

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

Release No. 34-68357; File No. S7-44-10

RIN 3235-AK87

**Extension of Dates for Certain Requirements of Rule 19b-4(n)(1) and Rule 19b-4(o)(2) and
Amendment of Form 19b-4**

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of dates for certain requirements.

SUMMARY: The Commission is amending Rule 19b-4(n)(1) and Rule 19b-4(o)(2) under the Securities Exchange Act of 1934 (“Exchange Act”) to extend the dates for certain requirements therein and amending the General Instructions to Form 19b-4 (referenced in CFR 249.819) to clarify the process for submitting advance notices and security-based swap submissions to the Commission. The Commission is extending the dates with respect to the requirements that designated clearing agencies for which the Commission is the supervisory agency file advance notices and clearing agencies file security-based swap submissions with the Commission in an electronic format to dedicated email addresses to December 10, 2013 in order to prevent the scenario that such filings are required to be filed with the Commission through a system that is not yet technologically able to accept them.

DATES: The effective date for this release is December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth Riitho, Special Counsel, at 551–5592; and Wyatt A. Robinson, Attorney-Adviser, at 551-5649, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

On June 28, 2012, the Commission adopted amendments to Rule 19b-4 and Form 19b-4 to define and describe when notices of proposed changes to rules, procedures, or operations are required to be filed by designated financial market utilities in accordance with Section 806(e) of Title VIII of the Dodd-Frank Act¹ (“Advance Notices”), to set forth the process for filing such Advance Notices with the Commission, and to specify the process for a clearing agency’s submission for review of any security-based swap, or any group, category, type, or class of security-based swaps that the clearing agency plans to accept for clearing (“Security-Based Swap Submissions”).² The effective date for the amendments to Rule 19b-4 was August 13, 2012. The effective date for all amendments to Form 19b-4 and 17 CFR 249.819 is December 10, 2012.

Rule 19b-4(n)(1)(i) requires a DCA³ for which the Commission is the supervisory agency to provide an Advance Notice to the Commission of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by

¹ Section 806(e) of Title VIII of the Dodd-Frank Act requires any financial market utility designated by the Financial Stability Oversight Council (“Council”) as systemically important to file with its supervisory agency 60 days advance notice of changes to its rules, procedures, or operations that could materially affect the nature or level of risk presented by the financial market utility. 12 U.S.C. 5465(e)(1)(A).

² See Securities Exchange Act Release No. 67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (“Adopting Release”).

³ Six clearing agencies registered with the Commission are DCAs: Chicago Mercantile Exchange Inc. (“CME”), The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), ICE Clear Credit (“ICC”), National Securities Clearing Corporation (“NSCC”), and The Options Clearing Corporation (“OCC”). However, the Commission is the supervisory agency for only DTC, FICC, NSCC, and OCC.

such DCA.⁴ Except as provided in Rule 19b-4(n)(1)(ii), a DCA for which the Commission is the supervisory agency is required to submit such Advance Notice to the Commission electronically on Form 19b-4. Rule 19b-4(n)(1)(ii) requires a DCA that files an Advance Notice with the Commission prior to December 10, 2012 to file such Advance Notice in an electronic format to a dedicated email address established by the Commission.⁵

Rule 19b-4(o)(2)(i) requires that except as provided in Rule 19b-4(o)(2)(ii), a clearing agency shall submit each Security-Based Swap Submission to the Commission electronically on Form 19b-4.⁶ Rule 19b-4(o)(2)(ii) requires a clearing agency that files a Security-Based Swap Submission with the Commission prior to December 10, 2012 to file such Security-Based Swap Submission in electronic format to a dedicated email address established by the Commission.⁷

The amendments to Form 19b-4 contained in the Adopting Release provide that, among other things, after December 10, 2012, Advance Notices and Security-Based Swap Submissions, and amendments, extensions, and withdrawals thereto, shall be filed in an electronic format through the Electronic Form 19b-4 Filing System (“EFFS”).⁸

⁴ See 17 CFR 240.19b-4(n)(1)(i).

⁵ See 17 CFR 240.19b-4(n)(1)(ii). Currently, DCAs file Advance Notices with the Commission via the dedicated email address AdvanceNoticeFilings@sec.gov.

⁶ See 17 CFR 240.19b-4(o)(2)(i).

⁷ See 17 CFR 240.19b-4(o)(2)(ii). The Commission has established the dedicated email address SBSwapsSubmissions@sec.gov for Security-Based Swap Submissions.

⁸ Adopting Release at 41653, 41654. Currently, EFFS is used by self-regulatory organizations (“SRO”), which include registered clearing agencies, to file proposed rule changes electronically with the Commission pursuant to Exchange Act Section 19(b) and Rule 19b-4.

II. DISCUSSION

A. Rules 19b-4(n)(1)(ii) and 19b-4(o)(2)(ii)

The Commission stated in the Adopting Release that it was in the process of designing and implementing EFFS system upgrades that are necessary for Advance Notices and Security-Based Swap Submissions to be filed through EFFS.⁹ The Commission anticipated in the Adopting Release that the EFFS system upgrades would be completed no later than December 10, 2012.¹⁰ Prior to December 10, 2012, DCAs for which the Commission is the supervisory agency are required to file Advance Notices and clearing agencies are required to file Security-Based Swap Submissions through dedicated email addresses established by the Commission.¹¹

Though the Commission has made progress on designing and implementing the EFFS system upgrades since the date of the Adopting Release, the Commission has determined that additional time is required to design, test, and implement the EFFS system upgrades. Therefore, the Commission is amending Rule 19b-4(n)(1)(ii) and Rule 19b-4(o)(2)(ii) to extend the dates with respect to the requirements that a DCA for which the Commission is the supervisory agency file an Advance Notice and a clearing agency file a Security-Based Swap Submission with the Commission in an electronic format to a dedicated email address established by the Commission to December 10, 2013. Extending the date prevents the scenario that DCAs for which the Commission is the supervisory agency are required to file Advance Notices and clearing

⁹ See Adopting Release at 41606, 41620.

¹⁰ See *id.*

¹¹ See *id.* The Commission has maintained a dedicated email address to receive Advance Notices and a dedicated email address to receive Security-Based Swap Submissions since July 19, 2012. The Commission has received five Advance Notices and zero Security-Based Swap Submissions through November 28, 2012.

agencies are required to file Security-Based Swap Submissions with the Commission through a system that is not yet technologically able to accept such filings. The Commission believes that an extension of the date to December 10, 2013, should provide the time necessary to complete implementation of the EDFS system upgrades.

In considering whether to extend the date with respect to the filing of Advance Notices and Security-Based Swap Submissions in an electronic format to a dedicated email address established by the Commission, the Commission's primary objective is to ensure that DCAs for which the Commission is the supervisory agency desiring to submit Advance Notices and clearing agencies desiring to submit Security-Based Swap Submissions to the Commission have a dependable mechanism with which to do so. As noted above, the Commission has maintained dedicated email addresses to receive Advance Notices and Security-Based Swap Submissions since July 19, 2012, and DCAs for which the Commission is the supervisory agency have developed a familiarity with this temporary mechanism to deliver Advance Notices to the Commission. Furthermore, the dedicated email address for submitting Advance Notices has operated according to design at all times during the period for which it has been in effect and the Commission has not received any complaints regarding the dedicated email address from DCAs for which the Commission is the supervisory agency.

B. General Instructions for Form 19b-4

In the Adopting Release, the Commission amended the General Instructions for Form 19b-4 to require, among other things, DCAs for which the Commission is the supervisory agency to submit Advance Notices and clearing agencies to submit Security-Based Swap Submissions to

the Commission in an electronic format through EFFF.¹² The effective date of the amendments to Form 19b-4, including the amendments to the General Instructions, is December 10, 2012.

In this release, the Commission is amending the General Instructions for Form 19b-4 to continue the requirement that DCAs for which the Commission is the supervisory agency file Advance Notices and amendments, extensions, or withdrawals thereto, and clearing agencies file Security-Based Swap Submissions, and amendments, extensions, or withdrawals thereto, to the Commission through dedicated email addresses until December 10, 2013. Specifically, the Commission is amending section A, “Use of the Form,” and section F, “Signature and Filing of the Completed Form,” of the General Instructions for Form 19b-4 to require DCAs for which the Commission is the supervisory agency to file Advance Notices and amendments, extensions, and withdrawals thereto, with the Commission by using the dedicated email address AdvanceNoticeFilings@sec.gov and to require clearing agencies to file Security-Based Swap Submissions and amendments, extensions, and withdrawals thereto, with the Commission by using the dedicated email address SBSwapsSubmissions@sec.gov. Finally, to facilitate the filing of Form 19b-4 to the dedicated email addresses, the Commission is also amending section A of the General Instructions for Form 19b-4 to state that blank electronic and PDF versions of Form 19b-4 are available on EFFF and www.sec.gov.

To the extent that EFFF is available for such Advance Notices and Security-Based Swap Submissions before December 10, 2013, the Commission will issue a notice to inform DCAs for which the Commission is the supervisory agency that they may begin voluntarily to submit

¹² See Adopting Release at 41624.

Advance Notices and clearing agencies that they may begin voluntarily to submit Security-Based Swap Submissions through EFFS.

The Commission finds, for good cause, that notice and solicitation of comment regarding the extension of the dates and the conforming change to the General Instructions for Form 19b-4 set forth herein are impractical, unnecessary, and contrary to the public interest.¹³ Notice and solicitation of comment is unnecessary because the extension of the dates and amendment to the General Instructions for Form 19b-4 simply preserve the status quo¹⁴ until the EFFS system upgrade is completed by continuing the mechanism by which DCAs for which the Commission is the supervisory agency file Advance Notices with the Commission and clearing agencies file Security-Based Swap Submissions with the Commission. Notice and solicitation of comment is impractical and contrary to the public interest because it would temporarily create the scenario that DCAs for which the Commission is the supervisory agency are required to file Advance Notices and clearing agencies are required to file Security-Based Swap Submissions with the Commission through a system that is not yet technologically able to accept such filings.

¹³ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impractical, unnecessary, or contrary to the public interest”). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (stating that if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”). Also, because the Regulatory Flexibility Act (5 U.S.C. 601-612) only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

¹⁴ A dedicated email address has been used successfully for these purposes since the effective date of the Adopting Release. See supra note 11 and accompanying text.

III. PAPERWORK REDUCTION ACT

The rule amendments contain “collection of information” requirements as defined by the Paperwork Reduction Act of 1995, as amended (“PRA”),¹⁵ but the Commission believes that these rule amendments will not impose any new burdens or costs upon DCAs or clearing agencies.

The rule amendments further modify recent amendments to Rule 19b-4 under the Exchange Act, by amending Rule 19b-4(n)(1)(ii) to extend the date with respect to the requirement that a DCA shall file an Advance Notice with the Commission in electronic format to a dedicated email address established by the Commission to December 10, 2013, and amending Rule 19b-4(o)(2)(ii) to extend the date with respect to the requirement that a clearing agency file Security-Based Swap Submissions with the Commission in an electronic format to a dedicated email address established by the Commission to December 10, 2013.

The Commission therefore does not believe that these amendments would require any new or additional “collection of information” as such term is defined in the PRA and will not impose any new burdens or costs upon DCAs or clearing agencies.

IV. ECONOMIC ANALYSIS

The Commission is sensitive to the economic effects of the amendments to Rule 19b-4, including its costs and benefits. Section 23(a)¹⁶ of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate

¹⁵ 44 U.S.C. 3501, *et seq.*

¹⁶ 15 U.S.C. 78w(a).

in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act¹⁷ requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

The amendments to Rule 19b-4(n)(1)(ii) and Rule 19b-4(o)(2)(ii) will affect DCAs for which the Commission is the Supervisory Agency and clearing agencies registered with the Commission that clear security-based swaps. Four clearing agencies are DCAs for which the Commission is the supervisory agency (DTC, FICC, NSCC, and OCC) and three clearing agencies registered with the Commission currently clear security-based swaps (CME, ICC, and ICE Clear Europe).

The extension of the dates and amendment to the General Instructions for Form 19b-4 simply preserve the status quo that has operated without complaint¹⁸ by continuing the method by which DCAs for which the Commission is the supervisory agency file Advance Notices and clearing agencies file Security-Based Swap Submissions with the Commission.¹⁹ Though the Commission stated in the Adopting Release that Advance Notices and Security-Based Swap Submissions, and amendments, extensions, and withdrawals thereto, should be filed in an electronic format through EFFS starting on December 10, 2012, because the EFFS system upgrades that are necessary for Advance Notices and Security-Based Swap Submissions to be

¹⁷ 15 U.S.C. 78c(f).

¹⁸ See supra note 11 and accompanying text.

¹⁹ The Commission does not believe that there are any viable and more cost-efficient alternatives to extending the date of the use of the dedicated email addresses for the submission of Advance Notices and Security-Based Swap Submissions given the fact that the EFFS system upgrades that are necessary for Advance Notices and Security-Based Swap Submissions to be filed on EFFS will not be complete by December 10, 2012.

filed on EFFS were not complete when the Commission adopted Rule 19b-4(n) and Rule 19b-4(o), the Commission mandated through Rules 19b-4(n)(1)(ii) and 19b-4(o)(2)(ii) that a DCA for which the Commission is the supervisory agency that files an Advance Notice or a clearing agency that files a Security-Based Swap Submission with the Commission prior to December 10, 2012 shall file such Advance Notice or Security-Based Swap Submission in electronic format to a dedicated email address established by the Commission.²⁰ Because the Commission has determined that additional time is required to design, test, and implement the EFFS system upgrades, an extension of the December 10, 2012 date for the use of dedicated email addresses to file Advance Notices or Security-Based Swap Submissions is necessary and appropriate to prevent the scenario that DCAs for which the Commission is the supervisory agency are required to file Advance Notices and clearing agencies are required to file Security-Based Swap Submissions with the Commission through a system that is not yet technologically able to accept such filings and to ensure the Commission continues to obtain the information necessary to meet its statutory obligations in connection with Advance Notices and Security-Based Swap Submissions.

Theoretically, the cost of foregoing the ability to file Advance Notices and Security-Based Swap Submissions through the EFFS system could be incurred by DCAs for which the Commission is the supervisory agency and clearing agencies as a result of the amendments to the rules extending the dates with respect to the filing of Advance Notices and Security-Based Swap Submissions to dedicated email addresses established by the Commission. However, this theoretical cost is not a real cost of the rule because use of the EFFS system is not an option.

²⁰ See 17 CFR 240.19b-4(n)(1)(ii) and 17 CFR 240.19b-4(o)(2)(ii).

Instead, the amendments to the rules extending the dates for filing Advance Notices and Security-Based Swap Submissions to dedicated email addresses established by the Commission avoids the cost of eliminating the ability of DCAs for which the Commission is the supervisory agency to file Advance Notices and clearing agencies to file Security-Based Swap Submissions to the Commission through the only method that is currently technologically available. Furthermore, extending the dates also enables the Commission to continue to obtain the information that is necessary to meet its statutory obligations with respect to the enhanced oversight of systemically important financial market utilities and the mandatory clearing of security-based swaps.

The Commission believes that the rule amendments will not lead to any material increase in the costs associated with filing Advance Notices and Security-Based Swap Submissions. The Commission stated in the Adopting Release that it believed that the requirements to file Advance Notices and Security-Based Swap Submissions by email, as well as the temporary nature of such requirements, would impose relatively little additional burden on DCAs for which the Commission is the supervisory agency or clearing agencies, both of which can use their existing email systems to make such filings.²¹ The Commission further believes that any additional negligible costs are justified because additional time is required to design, test, and implement the EDFS system upgrades that will facilitate the filing of Advance Notices and Security-Based Swap Submissions with the Commission in accordance with Rule 19b-4(n) and Rule 19b-4(o). As stated above, the Commission's primary objective is to ensure that clearing agencies desiring to submit Advance Notices or Security-Based Swap Submissions to the Commission have a

²¹ See Adopting Release at 41642, 41645.

dependable mechanism with which to do so.

Because these rules merely extend the date for the process by which DCAs for which the Commission is the supervisory agency file Advance Notices and clearing agencies file Security-Based Swap Submissions, the Commission believes that the rules being adopted today will have a negligible, if any, impact on efficiency, competition, and capital formation. To the extent that the rule amendments impose a new burden upon market participants, such burden will result from the requirement that DCAs for which the Commission is the supervisory agency filing Advance Notices and clearing agencies filing Security-Based Swap Submissions with the Commission submit Form 19b-4 to a dedicated email address as opposed to submitting it through EDFS. Regardless of whether Form 19b-4 is submitted through EDFS or a dedicated email address, DCAs for which the Commission is the supervisory agency and clearing agencies will still be required to adequately and accurately complete such form. Furthermore, the Commission believes that the interest of gaining additional time to effectively develop, test, and implement the EDFS system upgrades necessary for filing Advance Notices and Security-Based Swap Submissions in a manner that would be consistent with the requirements and goals of Rule 19b-4(n)(1)(i) and Rule 19b-4(o)(2)(i) justifies the risk of possibly imposing a negligible burden on DCAs for which the Commission is the supervisory agency and clearing agencies.

V. STATUTORY AUTHORITY

Pursuant to the Exchange Act, and particularly Sections 3C, 17A, and 19(b) thereof, 15 U.S.C. §§ 78c-3, 78q-1, and 78s(b), and Section 806(e) of the Clearing Supervision Act, 12 U.S.C. § 5465(e), the Commission is amending Rule 19b-4 and Form 19b-4 as set forth below.

List of Subjects in 17 CFR Parts 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of the Final Rule

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

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

1. The general authority citation for part 240 is revised and a sub-authority is added in section number order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111-203, §939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * *

Section 240.19b-4 is also issued under 12 U.S.C. 5465(e).

* * * * *

2. Section 240.19b-4 is amended by:

a. In paragraph (n)(1)(ii), removing the phrase “December 10, 2012” and adding in its place “December 10, 2013”;

b. In paragraph (o)(2)(ii), removing the phrase “December 10, 2012” and adding in its place “December 10, 2013”.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The general authority citation for part 249 is revised and a sub-authority is added in section number order to read as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.819 is also issued under 12 U.S.C. 5465(e).

* * * * *

4. Form 19b-4 (referenced in § 249.819) is amended by revising General Instructions for Form 19b-4 Sections A and F to read as follows:

Note: The text of Form 19b-4 does not and the amendments will not appear in the Code of Federal Regulations.

GENERAL INSTRUCTIONS FOR FORM 19b-4

A. Use of the Form

This form shall be used for all self-regulatory organization filings of proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) (except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7)¹ of the Act), security-based swap submissions, and advance notices. National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form. All proposed rule changes (except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act) shall be filed in an electronic format through the Electronic Form 19b-4 Filing System (“EFFS”), a secure website

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.

operated by the Commission. All security-based swap submissions and advance notices shall be filed by submitting Form 19b-4 to a dedicated email address, SBSwapsSubmissions@sec.gov for security-based swap submissions and AdvanceNoticeFilings@sec.gov for advance notices. An electronic version of Form 19b-4 is available in EDFS. A PDF version of the Form is also available on www.sec.gov.

* * * * *

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. All security-based swap submissions, advance notices, and amendments, extensions, and withdrawals of security-based swap submissions and advance notices shall be filed to a dedicated email address established by the Commission, SBSwapsSubmissions@sec.gov for security-based swap submissions and AdvanceNoticeFilings@sec.gov for advance notices. 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 Trading and Markets Administrator located on our website (<http://www.sec.gov>). An e-mail will be sent to the requestor that will provide a link to a secure website where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b-4 as indicated on Page 1 of the Form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b-4, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act. A registered clearing agency for which the Commission is not the appropriate regulatory agency

also shall file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. A clearing agency that also is a designated clearing agency shall file with the Board of Governors of the Federal Reserve System (“Federal Reserve”) three copies of any form containing an advance notice, one of which shall be manually signed, including exhibits; provided, however, that this requirement may be satisfied instead by providing the copies to the Federal Reserve in an electronic format as permitted by the Federal Reserve. The Municipal Securities Rulemaking Board also shall file copies of the form, including exhibits, with the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

* * * * *

By the Commission.

Kevin M. O’Neill
Deputy Secretary

Date: December 5, 2012