



June 4, 2004

By E-Mail (rule-comments@sec.gov)

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

Re: File No. S7-18-04; Proposed Rule Changes of Self-Regulatory
Organizations

Dear Mr. Katz:

National Futures Association (NFA) is a limited purpose national securities association under Section 15A(k) of the Securities Exchange Act of 1934 (Exchange Act) and a registered futures association under the Commodity Exchange Act. We applaud the Securities and Exchange Commission's efforts to make the self-regulatory organization (SRO) rule filing process less onerous and more transparent, and we ask that the electronic filing process be extended to include NFA.

The Commission proposes requiring SROs that file Form 19b-4 to file their rule changes electronically and to make certain information regarding those filings available on the SROs' websites. The proposal does not appear to include NFA or exchanges registered under Section 6(g) of the Exchange Act, which are required to file rule changes on Form 19b-7.¹ The current paper filing process is cumbersome and

¹ NFA and the notice-registered exchanges file all rule changes with the Commodity Futures Trading Commission (CFTC) as required by the Commodity Exchange Act (CEA) and CFTC rules. Under Sections 6(g)(4)(B), 15A(k)(3), and 19(b)(7) of the Exchange Act, NFA and the notice-registered exchanges must file certain rule changes affecting security futures products with the SEC contemporaneously with the CFTC filing. In most cases those changes become effective as provided in the Commodity Exchange Act (CEA) and without formal SEC approval.

inefficient, and NFA would prefer to file Form 19b-7 electronically. We also support the Commission's other proposals with some modifications. Our specific comments follow.

Question 1: Electronic Filing

NFA believes that electronic filing will make the process cheaper and more efficient for the SROs as well as the Commission, and we do not see any negative implications in this procedure. As far as we are aware, even the smallest SROs have the Internet access required to file electronically. Furthermore, the proposed screens described in the release appear to be easy to access and simple to use.²

Our only objection to the electronic filing proposal is that it is limited to those entities that are required to file Form 19b-4. Since NFA files its rule changes on Form 19b-7, it appears that these filings would continue to be done on paper. As mentioned above, this process is both cumbersome and inefficient. NFA, and Commission staff who review NFA rule filings, would also benefit from the electronic filing process. Therefore, we recommend that the Commission amend Rule 19b-7 and Form 19b-7 to authorize us to file electronically.³

Question 2: Exceptions to Electronic Filing

The Commission should reserve general exemptive authority to allow paper filings in unusual situations.

Question 3: Posting Proposed Rule Changes on SRO Websites

NFA posts all proposed rule changes – both significant and insignificant – under “rule submissions” on the “News Center” section of its website. The proposed rule changes are posted no later than the next business day after they are filed, and they go live as soon as they are posted.⁴

Even though NFA's current practice would comply with the Commission's proposed posting deadline, we believe that deadline is too short. If an SRO's website requires an overnight refresh before a posting appears, then a proposed rule change

² We are unsure whether the proposal allows SROs to attach non-Word exhibits as pdf files. For NFA and other SROs that have the equipment and software to turn hard-copy documents into pdf files, allowing pdf attachments would maximize the efficiency of the filing process for both the SRO and the Commission.

³ Adding Form 19b-7 filings should require minimal changes to the proposed screens. Page 1 would have to be modified to add Section 19(b)(7) to the list of statutory filing types, and the second screen would include a link to the Form 19b-7 instructions.

⁴ Currently, NFA posts only the CFTC version of the rule filing since the CFTC and SEC filings are substantively the same. NFA could easily post the SEC version as well.

would have to be posted the same day it was filed in order to comply with the proposed deadline. This could be a significant problem for small exchanges with limited personnel resources and for any SRO – regardless of size – facing unexpected events such as technical difficulties or unanticipated absences among posting and backup personnel. We understand the Commission’s concern with the lag time before a proposed rule change is published in the *Federal Register*, but a two or three business day posting deadline will still get the information to the public much faster than is currently the case.

Question 4: Incomplete and Withdrawn Filings

If a rule filing is withdrawn, either the proposed rule change should be deleted from the website or the withdrawal notice should be included on the same section of the website as the proposed rule change. NFA takes the second approach to give users a historical prospective on NFA rule changes.⁵ Currently NFA notes the effective date as a footnote to the rule submission, but we are considering adding status information to the index page.

We do not believe it is necessary for an SRO website to state that the Commission has deemed a proposed rule change to be incomplete. If the SRO decides to supplement and resubmit the proposed rule change, then the only difference between an incomplete filing and one that is complete but pending is the length of time the Commission has to approve it. If the SRO decides not to supplement and resubmit it, then the result is the same as if it was withdrawn.

Question 5: Posting Final Rules on SRO Websites

NFA currently updates the on-line NFA Manual, which is the rulebook section of the website, within two business days of the effective date of the rule change. Although these updates are posted within one business day, the NFA Manual section of NFA’s website refreshes overnight. If a rule has a delayed effective date, the final rule appears on the website the day it becomes effective.⁶

We agree that all SROs should post their rules on their websites within a reasonable time so that they are readily available to members and the public. As with posting proposed rule changes, however, we believe that one business day is too short a deadline. We also note that some exchanges post their rules in pdf format, which may require fewer resources than an html version but can also be less convenient to update. The Commission should consider these resource issues when adopting a posting requirement for final rules.

⁵ The website shows all NFA rule submissions – whether approved, pending, or withdrawn – filed since late 1996.

⁶ Although we do not currently post the final rules until they become effective, we could easily post them before the effective date with a notice that the changes will not become effective until the relevant date.

Question 6: Recordkeeping Requirement

NFA does not object to the recordkeeping requirements for the hard copy of the signature page.

For the reasons given above, we generally support the Commission's proposed amendments but ask that the Commission also authorize NFA to electronically file its rule changes with the Commission. If you have any questions concerning this letter, please contact me (312-781-1413 or tsexton@nfa.futures.org) or Kathryn Camp (312-781-1393 or kcamp@nfa.futures.org).

Respectfully submitted,

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Vice President and General Counsel

(kpc/CommentLetters/SEC Rule Filings)