 38,891 hours under the amended Rule 19b-4 and Form 19b-4. As discussed in Section IV (A), *supra*, the Commission believes that the amendments will, on aggregate, reduce costs related to the submission of SRO proposed rule changes. Because all

SROs currently have access to the Internet, the Commission anticipates that SROs will not have significant technology expenditures for electronic filings. Furthermore, costs associated with paper filings will not be incurred with electronic filings. Currently, most information submitted by SROs is currently submitted to the Commission in multiple paper copies. The Commission believes that the amendments to Rule 19b-4 and Form 19b-4, by requiring SROs to submit proposed rule changes electronically, will actually reduce SRO costs.

The Commission, however, anticipates that SROs will incur some cost in training their personnel to submit EAU and proposed rule changes electronically. Specifically, the Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments will be 30,811 hours (736 rule change proposals \times 34 hours + 33 complex rule proposals \times 129 hours + 510 amendments \times 3 hours). In addition, the Commission staff estimates that the upfront burden of training SRO staff members for these purposes will be 270 hours (27 SROs \times 2 hours \times 5 staff members).

The Commission also expects that SROs will incur some costs pursuant to the signature requirements of the amendments. For example, SROs will incur some minimal costs (\$15 per ID per year) associated with purchasing a digital ID for each duly authorized electronic signatory. In the Proposing Release, the Commission staff estimated that each SRO will purchase 2 digital IDs. However, one commenter asserted that it would likely seek 5 to 10 digital IDs for its staff.⁹¹ No other commenters sought to dispute the Commission's estimate on the digital IDs required by each SRO. Due in part to the large size of the commenter's staff and the number of its annual proposed rule changes and amendments, the Commission acknowledges this commenter's need for more than 2 digital IDs but believes that the commenter's estimate is nonetheless unusually high. Nevertheless, the Commission believes that it is appropriate to adjust the average number of IDs per SRO to 5 digital IDs. Accordingly, the annual cost of the ID for all SROs will be \$2,025 (27 SROs \times \$15 \times 5).

Under the amendments, SROs are required to print the Form 19b-4 signature block, sign proposed rule changes, and retain the manual signature for not less than five years.

⁸⁹ Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, International Stock Exchange, with Florence Harmon, Senior Special Counsel, on September 22, 2004.

⁹⁰ One SRO estimated its savings from not having to monitor the Commission's Public Reference Room to be over \$12,000 per year. *Id.*

⁹¹ See NASD Letter, p. 8.

The Commission anticipates that there will be no additional cost associated with such recordkeeping, as SROs are already required to retain the Form 19b-4 for not less than five years. Accordingly, the Commission believes that this requirement would not impose any new burden on SROs.

The Commission believes that the requirement that SROs post proposed rule changes on public Web sites will impose some but not substantial costs on most SROs. In the Proposing Release, the Commission staff estimated that SROs will need 30 minutes to post a proposed rule or an amendment on their Web sites. The Commission, however, has received one comment asserting that accurately processing and posting a proposed rule on its Web site requires more time than estimated.⁹² The Commission now believes that it takes an additional 3.5 hours to ensure that the proposed rule is accurately posted. Accordingly, the Commission estimates that the burden for posting rule change proposals and amendments on SRO Web sites would be 5,116 hours (4 hours × 769 proposed rule changes + 4 hours × 510 amendments).

The same commenter observed that staff resources are necessary to properly post proposed rule changes but did not quantify the cost. The commenter also noted, however, that the benefits of requiring SROs to post their rule filings on their public Web sites far outweigh the related costs.

The Commission observed in the Proposing Release that most SROs currently post some, if not all, of their rule text on their respective Web sites or rely on CCH to maintain such information. SROs may incur a cost in expediting prompt publication of rule changes on CCH or maintaining current versions on SRO Web sites. For those who do not currently maintain their rules online, as one commenter observed, the annual cost could be as high as \$45,000.⁹³ The Commission, however, notes that SROs are required by sections 6(b)(1),⁹⁴ 15A(b)(2),⁹⁵ 15B,⁹⁶ and 17A,⁹⁷ of the Act to enforce compliance with their respective 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 Web sites.

In the Proposing Release, the Commission staff also estimated that an SRO will take an average of 2 hours to update its Web site to accurately reflect an approved or effective-upon-filing rule change. One commenter, however, has asserted that this estimate does not accurately reflect the amount of time necessary for an SRO to incorporate such change.⁹⁸ The commenter observed that ensuring the accuracy of the final rule text and communicating the changes to the publishing vendor could take more than ten business days.⁹⁹ Other commenters have also suggested that it takes more than 2 hours to process the proposed rule changes without specifying a more accurate estimate.¹⁰⁰ Accordingly, the Commission is raising its estimate from 2 hours to 4 hours, consistent with the estimate for Web site posting of proposed rule changes and their amendments. Therefore, the Commission staff estimates that the burden for updating the posted SRO rules on the SRO Web sites will be 2,820 hours (705 SRO Commission approved or non-abrogated rules × 4 hours).

The Commission is also adopting the amendments that require NMS Plan participants to post on a public Web site a current version of the plans, as well as proposed amendments to these plans, within the same time periods for SROs. Commenters generally supported making NMS Plans, as well as proposed amendments, available on a public Web site. Some commenters, however, were concerned with the next business day timeframe for updating on-line rules and posting amendments; which the Commission has revised to a two business day posting requirement for both SROs and NMS plan participants.

NMS Plan participants may incur a cost in prompt publication of NMS Plans. As with the posting of SRO rules, the Commission staff estimates that four hours will be the amount of time required to post the NMS Plan on the designated Web site. NMS Plan participants should know the current version of their effective NMS Plan because Rule 11Aa3-2(b)(1) requires filing of the plan and any proposed amendments with the Commission. In addition, the Commission notes that SRO plan participants are required to enforce compliance with the terms of the plans by their members pursuant to

Rule 11Aa3-2(d). The Commission believes that NMS Plan participants must have a complete, updated version of their plans in order to enforce them.¹⁰¹ Accordingly, the Commission does not believe that NMS Plan participants would incur substantial costs in simply posting this information on a public Web site and estimates the burden hours for this requirement to be 24 hours (6 NMS Plans × 4 hour).

The participants in the seven NMS Plans will also be required to update NMS Plans within two business days after notification of Commission approval of proposed amendments. Consistent with the timeframe for SROs, the Commission estimates that it will take four hours for participants to update NMS Plans on the designated NMS Plan Web site and that the burden hours would be 48 hours (12 NMS Plans × 4 hours). NMS Plan participants will also have to post proposed amendments to NMS Plans on a public Web site. As with its estimate for SRO Web site posting of proposed rules, the Commission estimates four hours as the amount of time for NMS Plan participants to post proposed amendments on a designated Web site and estimates the burden hours to be 48 hours (12 amendments × 4 hours). The Commission does not believe that NMS Plan participants will incur material costs for posting this information on a public Web site.

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

Section 3(f) of the Act¹⁰² 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 Act¹⁰³ 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.

In the Proposing Release, the Commission considered how the proposed amendments would impact competition among SROs, and whether

⁹² See NASD Letter, p. 8. The commenter suggested that the estimate should be 4 instead of 0.5 hours.

⁹³ See CHX Letter, p. 4.

⁹⁴ 15 U.S.C. 78f(b)(1).

⁹⁵ 15 U.S.C. 78o-3(b)(2).

⁹⁶ 15 U.S.C. 78o-4.

⁹⁷ 15 U.S.C. 78q-1.

⁹⁸ See NASD Letter, pp. 8-9.

⁹⁹ *Id.*

¹⁰⁰ See Amex Letter, pp. 1-2, CBOE Letter, pp. 3-4, CHX Letter, pp. 3-4, ISE Letter, p. 2, NFA Letter, p. 3, OCC Letter, pp. 2-3, and Nasdaq Letter, p. 2.

¹⁰¹ The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at <http://www.optionsclearing.com>.

¹⁰² 15 U.S.C. 78c(f).

¹⁰³ 15 U.S.C. 78w(a)(2).

it would promote efficiency and capital formation. The Commission solicited comment on whether, if adopted, the proposed amendments would impose a burden on competition. The Commission also requested comment on whether, if adopted, the proposed amendments would promote efficiency, competition and capital formation. The Commission requested commenters to provide empirical data to support for their views.

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. The amendments to Rule 11Aa3-2(b), regarding Web site posting of NMS Plans and proposed amendments thereto, seek to achieve similar goals for plan participants and Commission staff. The Commission believes that the electronic rule filing process will enhance the efficiency of the filing of proposed rule changes under Rule 19b-4. The Commission further believes that the Web site posting of SRO rule filings will promote competition among SROs because they will be able to determine the proposed rules of their competitors more easily. Because the proposal does not impact a significant number of businesses or investors, the Commission believes the proposal will have minimal impact on capital formation.

The Commission believes that the proposed amendments to Rule 19b-4 and Form 19b-4 will significantly increase the efficiency of the process of filing proposed rule changes pursuant to Rule 19b-4. As a result of the new requirement to filing proposed rule changes electronically, the Commission anticipates that SROs will save time and resources currently devoted to corresponding under a paper-based system. As discussed in further detail in Section IV ("Consideration of Costs and Benefits"), the Commission anticipates that SROs will save staff time in the preparation and transmission of Form 19b-4 as well as associated preparation and delivery costs. Additionally, the proposed amendments to Rule 11Aa3-2 will increase efficiency by permitting NMS Plan participants to easily locate current plan text for compliance purposes.

The Commission received a number of comments on the issue of the effect of the proposal on the efficiency of the SROs' rule filing process. One

commenter stated "allowing pdf attachments would maximize the efficiency of the filing process for both the SRO and the Commission."¹⁰⁴ The Commission notes that the electronic Form 19b-4 permits that the majority of Exhibits be submitted as PDF attachments. Further, the Commission believes requiring the documents contained in Exhibits 1, 4, and 5 to be in Word format will facilitate the ability of the Commission to format 19b-4 public notices and approval orders for the **Federal Register**.

Another commenter stated that they believed that the requirement for the SROs to post their pending proposed rule changes could generate confusion because "many times amendments to the submission are filed, before a rule change proposal is noticed in the **Federal Register** for public comment."¹⁰⁵ The commenter reasoned that a "party would risk wasting resources commenting on a proposal that might be significantly changed before it is formally made available for public comment."¹⁰⁶ The Commission believes that the requirement to post proposed rule changes on SRO Web sites increases transparency and only minimally affects the efficiency of the commenting process. The Commission notes that the notice and comment process will continue to be triggered by publication in the **Federal Register**. If commenters do not want to waste resources commenting on a proposal that might be significantly changed before it is formally noticed for comment, then the Commission would urge commenters to wait until the Commission solicits public comment when the proposed rule change is noticed in the **Federal Register**. The proposed amendments will merely allow commenters to learn of the filing of a proposed rule change at an earlier point.

Finally, one commenter believes that informing "SROs of its approval of rule changes or its notice of effective-upon-filing rules' on the Web site would be "inefficient to administer" because "(t)his would require SROs to constantly monitor the electronic filing system to ascertain whether a filing had been approved."¹⁰⁷ The commenter requests the Commission to develop "a more direct method (e.g., e-mail or facsimile transmission) of advising SROs that a rule change has been approved in order to better achieve its goal of increasing the efficiency and

transparency of the rule change process."¹⁰⁸

The Commission agrees with this commenter and will develop an affirmative electronic notification to SROs that a proposed rule change has been approved or an effective-upon-filing rule change has been noticed by the Commission. As described in further detail in Section II(C), *supra*, the Commission is developing an electronic notification via an EFFS screen that multiple users at the SRO can view to determine such information. With such electronic notification in place, the Commission believes that the proposed amendments will provide an efficient and prompt procedure for it to notify SROs of approval of a proposed rule change or notice of an effective-upon-filing rule.

VI. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act,¹⁰⁹ the Commission certified that amending Rule 19b-4 and Form 19b-4 will not have a significant economic impact on a substantial number of small businesses. This certification, including the reasons supporting the certification, was set forth in the Proposing Release.¹¹⁰ The Commission received no comments on this certification.

VII. 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, 6, 11A, 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 amended as follows:

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:

¹⁰⁸ See CHX Letter, p. 2.

¹⁰⁹ 5 U.S.C. 605(b).

¹¹⁰ 69 FR 17864, 17871-72.

¹⁰⁴ See NFA Letter, p. 2.

¹⁰⁵ See CHX Letter, p. 2.

¹⁰⁶ See CHX Letter, p. 2.

¹⁰⁷ See CHX Letter, p. 2.

- 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 a semicolon;
- c. Removing the period at the end of paragraph (a)(1)(ix) and in its place adding “; and”;
- d. Adding paragraph (a)(1)(x); and
- e. Revising paragraph (c)(9).

The addition and revision read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

- (a) * * *
- (1) * * *
- (x) 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, 78l, 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 240.11Aa3-2 is amended by removing the authority citation following § 240.11Aa3-2 and adding paragraph (b)(8) to read as follows:

§ 240.11Aa3-2 Filing and amendment of national market system plans.

- (b) * * *
- (8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan Web site or on a Web site designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such Web site is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (c) of this section. If the amendment is not effective for a certain period, the plan

participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own Web site to the Web site with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (b) of this section are posted on a plan Web site or a designated Web site no later than two business days after the filing of the proposed amendments with the Commission. The plan participants shall maintain any proposed amendment to the plan on a plan Web site or a designated Web site until the Commission approves the plan amendment and the plan participants update the Web site to reflect such amendment or the plan participants withdraw the proposed amendment. If the plan participants withdraw proposed amendments, the plan participants shall remove such amendments from the plan Web site or designated Web site within two business days of withdrawal. Each plan participant shall provide a link to the Web site with the current version of the plan.

* * * * *

■ 5. Section 240.19b-4 is amended by:

- a. Adding a preliminary note;
- b. Revising paragraph (a), the introductory text of paragraph (e), and 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 also must 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. The 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 Web site within two business days after the filing of the proposed rule change, and any amendments thereto, with the Commission. Such proposed rule change and amendments shall be maintained on the self-regulatory organization’s Web site until:

(1) In the case of a proposed rule change filed under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the Commission approves the proposed rule change or the self-regulatory organization withdraws the proposed rule change, or any amendments, or is notified that the proposed rule change is not properly filed; or

(2) In the case of a proposed rule change filed under section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), or any

amendment thereto, 60 days after the date of filing, unless the self-regulatory organization withdraws the proposed rule change or is notified that the proposed rule change is not properly filed; and

(3) In the case of proposed rule changes approved by the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or noticed by the Commission pursuant to section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), the self-regulatory organization updates its rule text as required by paragraph (m) of this section; and

(4) In the case of a proposed rule change, or any amendment thereto, that has been withdrawn or not properly filed, the self-regulatory organization shall remove the proposed rule change, or any amendment, from its Web site within two business days of notification of improper filing or withdrawal by the SRO of the proposed rule change.

(m) Each self-regulatory organization shall post and maintain a current and complete version of its rules on its Web site. The self-regulatory organization shall update its Web site to reflect rule changes within two business days 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)(2)) 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

■ 6. 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.

* * * * *

■ 7. 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.

Dated: October 4, 2004.

By the Commission.

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)¹ of the Securities Exchange Act of 1934 ("Act"), shall be filed in an electronic format through the Electronic Form 19b-4 Filing System ("EFFS"), a secure Web site 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-

¹ 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.

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 business 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 of 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, extensions, and withdrawals of proposed rule changes shall be filed through the EDFS. In order to file Form 19b-4 through EDFS, 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 Web site (<http://www.sec.gov>). An e-mail will be sent to the requestor that will provide a link to a secure Web site 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 also shall 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 also shall 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:	June 30, 2007
Estimated average burden hours per response.....	38

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

<input type="checkbox"/> 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)
			Rule		
<input type="checkbox"/> Pilot	<input type="checkbox"/> Extension of Time Period for Commission Action	<input type="text"/> Date Expires	<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 EFFF website.	
Form 19b-4 Information <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	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.
Exhibit 1 - Notice of Proposed Rule Change <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	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)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/> Exhibit Sent As Paper Document <input type="checkbox"/>	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.
Exhibit 3 - Form, Report, or Questionnaire <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/> Exhibit Sent As Paper Document <input type="checkbox"/>	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.
Exhibit 4 - Marked Copies <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	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.
Exhibit 5 - Proposed Rule Text <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 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.
Partial Amendment <input type="button" value="Add"/> <input type="button" value="Remove"/> <input type="button" value="View"/>	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.

BILLING CODE 8010-01-C

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 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, then the form, report,

or questionnaire must be attached to and shall be considered as part of the proposed rule change. If completion of the form, report, or questionnaire is voluntary or is required pursuant to an existing rule of the self-regulatory organization, then the 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 the 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 Instructions 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. 347- ; 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),* 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 proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be

* 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.

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) 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) 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)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, the following paragraph should be used.)

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (1)-(5) of paragraph (f) of Rule 19b-4 thereunder, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) 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 such 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 by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number XX on the subject line.

Paper Comments

- Send 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 the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the [exchange]. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number XX and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Secretary

[FR Doc. 04-22628 Filed 10-5-04; 9:06 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 1987C-0023]

Listing of Color Additives Subject to Certification; D&C Black No. 2; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 30, 2004, for the final rule that appeared in the **Federal Register** of July 28, 2004 (69 FR 44927). The final rule amended the color additive regulations to provide for the safe use of D&C Black No. 2 (a high purity furnace black, subject to FDA batch certification) as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

DATES: Effective date confirmed: August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 202-418-3423.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 2004 (69 FR 44927), FDA amended the color additive regulations to add § 74.2052 *D&C Black No. 2* (21 CFR 74.2052) to provide for the safe use of D&C Black No. 2 as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

FDA gave interested persons until August 27, 2004, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore,

¹ 17 CFR 200.30-3(a)(12).