Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–43860; File No. S7–03–01]

RIN 3235–AI06

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend the requirements applicable to self-regulatory organization (''SRO'') filings of proposed rule changes with the Commission. Specifically, the Commission is proposing to issue a release relating to the proposed rule change within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. The amendments are designed to expedite the review of SRO rules, and to allow SROs to more quickly introduce changes to their markets.

DATES: Comments must be received by April 6, 2001.

ADDRESSES: All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File Number S7–03–01, this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site *http://www.sec.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Assistant Director, at (202) 942–0188; Elizabeth Badawy, Accountant, at (202) 942–0740; Terri Evans, Special Counsel, at (202) 942–4162; Joseph Morra, Special Counsel, at (202) 942–0781; and Sonia Patton, Attorney, at (202) 942–0753; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTAL INFORMATION:

I. Introduction

Under section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''), SROs generally must file proposed rule changes with the Commission for notice, public comment, and Commission approval, prior to implementation.[1] The purpose of this requirement is to help to ensure, through Commission review and the public comment process, that SROs carry out the purposes of the Exchange Act.[2] Increasingly, however, SROs operating securities markets are facing competition from alternative trading systems (''ATSs''),[3] which as broker-dealers are not subject to the same rule filing requirements. They also are competing with foreign markets as technology has allowed U.S. broker-dealers to indirectly access overseas markets.

The Commission believes that investors are best served by a regulatory structure that facilitates fair and vigorous competition among market participants and fosters investor protection.[4] Accordingly, over the years, the Commission has periodically revised the rule filing requirements to meet the changing needs of SROs in a competitive financial marketplace. For example, in 1994, the Commission adopted amendments to Rule 19b–4 [5] to expedite the rule filing review process for certain non-controversial filings.[6] In addition, in 1998 the Commission amended Rule 19b–4 to allow SROs to list and trade new derivative securities products pursuant to existing SRO trading rules, surveillance programs, and listing standards without submitting a proposed rule change pursuant to Section 19(b).[7] The Commission's goal was to speed the introduction of new derivative securities products and enable SROs to maintain a competitive balance with the overseas and OTC derivative markets.[8]

The Commission believes that it is now appropriate to consider further amending the rule filing process to allow SROs operating securities markets to be more competitive in today's marketplace. Enhancing the SROs' ability to implement and to respond quickly to changes in the marketplace should encourage innovation and better services to investors, such as further automating the execution of trades. Investors should also benefit from a competitive environment in which SROs may easily adapt their trading rules to respond to market opportunities. Therefore, the Commission is proposing to replace Rule 19b–4 [9] in its entirety with a new rule, Rule 19b–6.[10]

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[1] 15 U.S.C. 78s(b). Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term ''self-regulatory organization'' to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board (''MSRB'').

[2] The Commission review and public comment process help ensure, for example, that SROs refrain from using their regulatory powers in an unfair or anticompetitive manner to the detriment of investors.

[3] An alternative trading system is any ''organization, association, person, group of persons or system'' that (1) brings together purchasers and sellers of securities or otherwise performs functions that are commonly performed by a stock exchange, and (2) does not establish conduct rules or discipline subscribers other than by exclusion from trading. 17 CFR 242.300(a).

[4] Congress emphasized this principle when it amended the Act in 1975:

In 1936, this Committee [on Banking, Housing and Urban Affairs] pointed out that a major responsibility of the SEC in the administration of the securities laws is to ''create a fair field of competition.'' This responsibility continues today. . . . The objective would be to enhance competition and to allow economic forces, interacting *within a fair regulatory field,* to arrive appropriate variations in practices and services. It would obviously be contrary to this purpose to compel elimination of differences between types of markets or types of firms that might be competition enhancing.

S. Rep. No. 75, 94th Cong., 1st Sess., at 8 (1975) (emphasis added) (''Senate Report'').

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (Dec. 28, 1994) (hereafter referred to as the ''Non-Controversial Rule Adopting Release'').

[7] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (hereafter referred to as the ''New Products Adopting Release'').

[8] *Id.*

[9] 17 CFR 240.19b–4.

[10] 17 CFR 240.19b–6.

II. Background

A. Current Procedures for Submission and Approval of SRO Rule Filings

Section 19(b)(1) of the Act [11] requires each SRO to file with the Commission its proposed rule changes [12] accompanied by a concise general statement of the basis for, and purpose of, the proposed rule change. Once an SRO files a proposed rule change, the Commission must publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it, or as discussed below, it is otherwise permitted to become effective under Section 19(b)(3) of the Act.[13]

Section 19(b)(2) of the Act [14] delineates the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. The Commission must approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations applicable to the SRO proposing the rule change.[15] If the Commission does not make that finding, it must institute proceedings to determine whether to disapprove the proposed rule change.[16] The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice in the **Federal Register** if the Commission finds good cause for doing so and publishes its reasons.[17]

Section 19(b)(3) of the Act [18] provides that, in certain circumstances, a proposed rule change may become effective without the notice and approval procedures specified in section 19(b)(2).[19] Specifically, section 19(b)(3)(A) [20] allows certain types of proposed rule changes to be effective upon filing with the Commission if designated by an SRO as falling within any of the following categories: (1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; [21] (2) establishing or changing a due, fee, or other charge imposed by the SRO; [22] or (3) concerned solely with the administration of the SRO.[23] Section 19(b)(3)(A)(iii) [24] also grants the Commission the authority to expand by rule the scope of proposed rule changes immediately effective under section 19(b)(3)(A),[25] if the Commission determines that such expansion is consistent with the public interest and the purposes of section 19(b). Rule 19b–4(f) [26] implements the authority of section 19(b)(3)(A) [27] by detailing further the scope of proposed rule changes that may be filed under that Section. The language of Rule 19b–4(f) tracks those categories enumerated in section 19(b)(3)(A), and includes a category adopted in 1980 relating to registered clearing agencies,[28] as well as categories adopted in 1994 relating to minor systems changes and non-controversial filings.[29]

B. Purpose of Proposed Rule 19b–6

The rule filing process under the Exchange Act serves several important policy goals. First, the administrative notice and comment procedure helps to ensure that interested persons have an opportunity to provide input into SRO actions that may have a significant impact on market participants and individual investors.[30] In addition, the rule filing process allows the Commission to review proposed rule changes to help ensure that they are consistent with the Act and the goals of the national market system, such as fair competition among markets, transparency of prices, best execution of customer orders, and orderly and linked markets. As Congress has stated on a number of occasions, SROs are ''quasi-public agencies, not private clubs, and * * * their goal is the prevention of inequitable and unfair practices and the advancement of the public interest.'' [31] An important way for the Commission to help ensure that the SROs are serving those goals is through its review of SRO rule filings.

While the Commission continues to believe that the rule review process serves fundamental public policy goals, it also believes that it is time to reevaluate the process in order to accommodate changes in the marketplace and the need of SROs for greater certainty. The competitive landscape has shifted dramatically since the Commission first began reviewing SRO proposed rules 25 years ago. With the expanding integration of on-line technology in the securities industry, ATSs are transforming the structure of the nation's capital markets. For example, electronic communication networks (''ECNs''), which are a type of ATS, now account for approximately 30 percent of the total share volume and 40 percent of the dollar volume in Nasdaq securities, and approximately 3 percent of the total share and dollar volume in listed securities.[32] Broker-dealers also have developed automated systems that allow investors in the U.S. to trade indirectly on foreign markets.

Because ATSs, which are not registered as exchanges and therefore do not have self-regulatory responsibilities, do not have to submit trading rules to the Commission for approval, and because most foreign exchanges have different regulatory requirements than U.S. markets, ATSs and most foreign

[11] 15 U.S.C. 78s(b)(1).

[12] Section 19(b)(1) of the Act requires each SRO to file with the Commission ''any proposed rule or any proposed change in, addition to, or deletion from the rules of . . . [a] self-regulatory organization.'' In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term ''rules of a self-regulatory organization'' means (i) the rules of the MSRB or the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of any other SRO and (ii) such stated policies, practices, and interpretations of an SRO (other than the MSRB) as the Commission, by rule, may determine to be deemed to be rules.

[13] 15 U.S.C. 78s(b)(3).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] *Id.*

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(3).

[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] Rule 19b–4(b) defines the term ''stated policy, practice or interpretation'' to mean generally any material aspect of the operation of the facilities of the SRO or any statement made available to the membership, participants, or specified persons that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule. 17 CFR 240.19b–4(b).

[22] The Commission has stated that as a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under section 19(b)(2) for full notice and comment. *See* Securities Exchange Act Release No. 17258 (Oct. 30, 1980), 45 FR 73906, at 73910 (Nov. 7, 1980). The Commission emphasizes that a proposed rule change that is filed pursuant to section 19(b)(3)(A), 15 U.S.C. 78s(b)(3)(A), may *not* become effective retroactively. For example, if a proposed rule change regarding fees was properly filed under section 19(b)(3)(A), 15 U.S.C. 78s(b)(3)(A), on December 3rd, the fee would be effective as of December 3rd. The SRO could *not* apply the fee as of December 1st.

[23] The Commission, however, notes that a rule that solely addresses floor decorum or safety is *not* required to be filed with the Commission.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] *See* Securities Exchange Act Release No. 17258 (Oct. 30, 1980), 45 FR 73906 (Nov. 7, 1980).

[29] *See* Non-Controversial Rule Adopting Release, *supra* note 6.

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

[31] Securities Industry Report of the Subcommittee on Securities, S. Doc. No. 13, 93d Cong., 1st Sess. 156 (1973).

[32] *See* Division of Market Regulation, Commission, Study of Electronic Communication Networks and After-Hours Trading (2000).

exchanges can often make changes to their trading procedures and systems swiftly. U.S. SROs can be placed at a competitive disadvantage because they must wait for the completion of the public comment period and the Commission review process before implementing similar changes. The Commission, therefore, is proposing to revise the process for SRO trading rules to allow U.S. SROs to alter the majority of trading rules without waiting for Commission approval. The Commission would be able to abrogate a trading rule and activate the normal notice and comment period where a trading rule raises significant issues, including its conformity to the federal securities laws. By expediting the rule filing process, the Commission's goal is to strike a balance between the need for greater flexibility and certainty, and its statutory obligation to oversee SRO actions.

III. Description of Rule 19b–6

To streamline the rule filing process, the Commission is proposing to completely replace Rule 19b–4 [33] with new Rule 19b–6, which incorporates certain provisions from Rule 19b–4.[34] In addition, the Commission is proposing to replace Form 19b–4 with new Form 19b–6 to reflect the changes made by the proposed rule. Generally, proposed Rule 19b–6 would (1) require that the Commission issue a release relating to the proposed rule change within 10 business days of filing with the Commission or within such longer time period as to which the SRO consents in writing; (2) eliminate the pre-filing requirement and the 30-day delayed operational period before a non-controversial rule change can be filed or become operative; (3) expand the categories of proposed rule changes that qualify for immediate effectiveness to include trading rules (other than a trading rule that would make fundamental structural changes to the market, and that would significantly affect the protection of investors or the public interest or impose a significant burden on competition); (4) clarify that where a proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act,[35] no inference may be made regarding whether the proposed rule change is in the public interest, including any impact on competition; and (5) permit SROs to file proposed rule changes electronically.

A. Issuance of a Release Relating to Proposed Rule Changes Within 10 Business Days of Filing

In the past, commenters have stated that ''the rule filing process, in general, could be shortened if SRO rules that [were] submitted to the Commission in proper form were published for notice and comment immediately, or within a set period of time, such as ten business days.'' [36] The Commission agrees that prompt issuance of a release relating to a properly drafted proposed rule change would further enhance the efficiency of the rule filing process under section 19(b) of the Act.[37] The Commission is therefore proposing to issue a release relating to filed proposed rule changes that meet the requirements of the rule within 10 business days of receipt by the Commission or within such longer period as to which the SRO consents in writing.[38]

The Commission notes that proposals must be drafted with precision if they are to elicit meaningful public comment. In light of past problems with SROs submitting unclear and internally inconsistent rule filings, the Commission is proposing to prescribe in Rule 19b–6(f) and Form 19b–6 the items that must be included in a rule filing for it to be considered properly filed. Proposed Rule 19b–6(f) states that in order for a proposed rule change to be properly filed, it must provide an accurate statement of the authority for and basis of the proposed rule change, including the impact on competition, as well as a summary of any written comments received by the SRO. In addition, the SRO's proposed rule change must not be inconsistent with the existing rules of the SRO and must contain a certification from a senior SRO official regarding its accuracy and completeness. Under proposed Rule 19b–6, incomplete or inadequate filings will not be deemed to have been filed with the Commission; the Commission will return to an SRO any filings that fail to comply with the directions in proposed Form 19b–6, which are described further in Part F below.

B. Proposed Changes to Non-Controversial Filings Category

Generally, Rule 19b–4(f)(6) [39] allows proposed rule changes that are non-controversial to be effective upon filing with the Commission, provided that the SRO submits written notice of its intent to file the proposal at least five business days in advance of filing. Non-controversial rule changes do not become operative until 30 days after the date of filing.[40] At the time the Commission adopted this rule, several commenters recommended that the 30-day period be shortened, eliminated, or applied only in specific instances.[41] The Commission, however, believed that the 30-day delayed operational date for non-controversial filings was necessary to allow the Commission the opportunity to abrogate a rule change without significant disruption to existing operations if the Commission determined after subsequent review or public comment that the proposal was not properly filed within the non-controversial category.[42]

In light of its experience with this provision, the Commission preliminarily believes that it may now be appropriate to eliminate the 30-day delayed operational date and the five-day pre-filing requirement for non-controversial rule filings. Eliminating the time periods in this provision would enable SROs to implement immediately those rule changes that do not significantly affect the protection of investors or the public interest, do not impose any significant burden on competition, are not designed to permit unfair discrimination between customers, issuers, and brokers or dealers, and do not relate to trading rules (which are covered in a separate provision). The Commission notes that because the majority of rule filings submitted pursuant to this provision to date have been truly non-controversial, abrogation under this category has been unnecessary.

The Commission notes that it retains the statutory authority to abrogate a proposed rule change submitted under section 19(b)(3)(A) of the Act [43] within 60 days of the date of filing of the

[33] 17 CFR 240.19b–4.

[34] Unless clearly inconsistent with the language of Rule 19b–6, prior interpretations of Rule 19b–4 will continue to apply. *See, e.g.*, Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906 at note 40 (November 7, 1980) (As a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under section 19(b)(2) for full notice and comment.).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] *See* New Products Adopting Release, *supra* note 7, citing comment letters; *see also* Non-Controversial Rule Adopting Release, *supra* note 6.

[37] 15 U.S.C. 78s(b).

[38] Proposed Rule 19b–6(a). This proposal would apply not only to national securities exchanges and association, but also to clearing organizations.

[39] 17 CFR 240.19b–4(f)(6).

[40] The Commission has frequently exercised its authority to shorten or waive either the five-day advance notice requirement or the 30-day delay in operational effectiveness. 17 CFR 240.19b–4(f)(5)(iii) and Non-Controversial Rule Adopting Release, *supra* note 6.

[41] *See* Non-Controversial Rule Adopting Release, *supra* note 6, citing comments.

[42] *Id.*

[43] 15 U.S.C. 78s(b)(3)(A).

proposed rule change.[44] In other words, the Commission could require that the SRO refile the proposed rule change under section 19(b)(2) for regular notice and comment if it determined, for example, that the rule change was controversial and warranted further public comment. Once abrogated, a proposed rule change would not be effective unless subsequently approved by Commission order. Because these changes to the existing rule filing process would give the SROs greater flexibility, the Commission would be prepared to use its abrogation authority more often than it has in the past. For example, it could abrogate if it determined upon subsequent review or public comment that a proposed rule change was inappropriately submitted under Section 19(b)(3)(A) or otherwise raised significant legal or policy concerns that would justify further review pursuant to section 19(b)(2).

The Commission is also proposing three technical changes to the non-controversial filing category. First, the Commission is proposing to specifically exclude from this category SRO trading rules because the Commission is proposing a separate provision for these rules, as discussed below. Second, the Commission is proposing to clarify that a proposed rule change filed under this category may not ''unfairly discriminate between customers, issuers, and brokers or dealers.'' The Commission notes that this merely restates the requirement under section 6(b)(5) of the Act[45] that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Third, the Commission is amending the rule language to clarify that it is intended to apply solely to minor proposed rule changes and other proposed rule changes that are substantially the same as the rule of another self-regulatory organization that previously was filed with and approved by the Commission pursuant to section 19(b)(2) of the Exchange Act[46] (*i.e.,* so-called ''copycat filings'').

C. Immediate Effectiveness of Trading Rules

Under the Commission's proposal, SROs would have the choice to file proposed rule changes governing most trading rules to take effect pursuant to section 19(b)(2)[47] or section 19(b)(3) of the Act.[48] Under section 19(b)(3), the proposed rule change would be effective upon filing provided that the SRO had established procedures for the effective surveillance of activity conducted pursuant to the trading rule and for enforcement of the rule.[49] However, those few trading rules that make fundamental structural changes to the market, and that significantly affect the protection of investors or the public interest or impose a significant burden on competition, would not be eligible to become immediately effective.[50] The Commission also wishes to emphasize that an SRO filing a proposed trading rule for immediate effectiveness pursuant to section 19(b)(3)(A) must be prepared to cease applying the proposed trading rule promptly upon Commission abrogation of the proposed rule change. If the Commission abrogates a proposed rule change, the SRO may not continue to implement the rule unless it is approved by the Commission pursuant to section 19(b)(2) of the Exchange Act.

Trading rules would be defined broadly to include SRO rules governing the trading of securities through the SRO or its facilities. The definition includes rules governing: use of or access to an order entry, routing, or execution system; member proprietary trading; display of quotations; market maker activities;[51] trading units; order types; odd lot differentials;[52] priority of orders, bids, and offers (but not handling of customer orders, including limit orders); fast markets; trading hours; national securities exchange or national securities association rules governing comparison, clearance and settlement of transactions by means of exchange or association facilities;[53] disagreements on executions; obligations of specialists to maintain fair and orderly markets;[54] special offerings; exchange distributions;[55] closing contracts;[56] authority and actions of order book officials;[57] activities of floor brokers;[58] and trading activities of specialists and lead market makers.

For example, rules eligible for immediate effectiveness would include rules extending the close of trading, affecting the crossing of orders or the priority of orders,[59] mandating executions of orders up to a particular size at the displayed bid or offer, or affecting the operation of certain small order execution systems.[60] The proposed trading rule definition would also encompass proposed rule changes suspending firm quotes in fast markets[61] or requiring the dissemination of an inferior quote whenever the market maker fails to

[44] 15 U.S.C. 78s(b)(3)(C). *See also* Section F, *infra.*

[45] 15 U.S.C. 78f(b)(5).

[46] 15 U.S.C. 78s(b)(2).

[47] 15 U.S.C. 78s(b)(2).

[48] 15 U.S.C. 78s(b)(3).

[49] Proposed Form 19b–6 would require that the chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority to certify that the self-regulatory organization had established procedures to conduct surveillance for compliance with, and enforce, the proposed rule change.

[50] *See* discussion at Part D, *infra.*

[51] One example of this type of filing is a filing submitted by the Pacific Exchange, Inc. (''PCX'') that allowed Lead Market Makers to perform certain floor broker functions in addition to order book official and market maker functions. A Lead Market Maker is permitted, but not obligated, to accept non-discretionary orders that are not eligible to be placed in the public order book, and is permitted to represent such orders as a floor broker. *See* File No. SR–PCX–99–25.

[52] An example of this type of filing is File No. SR–CHX–94–23, which allowed The Chicago Stock Exchange (''CHX'') specialists to charge a differential for certain odd lot trades.

[53] *See, e.g.,* File No. SR–NYSE–91–09 (relating to the New York Stock Exchange (''NYSE'') overnight comparison system allowing (1) security position movements and (2) the comparison of cash ''ex-clearing house'' transactions). Rule 19b–6 would not include SRO rules governing trade reporting and also would not apply to the rules of a registered clearing agency.

[54] One example of this type of rule filing is a filing submitted by the NYSE adopting an ''adjusted stabilization'' method of measuring specialist performance. *See* File No. SR–NYSE–99–01.

[55] This is intended to cover proposed rule changes such as File No. SR–NYSE–97–15, which amended NYSE Rule 392 to require notification by member organizations of any stabilizing bid made in connection with an offering of an exchange-listed security.

[56] One example of this type of rule filing is File No. SR–NYSE–82–23, which amended NYSE Rules 282, 284, and 289 relating to the reduction of NYSE staff involvement in processing buy-ins and to provide for the delivery of buy-ins from the initiating firm directly to the defaulting firm.

[57] This is intended to cover proposed rule changes such as File No. SR–CBOE–98–27, which amended Chicago Board Options Exchange's (''CBOE's'') rules governing the execution of orders by order book officials or designated primary market makers' book staff to provide for the electronic execution of certain orders on the ''live ammo'' screen. The proposal allowed an order book official or a designated primary market maker to designate orders to be electronically executed against market makers standing in the crowd.

[58] An example of this kind of proposed rule change is File No. SR–PCX–99–17, which allowed PCX floor brokers to represent telephonic orders in the crowd without a written ticket, provided the ticket has already been completed, time stamped, and is being delivered to the floor broker in the crowd.

[59] For example, the PCX submitted a proposed rule change that entitled floor brokers, under certain conditions, to cross a specified percentage of a customer order that the floor broker brought to the post on behalf of the floor broker's member firm before market makers in the crowd could participate in the transaction. *See* File No. SR–PCX–99–18. In addition, the NYSE submitted a proposed rule change that would facilitate the crossing of certain orders of a specified minimum size against certain displayed quotes. *See* File No. SR–NYSE–99–24.

[60] One example of this type of filing is a proposed rule change submitted by the American Stock Exchange (''Amex'') that increased from 50 to 100 the maximum number of equity and index option contracts in an order that may be entered through the Amex Order File System into the Amex Options Display Book. *See* File No. SR–Amex–99–11.

[61] *See, e.g.,* File No. SR–CBOE–99–52.

execute the full size of an incoming order.[62]

This proposal would be limited to trading rules, where SROs need greater flexibility because they must respond quickly to competition in the marketplace. SROs do not face the same competition with respect to member regulation. Only SROs exercise quasi-governmental powers in enforcing compliance by members with both the legal requirements of the Act and ethical standards that extend beyond those requirements. Accordingly, the definition of trading rule would not include rules governing membership, member regulation, discipline, arbitration, or financial responsibility (such as margin, net capital, and recordkeeping). Rules affecting customer communications or suitability also would not be included under the proposed definition of a trading rule. Finally, the definition of trading rule would not include rules affecting listing standards or corporate governance. The Commission believes that public comment and Commission approval of these types of rules are critical to help ensure that investor protection and listing standards are not compromised, and that members of an SRO are afforded due process.[63]

D. Trading Rules Ineligible for Immediate Effectiveness

SRO trading rules occasionally involve fundamental issues of market structure and fairness to customers, members, and non-members, including potentially anti-competitive or discriminatory conduct on the part of the SRO's market. The Commission believes that trading rules that would have a significant impact on market structure or competition should be subject to the full notice and comment process. It is through this process that the public has an opportunity to raise concerns, for example, about an SRO's use of its regulatory powers to unfairly advantage its market at the expense of its competitors. The Commission, therefore, is proposing to exclude from Rule 19b–6(b)(6) trading rules that would make fundamental structural changes to that SRO's market and that significantly affect investors or impose a significant burden on competition. These rules would be subject to the regular notice and comment period pursuant to section 19(b)(2) of the Act. For example, under proposed Rule 19b–6, SRO rules dealing with the conversion to decimal pricing would not have been effective upon filing, although they would likely have been considered trading rules within the proposed definition of that term. The transition from quoting in fractions to quoting in decimals, and the technological concerns and investor protection issues associated with that transition, have far reaching ramifications for the securities markets.[64]

E. Request for Comment

The Commission requests the views of commenters on the proposed rule, including whether it provides SROs with sufficient flexibility to adapt to changes in their marketplaces while ensuring that the goals of the national market system are satisfied. In addition, to assist commenters, the Commission specifically requests comment on the following:

1. Is the definition of a trading rule appropriate? Is it over-inclusive or under-inclusive?

2. Should proposed rule changes that are considered non-controversial or that govern trading rules become operative immediately or should the operative date be suspended for 60 days to allow the Commission to abrogate those proposed rule changes without disrupting the operation of the SROs?

3. What other types of proposed rule changes should the Commission consider making eligible for immediate effectiveness? For example, should it include listing standards, new products, or position limits? Would investors and market participants continue to be adequately protected if other types of rule changes were included?

F. Operation of Proposed Rule 19b–6

As discussed above, under proposed Rule 19b–6, the Commission will issue a release relating to properly filed proposed rule changes submitted pursuant to section 19(b)(1) within ten business days of filing or within such longer period as to which the SRO consents in writing. SROs will continue to have the option to file their proposals for regular notice, comment and approval under section 19(b)(2) or for immediate effectiveness under section 19(b)(3)(A).[65]

A proposed rule change will be not considered filed on the date it is received by the Commission unless: (1) A properly completed Form 19b–6 is submitted; (2) in order to elicit meaningful comment, it is accompanied by (a) a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition, if any, and (b) a summary of any written comments received by the SRO on the proposed rule change; (3) it is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended; and (4) the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority, certifies to the accuracy and completeness of the statements made on new Form 19b–6 (the form is discussed in part F below).

If the filing is complete, including the certification, the Commission will post the proposal on the Commission's web page and send it to the **Federal Register** for publication. The notice would typically provide for a 21-day comment period, beginning on the date after the notice appears in the **Federal Register**. If the filing is incomplete, it would not be deemed filed and would be returned to the SRO.

The Commission may abrogate an SRO rule submitted for immediate effectiveness under section 19(b)(3)(A) and Rule 19b–6 within 60 days from the date the proposed rule change is filed with the Commission.[66] As discussed above, the Commission may determine that abrogation is appropriate when a filing raises concerns about unfair discrimination or competition, raises controversial issues, or otherwise could substantially benefit from notice and comment. This decision will be based not only on the Commission's initial examination of the filing, but also on comments the Commission receives during the 21-day comment period. The Commission anticipates that the large majority of these proposed rule changes would be effective upon filing and would not be subsequently abrogated. If the Commission abrogates a proposed rule change, the SRO must refile the proposed rule change with the Commission for review pursuant to section 19(b)(2).[67]

If an SRO wishes to make a substantive amendment to a proposed rule change filed for immediate effectiveness, the SRO must refile the proposed rule change in its entirety. At that point, the 60-day abrogation period would run from the date of filing of the

[62] *See, e.g.,* File No. SR–NASD–99–20.

[63] The Commission will issue a release relating to these types of rules within 10 business days under Rule 19b–6(a).

[64] *See* Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Securities Exchange Act Release No. 42360 (January 28, 2000).

[65] *But see* note 74, *infra.*

[66] 15 U.S.C. 78s(b)(3)(C).

[67] Section 19(b)(3)(C) states that ''the Commission summarily may abrogate the change in the rules of the self-regulatory organization * * * and require that the proposed rule change be refiled in accordance with'' section 19(b)(1) and reviewed in accordance with section 19(b)(2).

new amended filing, and the proposed rule change, in its entirety, would be deemed effective upon filing of the amendment and not from the date of the initial filing. If an SRO makes a timely[68] technical amendment (*i.e.,* to correct cross-references or other citations or to clarify minor points) to a filing, the 60-day abrogation period would continue to run from the date of the original filing, and the proposed rule change would be deemed effective as of the date of the original filing; the amendment therefore would not affect the abrogation period. Substantive amendments to proposed rule changes will be published in the **Federal Register** and posted on the Commission's web site. This will give the public the opportunity to comment on the substantive change. The Commission notes that its decision to abrogate or its failure to abrogate a proposed SRO rule change is not reviewable under section 25 of the Exchange Act.[69] If the Commission abrogates a proposed rule change, the abrogation will not affect the validity or force of the proposed rule change during the period the rule was in effect.[70]

G. Form 19b–6

Generally, Form 19b–6 requires an SRO to (1) submit a complete description of the terms of its proposal; (2) describe the impact of the proposed rule change on various segments of the market, including members, member constituencies, and non-members; and (3) describe how the filing relates to existing rules of the SRO. In addition to the foregoing, a proposed rule change must provide an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, including its impact on competition, if any, as well as a summary of any written comments received by the SRO.[71] The proposed rule change must also be consistent with the existing rules of the SRO, including any other proposed rule changes. And finally, the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must certify to the accuracy and completeness of the statements made on Form 19b–6, and certify that the SRO will enforce and conduct surveillance for compliance with the rule.

The Commission firmly believes that, to provide the public with a meaningful opportunity to comment, a proposed rule change must be accurate, consistent, and complete. Currently, Commission staff devotes significant time to processing proposed rule changes, reviewing them for accuracy and completeness, and preparing them for publication. This time is lengthened because the SROs often must correct, clarify, or further substantiate their proposals to address issues identified by the reviewing staff. In the future, because of the expedited process and the immediate effectiveness of many proposals, proposed rule changes that do not: (1) Contain a properly completed Form 19b–6; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; (4) state that the proposal is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended; and (5) include the certification described above will not be deemed filed. These proposed rule changes will be returned to the SRO and will not be deemed filed until all required information has been provided.

H. Where a Proposed Rule Change Becomes Effective Upon Filing Pursuant to Section 19(b)(3)(A) of the Act, No Inference May Be Made Regarding Whether the Proposed Rule Change Is in the Public Interest, Including Any Impact on Competition

Subsection (h) of Rule 19b–6 clarifies that where a proposed rule change becomes effective upon filing pursuant to section 19(b)(3)(A) of the Act,[72] no inference may be made regarding whether the proposed rule change is in the public interest, including whether it has an impact on competition. Although the Commission intends to conduct a review of proposed rule changes that are effective on filing in order to determine whether they raise significant issues requiring abrogation of the filing, the Commission will not be taking final action unless it chooses to abrogate the proposed rule change and subsequently issues an order approving or disapproving the proposal pursuant to section 19(b)(2) of the Act. Therefore, the Commission will not necessarily have made a final determination on whether the proposed rule change is in the public interest, including whether it has an impact on competition, where the proposal has become effective upon filing pursuant to section 19(b)(3)(A) of the Exchange Act. Absent a Commission order approving the proposed SRO rule change pursuant to section 19(b)(2), a person may not necessarily draw conclusions about whether the proposed rule change is in the public interest, including whether it has an impact on competition. However, if an SRO determines that it would like the Commission to make such a determination, the SRO still has the option of submitting the proposed rule change under section 19(b)(2)[73] instead of section 19(b)(3).[74]

I. Electronic Submission

Currently, SROs are required to submit nine copies of Form 19b–4 before a proposal is deemed filed. Under Rule 19b–6, the Commission is proposing to allow SROs to file proposed rule changes with the Commission electronically, provided they promptly file nine paper copies, one of which must be manually signed. SROs that elect to file proposed rule changes electronically must do so in accordance with standards to be published by the Commission. Proposed rule changes that are not filed pursuant to these standards will not be deemed filed and will be returned to the SRO.

J. Request for Comment

In addition to requesting comment on the Commission's overall approach to rule filings under proposed Rule 19b–6,

[68] A "timely" technical amendment to a proposed rule change must be received by the Commission with enough time prior to the end of the abrogation period to ensure that the filing is complete and accurate. If a technical amendment is not timely filed, the Commission may choose to abrogate the proposed rule change as incomplete or inaccurate. In general, to be considered timely, technical amendments must be received by the Commission not less than ten business days prior to the end of the abrogation period.

[69] 15 U.S.C. 78y. *See* 15 U.S.C. 78s.

[70] 15 U.S.C. 78s(b)(3)(C).

[71] These requirements exist today under Form 19b–40.

[72] *See, e.g.,* 15 U.S.C. 78c(f) (requiring the Commission, when it is engaged in the review of an SRO rule 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), 15 U.S.C. 78f (requiring that the rules of an exchange be designed, in general, to protect investors and the public interest and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers), 15 U.S.C. 78o–3 (requiring that the rules of an association not be designed to permit unfair discrimination between customers, issuers, broker or dealers and do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act).

[73] 15 U.S.C. 78s(b)(2).

[74] 15 U.S.C. 78s(b)(3). Under this proposal, an SRO could submit a proposed rule change either under section 19(b)(3)(A) for immediate effectiveness *or* under section 19(b)(2) for notice and comment and Commission approval. An SRO would not be able to submit a proposed rule change under section 19(b)(3)(A) and then submit the same rule language under section 19(b)(2). Of course, if the Commission abrogated an SRO proposed rule change that was filed pursuant to section 19(b)(3), the proposed rule change would be reviewed under section 19(b)(2) upon filing by the SRO.

the Commission requests comment on the following:

1. Should the Commission continue to require paper copies and manual signatures on proposed rule filings? If not, under what conditions should SROs be permitted to file electronically? Should the Commission continue to require the submission of one paper copy with a manual signature?

2. What implications are there if the Commission requires SROs to file proposed rule filings through an electronic system?

K. Additional Ways To Streamline the Rule Filing Process

The Commission is also considering issuing abbreviated approval orders for proposed rule changes filed under section 19(b)(2) if a proposal raises no significant issues and the Commission does not receive any comment letters. An abbreviated approval order would cite the relevant statutory provisions, but would not include a detailed analysis, as it does today. The Commission requests comment on whether abbreviated orders raise any policy concerns.

IV. Request for Comment

Interested persons are invited to submit written data, views, and arguments concerning the proposed rulemaking. Persons making written submissions should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All submissions should refer to File No. S7–03–01, (this file number should be included on the subject line if E-mail is used), and should be submitted by April 6, 2001. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet web site *http://www.sec.gov.*

V. Costs and Benefits of the Proposed Rulemaking

The Commission is proposing to amend the requirements applicable to SRO filings of proposed rule changes with the Commission. Specifically, the Commission is proposing to issue a release relating to all proposed rule changes within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. The Commission is considering the costs and benefits of proposed Rule 19b–6.

A. Benefits

The Commission preliminarily believes that, by expediting the rule filing process, the proposed rule will reduce significantly the SROs' regulatory burden and help SROs maintain their competitive balance with other market centers. For example, Commission staff determined that for 1999, it took the Commission approximately 101 days, on average (with a median of 67 days), to approve 95 rule filings submitted under section 19(b)(2) that potentially could qualify for expedited treatment under the new rule.[75]

Because, under the proposed rule, trading rules that otherwise would have been filed under section 19(b)(2) of the Act[76] may become immediately effective under section 19(b)(3),[77] the Commission believes that the proposed rule will foster innovation by allowing the SROs to more quickly adapt and meet the needs of market participants without waiting for Commission approval of their proposed rule changes. As a result, the Commission believes that the SROs may be able to more quickly implement new technology, which can enhance and improve trading efficiency. Improved trading efficiency could benefit investors (for example, by providing faster executions). In addition, the Commission believes that the ability of the SROs to more quickly adapt to changes could allow them to better compete in a global marketplace, especially because foreign markets may be subject to different regulations than U.S. markets. The Commission expects that the other changes proposed under Rule 19b–6, such as electronic filing and issuing a release relating to all proposed rule changes within 10 business days of receipt, will also expedite the processing of SRO proposed rule changes.

B. Costs

The Commission does not expect that the proposed rule will impose any additional costs on SROs, and may in fact reduce costs related to SRO rule changes. SROs are already obligated to submit proposed rule changes to the Commission and are further subject to potential abrogation of proposed rule changes submitted under section 19(b)(3)(A).[78] Proposed Rule 19b–6 is only intended to expedite the rule filing process. Further, the Commission expects that market participants will still be able to provide meaningful comment on proposed rule changes submitted by the SROs, because those filings will be published in the **Federal Register**.

C. Request for Comment

To assist the Commission in its evaluation of the costs and benefits that may result from proposed Rule 19b–6, commenters are requested to provide analysis and data relating to the anticipated costs and benefits associated with the proposed rule. Specifically, the Commission requests commenters to address whether proposed Rule 19b–6 would generate the anticipated benefits or impose any costs on U.S. investors or others.

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

Section 23(a) of the Exchange Act[79] requires the Commission, when promulgating rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furtherance of the purposes of the Act. Section 3(f) of the Exchange Act[80] requires the Commission, when engaged in rulemaking where it is required to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed rule is intended to expedite the review of SRO rules, and to allow SROs to more quickly introduce changes to their markets. The Commission is proposing to issue a release relating to the proposal within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. This should help to foster innovation, increase competition, and thereby benefit investors. The Commission solicits comments on the impact of the proposed rule on competition, including competition between SROs, alternative trading systems, and other market participants. Finally, commenters should consider the proposed rule's effect on efficiency and capital formation.

[75] 15 U.S.C. 78s(b)(2).

[76] 15 U.S.C. 78s(b)(2).

[77] 15 U.S.C. 78s(b)(3).

[78] 15 U.S.C. 78s(b)(3)(A).

[79] 15 U.S.C. 78w(a)(2).

[80] 15 U.S.C. 78c(f).

VII. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act[81] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[82] Rule 19b–6 and Form 19b–6 apply only to SROs. Furthermore, the proposed amendments are intended to streamline a process to which these SROs already are subject. The Chairman has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A to this document.

VIII. Paper Work Reduction Act

Certain provisions of the proposed rule and form contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[83] The Commission has submitted the collection to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to replace the current collection of information titled ''Rule 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045; SEC File No. 270–38) with a new information collection titled ''Rule 19b–6 Under the Securities Exchange Act of 1934.'' The Commission is also proposing to replace the current collection of information titled ''Form 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045; SEC File No. 270–38) with a new collection of information titled ''Form 19b–6 Under the Securities Exchange Act of 1934.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information

Rule 19b–6 would require an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b–6. Form 19b–6 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–6 also 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 from SRO members.

B. Proposed Use of Information

The information obtained under Rule 19b–6 would be used by the Commission to review rule change proposals filed by SROs pursuant to section 19(b)(1) of the Act[84] and to provide notice of the proposals to the general public. The Commission relies upon the information received in SRO rule change proposals, as well as public comment regarding the information, in reviewing and reaching decisions about any required action with respect to proposed rule changes.

C. Respondents

There are currently 24 SROs subject to the collection of information, though that number may vary owing to the consolidation of SROs or the introduction of new entities. In recent years, these respondents have each filed an average of 21 rule change proposals per year, for an average annual total of approximately 500 filings subject to the current collection of information.

D. Total Annual Reporting and Recordkeeping Burden

Proposed Rule 19b–6 is designed to streamline the rule filing process. For example, Rule 19b–6 would permit SROs to electronically file their rule change proposals. In addition, Form 19b–6 has been designed to be simpler than Form 19b–4. The Commission predicts that a simplified form will reduce by two hours the amount of SRO clerical time required to prepare the average filing.

A rule proposal is generally filed with the Commission after an SRO's staff has obtained approval by its board. Frequently, a substantial portion of the filing can be drawn from the materials prepared for the board's review. Therefore, the time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. However, several SROs have estimated at 35 hours the amount of time required to complete an average rule filing using present Form 19b–4. This figure includes an estimated 25 hours of in-house legal work and 10 hours of clerical work.

The Commission estimates at 33 hours the amount of time that would be required to complete an average rule filing using proposed Form 19b–6. This figure reflects the two hours savings in clerical hours resulting from the use of a simpler form. Using the estimate of 33 hours per rule filing under proposed Rule 19b–6, the total annual reporting burden under the new rule is 16,500 hours. This is based on an average of 500 rule change proposals received by the Commission each year, as noted in Subsection C, above. The Commission also estimates that an SRO will incur costs of $150.00 for overhead, including telephone charges, copying, and postage, for each proposed Form 19b–6 that it submits.

E. Retention Period of Record Keeping Requirements

The SROs would be required to retain records of the collection of information 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 under the Act.[85]

F. Collection of Information Is Mandatory

Any collection of information pursuant to proposed Rule 19b–6 and Form 19b–6 under the Act would be mandatory as a means for the Commission to review, and, as required, take action with respect to SRO rule change proposals.

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

Other than information for which an SRO requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to proposed Rule 19b–6 and Form 19b–6 under the Act would not be confidential and would be publicly available.[86]

H. Request for Comment

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

(1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

[81] 5 U.S.C. 603(a).

[82] 5 U.S.C. 605(b).

[83] 44 U.S.C. 3501 *et seq.*

[84] 15 U.S.C. 78s(b)(1).

[85] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 under the Act. 17 CFR 240.17a–6.

[86] A proposed rule change containing proprietary or otherwise sensitive information, such as details of an SRO's disaster operational back-up system, for example, would not be made public.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–03–01. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

IX. Statutory Basis and Text of Proposed Amendments

The deletion of Rule 19b–4 and Form 19b–4 and the addition of Rule 19b–6 and Form 19b–b under the Exchange Act is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(26), 3(a)(27), 3(b), 6, 15A, 15B, 17A, 19(b), 23(a) and 36(a) of the Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

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

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

1. 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, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.19b–4 is removed and reserved.

3. Section 240.19b–6 is added to read as follows:

§ 240.19b–6 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b–6 (17 CFR 249.19b–6). The Commission shall issue a release relating to a proposed rule change filed pursuant to this section within 10 business days of filing with the Commission (or within such longer period as to which the self-regulatory organization consents in writing).

(b) A proposed rule change may take effect upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act, (15 U.S.C. 78s(b)(3)(A)) if properly designated by the self-regulatory organization as:

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

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) 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

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), and:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition;

(iii) Does not unfairly discriminate between customers, issuers, and brokers or dealers; and

(iv) Does not relate to a trading rule; or

(6) Establishing or changing a trading rule, other than a trading rule that would make fundamental structural changes to the market, and that significantly affects the protection of investors or the public interest or imposes a significant burden on competition; provided that the self-regulatory organization certifies that it has established procedures for the effective surveillance of activity conducted pursuant to, and for the enforcement of, such trading rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless:

(1) It is reasonably and fairly implied by an existing rule of the self-regulatory organization; or

(2) It is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of a self-regulatory organization shall be deemed to be a proposed rule change if:

(1) It is approved or ratified by the governing body of the self-regulatory organization; and

(2) It is not reasonably and fairly implied by that rule.

(e) (1) The listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the self-regulatory organization's procedures and listing standards for the product class that would include the new derivative securities product, the self-regulatory organization's trading rules for the product class have been approved pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or have taken effect pursuant to section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), and the self-regulatory organization has a surveillance program for the product class.

(2) Self-regulatory organizations shall retain at their principal place of business a file, available to Commission staff for inspection, of all relevant records and information pertaining to each new derivative securities product traded pursuant to this paragraph (e) for a period of not less than five years, the

first two years in an easily accessible place, as prescribed in § 240.17a–1.

(3) When relying on this paragraph (e), a self-regulatory organization shall submit Form 19b–6(e) (17 CFR 249.19b–6(e)) to the Commission within five business days after commencement of trading a new derivative securities product.

(f) (1) A proposed rule change shall not be deemed filed on the date it is received by the Commission unless:

(i) A completed Form 19b–6 (cite) is submitted;

(ii) In order to elicit meaningful comment, it is accompanied by:

(A) A clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition, if any; and

(B) A summary of any written comments received by the self-regulatory organization on the proposed rule change;

(iii) It is not inconsistent with the existing rules of the self-regulatory organization, including any other rules proposed to be amended; and

(iv) The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority, certifies the accuracy and completeness of the statements made on Form 19b–6 (17 CFR 249.19b–6).

(2) Filing a material amendment to a proposed rule change shall be deemed to be a refiling of the rule change for purposes of the timing requirements of this section and section 19(b) of the Act (15 U.S.C. 78s(b)).

(g) For purposes of this section:

(1) The term *trading rule* means a rule of a national securities exchange or a national securities association that governs the trading of securities on the exchange or association or through its facilities:

(i) The term *trading rule* shall include rules governing member trading, such as rules governing: use of or access to an order entry, routing, or execution system; member proprietary trading; display of quotations; market maker activities; trading units; order types; odd lot differentials; priority of orders, bids, and offers (but not customer orders, including limit orders), fast markets; trading hours; comparison; clearance and settlement of transactions; disagreements on executions; obligations of specialists to maintain fair and orderly markets; special offerings; exchange distributions; closing contracts; authority and actions of order book officials; activities of floor brokers; and trading activities of specialists and lead market makers.

(ii) The term *trading rule* shall not include rules governing member regulation, such as rules governing: transaction confirmations and account statements; member advertising, sales literature, and other customer communications; suitability and other sales practices; arbitration; disciplinary matters and sanctions; membership and eligibility requirements; financial responsibility (*e.g.,* net capital and recordkeeping); margin and use of collateral; transaction reporting; discretionary handling of customer orders (including limit orders); position limits; market surveillance; listing standards; and self-regulatory organization corporate governance.

(2) The term *stated policy, practice, or interpretation* means:

(i) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(ii) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization (''specified persons''), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to:

(A) The rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons; or

(B) The meaning, administration, or enforcement of an existing rule.

(3) The term *new derivative securities product* means any type of option, warrant, hybrid securities product or any other security whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

(h) Where a proposed rule change becomes effective pursuant to paragraph (b) of this section, no inference may be made regarding whether the proposed rule change is in the public interest, including whether it has an impact on competition.

(i) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(j) Notice of orders issued pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) will be given by prompt publication thereof, together with a statement of written reasons therefore. The Commission will promptly notify each self-regulatory organization upon issuing an order, pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2), approving a proposed rule change by that self-regulatory organization.

(k) Self-regulatory organizations shall retain at their principal place of business a file, available to all interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

(l) A proposed rule change by a self-regulatory organization may be filed electronically with the Commission, in a format acceptable to the Commission, provided that the self-regulatory organization promptly thereafter files with the Commission nine paper copies, one of which is manually signed.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

5. Section 249.818 and Form 19b–6 are added to read as follows:

[Note: Form 19b–6 is attached as Appendix B to this document.]

§ 249.818 Form 19b–6, for filings 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, to file proposed rule changes with the Commission pursuant to section 19(b) of that Act and Rule 19b–6 thereunder.

6. Section 249.819 and Form 19b–4 are removed and reserved.

7. Section 249.820 is amended by revising all references to ''19b–4(e)'' to read ''19b–6(e)''.

8. Form 19b–4(e) (referenced in § 249.820) is amended by revising all references to ''19b–4'' to read ''19b–6'' and all references to ''19b–4(e)'' to read ''19b–6(e)''.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934, to file proposed

rule changes with the Commission pursuant to section 19(b) of that Act and Rule 19b–6 thereunder.

Dated: January 19, 2001.

By the Commission.

Jonathan G. Katz,

Secretary.

[Note: Appendix A and Appendix B to the Preamble Will Not Appear in the Code of Federal Regulations.]

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that Rule 19b–6 and Form 19b–6 under the Securities Exchange Act of 1934, 17 CFR 240.19b–6, which would streamline the self-regulatory organization (''SRO'') rule filing process would not have a significant economic impact on a substantial number of small entities. Rule 19b–6 and Form 19b–6 apply only to SROs, none of which are small entities. Furthermore, proposed Rule 19b–6 and Form 19b–6 are intended to streamline a process to which SROs already are subject. Accordingly, the proposed rule and form, if adopted, would not have a significant impact on a substantial number of small entities.

Dated: January 19, 2001.

Arthur Levitt,

Chairman.

Appendix B—Form 19b–6

OMB APPROVAL

OMB Number: XXXX
Expires: XX-XX-XX
Estimated average burden hours per response: XX

File No. SR lllllllllllllll
Amendment No. lllllllllllll
(If Applicable)*

Securities and Exchange Commission, Washington, DC 20549–1001, Form 19b–6, Proposed Rule Change by:
llllllllllllllllllll
(Exact Name of Self-regulatory Organization)*

Pursuant to Rule 19b–6 under the Securities Exchange Act of 1934.

*(Do not include parenthetical material in completed form).

General Instructions

A. When Should This Form Be Used?

This Form 19b–6 must be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''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 19b–6.

B. Terms

Unless the context clearly indicates otherwise, terms used in this Form 19b–6 have the meaning ascribed to them in the Act, as amended, and Rule 19b–6 thereunder.

C. Format Requirements

The Notice section of this Form 19b–6 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) [http://www.nara.gov/fedreg] 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 Commission 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). Failure to provide this information will result in the proposed rule change being deemed not properly filed. In addition, the OFR's *Drafting Legal Documents* is a general style guide to clear and concise legal writing.

D. When Is a Proposed Rule Change Considered Filed?

To be considered filed, an SRO must include with its proposed rule change: a completed Form 19b–6 that includes the cover sheet, Notice, Certification, and applicable Exhibits. The proposed rule change will be considered filed on the date that the Commission receives it if the filing complies with all requirements of this Form 19b–6 and the requirements of Rule 19b–6. Any filing that does not comply with all of the requirements of this Form 19b–6 will not be considered filed with the Commission and will be returned to the self-regulatory organization.

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. It is the responsibility of the self-regulatory organization to prepare Items I and II of the Notice.

E. What Other Information Must an SRO Include When Filing a Proposed Rule Change?

Exhibit 1

(i) Copies of all notices issued by the self-regulatory organization soliciting comment on the proposed rule change.

(ii) Copies of all written comments on the proposed rule change received by the self-regulatory organization, even if the self-regulatory organization did not solicit comments. All comments should be presented in alphabetical order, together with an alphabetical listing of the commenters.

(iii) Any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of comments on the proposed rule change made at any meeting.

(iv) Any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change prepared or received by the self-regulatory organization.

(v) 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) concerning the proposed rule change, copies of the communications must be filed as previously instructed.

Exhibit 2: 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 3: Copies of any systems change notifications in accordance with the Commission's Automation Review Policy statements. *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989) [54 FR 48703] and 29185 (May 9, 1991) [56 FR 22490].

F. What To Do if There Is an Amendment to the Proposed Rule Change

If information on the Form 19b–6, the Certification, the Notice, or any applicable Exhibit is or becomes inaccurate or incomplete before the Commission takes action on the proposed rule change, the self-regulatory organization must file correcting amendments. Nine copies of amendments, including one manually signed copy, must be provided. Self-regulatory organizations may file amendments electronically in accordance with Commission instructions.

If an amendment alters the text of the proposed rule change as it appeared prior to the amendment, the amendment must mark the text, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of this requirement is to permit the staff to immediately identify any changes made to the previous version of the rule text.

G. Where and How To File

Nine copies of Form 19b–6 and all applicable exhibits must be filed with the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–1001. The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority must manually sign at least one copy of the completed Form 19b–6. The Form 19b–6 also may be filed electronically with the Commission in compliance with such guidelines as may be published by the Commission from time to time. Please note that any information filed by the SRO requesting confidential treatment must be filed on paper with the Commission.

A registered clearing agency for which the Commission is not the appropriate regulatory agency must also file with its appropriate

regulatory agency three copies of the Form 19b–6, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board must also file copies of the Form 19b–6, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

Form 19b–6 Certification

The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority must review the Form 19b–6 (including the Notice and all required exhibits (See General Instructions)), complete the following certification, and sign the certification statement set forth below. The filing will not be considered filed with the Commission if the relevant items are not complete. This certification incorporates all statements made in the Notice.

Contact Information: Provide the name(s), telephone number(s) and e-mail address(es) of the person(s) on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change:

Name(s): lllllllllllllllll
Telephone number(s): llllllllll
E-mail address(es): lllllllllllll

The filing is being submitted pursuant to the following section of the Securities Exchange Act of 1934 (''Act'') (check box(es)).

b Section 19(b)(2)
b Section 19(b)(3)(A)
b Section 19(b)(3)(B)
b 19b–6(b)(5) Rule Filing

If the proposed rule change is effecting a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved, identify the rule and explain any differences between the proposed rule change and that rule. For the latter, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the previously approved rule.

b Request for Accelerated Effectiveness

If the SRO is requesting accelerated effectiveness pursuant to Section 19(b)(2), provide a statement explaining why the self-regulatory organization believes there is good cause for the Commission to accelerate effectiveness.

lllllllllllllllllllll

I, [name, title, self-regulatory organization] certify that (please check all applicable items below):

b The filing provides an accurate statement of the authority and statutory basis for the proposed rule change.
b The filing does not violate, and is fully consistent with, the federal securities laws, including appropriate rules and regulations.
b The filing is submitted under the appropriate subsection of Section 19(b) and Rule 19b–6(b) as set forth in the Notice.
b The Board of Directors or other governing authority of the self-regulatory organization required under its constitution, articles of incorporation, bylaws, rules, or corresponding instruments has approved the proposed rule change.
b The Notice provides a clear and accurate statement of the proposed rule change's impact on competition, including whether the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.
b The Notice describes thoroughly the impact of the proposed rule change on various segments of the self-regulatory organization, including members, member constituencies, and non-members.
b The proposed rule change is not inconsistent with the existing rules of the self-regulatory organization, and the Notice describes how the proposed rule change relates to these rules.
b If applicable, the Notice contains an accurate summary of all comments received (solicited or unsolicited).
b The Notice contains the text of the proposed rule change, in the appropriate format required by the Commission.
b If the rule change is filed pursuant to Section 19(b)(3)(A) of the Act, appropriate procedures are in place for the effective surveillance of activity conducted pursuant to, and enforcement of, the proposed rule.
b If a proposed rule change to a trading rule is filed pursuant to Section 19(b)(3)(A) of the Act, the issuer is prepared to cease applying the proposed trading rule promptly upon Commission abrogation of the proposed rule change, and will not continue to implement the rule unless and until it is approved by the Commission pursuant to Section 19(b)(2) of the Exchange Act.
b If applicable, the issuer has agreed to issue the proposed new derivative products, and that issuer has agreed to file under Section 19(b) any required rule changes and submit any necessary documents to comply with the federal securities laws.
b The Notice is in the format required for publication by the **Federal Register**.
b The Notice identifies prior Commission orders or releases impacting the proposed rule change.

I understand that all statements made in the Notice are incorporated by reference into this Certification as representations of [name of self-regulatory organization] to the Commission. In addition, I have reviewed this Form 19b–6 Certification, the Notice, and any other applicable exhibits, and certify that they are accurate, complete, and consistent with the federal securities laws and other rules of [name of the self-regulatory organization].

Signature: lllllllllllllllll
Date: lllllllllllllllllll
(Signature of chief executive officer, general counsel, other officer or director) [1]

Form 19b–6 Notice

Securities and Exchange Commisison

(Release No. 34-.....; File No. SR-....)

Self-Regulatory Organization; [Notice of Filing of a] [Notice of Filing and Immediate Effectiveness of a] Proposed Rule Change by [Name of Self-Regulatory Organization] Relating to [brief description of proposed rule change]

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1),[1] and Rule 19b–6 under the Act, 17 CFR 240.19b–6, notice is hereby given that on [date [2]], the [name of self-regulatory organization] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Section 19(b)(3)(A) Filings. If the proposed rule change is to take effect pursuant to Section 19(b)(3)(A) and Rule 19b–6(b), the following sentence, with appropriate footnote citation, should be included in the first paragraph:

> [self-regulatory organization] filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–6(b) [applicable section] thereunder,[4] which renders the proposal effective upon filing with the Commission.

For proposed rule changes filed pursuant to Section 19(b)(3)(A)(ii) and Rule 19b–6(b)(2), the sentence should read:

[self-regulatory organization] has designated this proposal as one establishing or changing a due, fee, or other charge imposed by [self-regulatory organization] under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–6 (b)(2)[6] thereunder, which renders the proposal effective upon filing with the Commission.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The [name of self-regulatory organization] has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. These statements are set forth in Sections A, B, and C below. Section D below sets forth the text of the proposed rule change.

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

1. Purpose

Provide a statement of the purpose of the proposed rule. The statement must:

• *Describe the text of the proposed rule change in a sufficiently detailed and specific manner as to support a finding under Section*

[1] Print name and title.

[1] All cites should be in footnotes.

[2] 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 19b–6. *See* General Instructions.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] Include cite.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–6(b)(2).

19(b) 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;

• *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;*

• *Describe how the proposed rule change relates to existing rules of the self-regulatory organization;*

• *Describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder;*

• *Identify rules of the self-regulatory organization and provisions of the federal securities laws that the self-regulatory organization reasonably expects the proposed rule change to affect and describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the self-regulatory organization;*

• *Set forth the file numbers, release numbers, the Federal Register cites and other identifying information for prior filings relating to the affected rule and disclose any prior Commission order or release impacting the proposed rule change; and*

• *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 is it is responsible.*

2. Statutory Basis

Provide a statement of the proposed rule change's basis under the Act and the rules and regulations under the Act applicable to the self-regulatory organization. This statement must:

• *Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to the self-regulatory organization;*

• *Reference and cite the specific section(s) of the Act and the rules; and*

• *Respond specifically to all significant arguments, raised by commenters or known to the self-regulatory organization, that the proposed rule change is inconsistent with those requirements.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The information required by this section must be sufficiently detailed and specific to support the premise that the proposed rule change does not impose any unnecessary or inappropriate burden on competition. In responding to this section, the self-regulatory organization must:

• *State whether the proposed rule change will impose or relieve any burden on, or promote, competition;*

• *Specify the particular categories of persons and kinds of businesses that will be burdened and the ways in which the proposed rule change will affect them;*

• *Set forth and respond in detail to written comments addressing significant impacts or burdens on competition; and*

• *Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act; or, if the self-regulatory organization does not believe that the burden on competition is significant, explain why.*

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

State whether or not comments were solicited or received. Summarize all comments received (solicited or unsolicited) and respond in detail to any significant issues raised about the proposed rule change.

If an issue is summarized and responded to in detail elsewhere in this notice, that response need not be duplicated if an appropriate cross-reference is made to the place where the response can be found.

D. Text of the Proposed Rule Change

Insert text of the proposed rule change, with deletions in brackets and additions underlined. If the self-regulatory organization is amending only part of the text of a lengthy rule, it may file only those portions of the text being amended if the filing is clearly understandable on its face.

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

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

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

A. By order approve the proposed rule change or

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

Section 19(b)(3)(A) Filing. If the proposed rule change is to take, or to be put into, effect pursuant to section 19(b)(3)(A) and Rule 19b–6(b), the following paragraph should be used:

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(insert appropriate subparagraph) of the Act and Rule 19b–6(b)[insert appropriate subparagraph] under the Act. At any time within 60 days of the date of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if the Commission believes that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission shall make no determination of a proposed rule change's impact on competition, efficiency, or capital formation for purposes of section 3(f) of the Act (15 U.S.C. 78c(f)) where the proposed rule change takes effect upon filing pursuant to paragraph (b) of Rule 19b–6 under the Act, and no inference of such a finding shall be made therefrom.

In addition, the self-regulatory organization must designate whether 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;

(iii) Is concerned solely with administration of the self-regulatory organization;

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

(v) Effects a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved pursuant to section 19(b)(2) of the Act, and (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; (C) does not unfairly discriminate between customers, issuers, and brokers or dealers; and (D) does not relate to a trading rule; or

(vi) Establishes or changes a trading rule, other than a trading rule that would make fundamental structural changes to the market, and that significantly affects the protection of investors or the public interest or imposes a significant burden on competition; provided that the self-regulatory organization certifies that it has established procedures for the effective surveillance of activity conducted pursuant to, and for enforcement of, such trading rule.

Section 19(b)(3)(B) Filing. If the proposed rule change is to take, or to be put into, effect pursuant to section 19(b)(3)(B) and Rule 19b–6(b), the following paragraph should be used:

The foregoing rule change has become effective pursuant to section 19(b)(3)(B) of the Act. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if the Commission believes that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

In addition, the self-regulatory organization must 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 the proposed rule change to be put into effect summarily by the Commission.

Note: The Commission has the power under section 19(b)(3) of the Act to abrogate summarily within 60 days of its filing any proposed rule change that 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 rule and regulations thereunder. The Commission will generally exercise its summary power under section 19(b)(3)(B) only if the proposed rule change is promptly filed for consideration under section 19(b)(2) of the Act. A summary order under section 19(b)(3)(B) will be effective only until the Commission (i) approves the proposed rule change pursuant to section 19(b)(2) of the Act, (ii) institutes proceedings pursuant to section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change, or (iii) disapproves the proposed rule change pursuant to section 19(b)(2)(B) of the Act.

III. 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. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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. Copies of these filings will also be available for inspection and copying at the principal office of the [name of self-regulatory organization]. Electronically submitted comments will be posted on the Commission's Internet website (http://www.sec.gov). All submissions should refer to File No. [insert file number] and should be submitted by February 26, 2001.

This Notice was prepared by the [insert name of self-regulatory organization.] The Commission has not reviewed the substance of the proposed rule change prior to publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30–3(a)(12)).

[Insert name of Secretary],

Secretary.

[FR Doc. 01–2731 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 910]

RIN 1512–AA07

Realignment of the Alexander Valley and Dry Creek Valley Viticultural Areas (2000R–298P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the revision and realignment of a boundary line between the Alexander Valley (27 CFR 9.53) and the Dry Creek Valley (27 CFR 9.64) viticultural areas, located in northern Sonoma County, California. The petition proposes realigning approximately 410 acres, of which 50 acres are planted with grapes, from the Dry Creek Valley area to the Alexander Valley area.

DATES: Written comments must be received by April 6, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 910). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA (415) 744–7011.

SUPPLEMENTARY INFORMATION:

Background

With the issuance of T.D. ATF–187 on October 24, 1984, and T.D. ATF–129 on April 15, 1983, ATF formalized, respectively, the establishment of the Alexander Valley and Dry Creek Valley viticultural areas in Sonoma County, CA. The Alexander Valley viticultural area, T.D.–187, has been amended by T.D. ATF–233, August 26, 1986, T.D. ATF–272, May 13, 1988, and T.D. ATF–300, August 9, 1990.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from E. & J. Gallo Winery proposing the revision and realignment of a congruent boundary line between the Alexander Valley and the Dry Creek Valley viticultural areas, located in northern Sonoma County, California. The petition proposes realigning approximately 410 acres from the Dry Creek Valley area to the Alexander Valley area. The original petitions incorporated U.S.G.S. mapping section lines to define the boundary in this area. The petitioner uses geographic and climatic features to define the proposed line between these two areas.

Proposed Amendment to Boundaries

The petitioner believes that a small section of the boundary between the established Alexander Valley viticultural area, 27 CFR 9.53, and Dry Creek Valley viticultural area, 27 CFR 9.64, should be modified. The petition states this boundary portion currently ignores distinctive geographic features, climatic differences and divides several vineyards.

The original boundary line in sections 4 and 5 of T.10 N., R.10 W. of the U.S.G.S. map, Geyserville Quadrangle of 1955, was defined primarily by the mapping section lines. According to the petitioner, at the time this boundary line was petitioned and approved, in 1983 for Dry Creek Valley and 1984 for Alexander Valley, there were no vineyards along this boundary section.

The petitioner provides a U.S.G.S. topographic map as evidence of a significant ridgeline along the proposed boundary line. This ridgeline is a watershed dividing point between the Dry Creek Valley and Alexander Valley viticultural areas. Currently both the Dutcher Creek and Gill Creek watersheds are in the Dry Creek Valley area but drain into different viticultural areas. The Gill Creek watershed, to the east of the ridgeline, drains east and crosses the boundary line into the Alexander Valley area. The Dutcher Creek Planning Watershed, to the west of the ridgeline, drains into Dry Creek,