



June 4, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Proposed Rule Changes Of Self-Regulatory Organizations (File No. S7-18-04)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on proposed amendments to Rule 19b-4 and Form 19b-4 under the Securities Exchange Act of 1934, which would modernize certain requirements relating to rule changes proposed by self-regulatory organizations.² The Institute supports the Commission's efforts to modernize the SRO rulemaking process. As we stated in response to a previous Commission proposal regarding SRO filings of proposed rule changes, the SRO rulemaking process is crucial to the development of an efficient market structure, the orderly functioning of the markets, and the protection of investors.³ The Commission recognized the importance of the process in the Proposing Release, stating that the SRO rule filing process serves important policy goals, including, among other things, assuring that interested persons have an opportunity to provide input regarding SRO actions that could have a significant effect on the market and market participants.

The proposal would improve the current rulemaking process in several respects. For example, requiring SROs to file proposed rule changes electronically with the Commission as well as posting all proposed rule changes, and any amendments thereto, on their websites no later than the next business day after filing with the Commission should accelerate the rulemaking process and make rule filings more transparent, which, in turn, should make it

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,633 open-end investment companies ("mutual funds"), 622 closed-end investment companies, 126 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$7.393 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households.

² SEC Release No. 34-49505 (March 30, 2004), 69 FR 17864 (April 5, 2004) ("Proposing Release").

³ See Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 6, 2001.

easier for interested persons to identify, and comment on, proposals in a timely manner. The Institute therefore supports these elements of the proposal. In addition, we have a few minor comments that are set forth below.

At the same time, however, we are extremely disappointed that the Commission did not address one of our most significant concerns with the current rulemaking process – the length of time allocated to interested persons to comment on significant SRO proposals.

Our specific comments are set forth below.

I. Current Proposal

The proposal would amend the SRO rulemaking process by requiring each SRO to, among other things, (1) post all proposed rule changes, and any amendments thereto, on its public website no later than the next business day after filing with the Commission, (2) post and maintain a current and complete version of its rules on its website, and (3) update its public website to reflect rule changes no later than the next business day following notification of the Commission's approval of the rule change.

The Institute supports requiring each SRO to post all proposed rule changes, and any amendments thereto, on its public website no later than the next business day after filing with the Commission.⁴ Currently, notices of SRO proposals appear in the *SEC News Digest* followed by publication in the *Federal Register*. Publication in the *Federal Register* can take up to ten days after the notice first appears.⁵ As the Proposing Release notes, the proposal would provide interested persons with ready access to proposed rule changes, thereby facilitating their efforts to identify and comment on SRO rule proposals.

The Institute also supports requiring SROs to post and maintain a current and complete version of their rules on their websites and update their websites to reflect rule changes no later than the next business day after notification of Commission approval of the rule change or Commission notice of an effective-upon-filing SRO rule.⁶ We believe that the proposed posting requirements would facilitate access by interested persons to SRO rules as well as SRO rule changes, thus facilitating compliance efforts.⁷

⁴ See proposed Rule 19b-4(l) under the Exchange Act.

⁵ Depending on its significance, a proposal also may be published on the SEC's website. In addition, proposals sometimes, but not always, appear on the SRO's website.

⁶ See proposed Rule 19b-4(m) under the Exchange Act.

⁷ In response to the Commission's request for comment, the Institute believes that an SRO rule with a delayed effective date should be required to be posted on the SRO's website no later than the next business day after it has been notified of the Commission's approval of the rule change or Commission notice of an effective-upon-filing SRO rule. Similarly, the Institute would support requiring an SRO to post on its website withdrawals of proposed rule changes and the status of a proposed rule change if the SRO proposed rule change is incomplete because it does not comply with applicable requirements and is deemed not filed and returned to the SRO. We believe that these reforms would further increase transparency of the SRO rulemaking process and assist interested persons in their efforts to monitor the progress of SRO rulemaking.

II. Public Comment Period

The Institute is extremely concerned that the Commission, while proposing significant reforms to the SRO rulemaking process, has not addressed perhaps the most significant aspect of the process -- the time period provided for public comment. While we support interested persons having better access to proposed rule changes, these persons still need a suitable "opportunity to submit ... views and arguments" on SRO proposals.⁸ Currently, once a proposed rule change is properly filed with the Commission, the Commission sends the proposal to the *Federal Register* for publication, and interested persons are typically provided only 21 days, beginning from the publication date of the proposed rule change in the *Federal Register*, to comment on the proposed rule change.⁹

As the Institute has noted on several occasions in the past,¹⁰ a 21-day comment period often does not provide a meaningful "opportunity" to comment because it is extremely difficult to develop comprehensive, well-considered comments in this period of time, especially with respect to complex proposals. Lengthening the time permitted for public comment, at least for significant rule proposals, would greatly improve the SRO rulemaking process. We therefore urge the Commission to extend the public comment period for significant SRO proposals.¹¹

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⁸ See Section 19(b)(1) of the Exchange Act.

⁹ In fact, there have been many instances in the past few years in which significant proposals have been published with a 21-day comment period. The attached appendix describes some of these proposals.

¹⁰ See, e.g., Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 8, 2003 (File No. SR-NYSE-2002-33) (NYSE's Corporate Governance Proposal); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 15, 2003 (File No. SR-NASD-2002-141) (Nasdaq's Corporate Governance Proposal); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated January 9, 2001 (File No. SR-NASD-00-59) (Nasdaq Mutual Fund Quotation Service); and Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 20, 2000 (File No. SR-NASD-99-53) (Nasdaq Order Display Facility).

¹¹ We specifically recommend extending the comment period to 60 days for significant rule proposals. This would be consistent with the Commission's practice of typically providing a 60-day comment period for its rule proposals.

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The Institute appreciates the opportunity to comment on this significant proposal. If you have any questions or need additional information, please contact me at 202-218-3563.

Sincerely,

Dorothy M. Donohue
Associate Counsel

Attachment

cc: Annette L. Nazareth, Director, Division of Market Regulation
Paul F. Roye, Director, Division of Investment Management
Securities and Exchange Commission

Appendix

Examples of Significant Rule Filings with 21-Day Comment Periods

1. Amex Proposal Relating to Corporate Governance
November 2003

Proposed significant changes to listing standards aimed at strengthening corporate governance practices.
2. NYSE and Nasdaq Proposals Relating to Corporate Governance
April 2003

Proposed significant changes to listing standards aimed at strengthening corporate governance practices.
3. NYSE and Nasdaq Proposals Relating to Shareholder Approval of Stock Option Plans
October 2002

Proposal requiring shareholder approval of most stock option plans.
4. Nasdaq Order Display Facility (SuperMontage) Proposal
Originally filed December 1999

Proposal to create new facility for the trading of securities in the Nasdaq Stock Market. Several year effort on the part of market participants to develop proposed system.
5. NASDR Request for Comment on Modernization of NASD Rules
October 1998

Broad request for comment on whether **any** NASD rules or by-laws should be repealed because they are obsolete, should be modernized in light of technological or industry developments, or should distinguish between institutional and retail customers.
6. NASDR Bond Fund Volatility Ratings Proposal
November 1998

Took almost two years for NASDR and SEC to develop proposal due to controversy surrounding it and the complexity of the issue. Several days of the comment period also fell over Thanksgiving holiday.
7. Amendments to Non-Cash Compensation Arrangements
September 1997

Proposed amendments to NASD rule relating to non-cash compensation paid in connection with the sale of investment company securities. NASD spent three years developing the proposal.