Federal Register

Monday,
August 20, 2001

Part IV

Securities and Exchange Commission

17 CFR Part 200

Delegation of Authority to the Director of the Division of Market Regulation; Final Rule

17 CFR Parts 202, 240, and 249

Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–44691]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to delegate authority to the Director of the Division of Market Regulation (''Director'') to publish notices of proposed rule changes filed pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act'') relating to security futures products and to abrogate such proposed rule changes and require that they be refiled in accordance with section 19(b)(1) of the Exchange Act. This delegation of authority will facilitate the timely implementation of Rule 19b–7 and Form 19b–7 under the Exchange Act.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Cyndi Nguyen, Attorney, at (202) 942–4163, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

The Commission is adopting an amendment to Rule 30–3 of its Rules of Organization and Program Management governing Delegations of Authority to the Director.[1] The Commission is adding paragraph (a)(75) to Rule 30–3 [2] to authorize the Director to publish notices of proposed rule changes filed by self-regulatory organizations relating to security futures products pursuant to section 19(b)(7)(A) of the Exchange Act.[3] In addition, the Commission is adding new paragraph (a)(76) to Rule 30–3 [4] to authorize the Director to abrogate such proposed rule changes pursuant to section 19(b)(7)(C) of the Exchange Act [5] and require that they be refiled in accordance with section 19(b)(1) of the Exchange Act.[6]

To implement the Commodity Futures Modernization Act of 2000 (''CFMA''), the Commission today is adopting, in a separate release,[7] Rule 19b–7,[8] Form 19b–7,[9] and conforming amendments to Rule 19b–4 [10] and Form 19b–4 [11] to accommodate certain proposed rule changes submitted by national securities exchanges registered pursuant to section 6(g) of the Exchange Act (''Security Futures Product Exchanges'') [12] and national securities associations registered pursuant to section 15A(k) of the Exchange Act (''Limited Purpose National Securities Associations'').[13] Rule 19b–7 establishes the procedures for Security Futures Product Exchanges and Limited Purpose National Securities Associations when filing proposed rule changes that relate to certain matters, including higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchanges' and associations' obligations to enforce the securities laws. Pursuant to section 19(b)(7)(A) of the Exchange Act,[14] the Commission must promptly notice such proposed rule changes. Accordingly, the Commission is now adding new paragraph (a)(75) to Rule 30–3 to authorize the Director to publish notices of proposed rule changes relating to security futures products filed pursuant to section 19(b)(7)(A) of the Exchange Act.

The CFMA also added section 19(b)(7)(C) to the Exchange Act,[15] which grants to the Commission, after consultation with the Commodity Futures Trading Commission, the authority to summarily abrogate a proposed rule change that has taken effect pursuant to section 19(b)(7)(B) of the Exchange Act [16] if it appears to the Commission that such rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.[17] In the event that this occurs, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required, pursuant to sections 6(g)(4)(B)(iii) [18] and 15A(k)(3)(C) [19] of the Exchange Act, respectively, to refile the proposed rule change pursuant to the requirements of section 19(b)(1) of the Exchange Act.[20] Accordingly, the Commission is adding new paragraph (a)(76) to Rule 30–3 to authorize the Director to abrogate a proposed rule change relating to security futures products and require that it be refiled in accordance with section 19(b)(1) of the Exchange Act.

These delegations of authority to the Director are intended to conserve Commission resources by permitting Division of Market Regulation staff to publish notices of proposed rule changes filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations relating to security futures products and to abrogate such proposed rule changes and require that they be refiled in accordance with section 19(b)(1) of the Exchange Act. The Commission anticipates that the delegation of authority will facilitate the timely implementation of Rule 19b–7 and amendments to Rule 19b–4. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,[21] that these amendments relate solely to agency organization, procedure, or practice, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

[1] 17 CFR 200.30–3.

[2] 17 CFR 200.30–3(a)(75).

[3] 15 U.S.C. 78s(b)(7)(A).

[4] 17 CFR 200.30–3(a)(76).

[5] 15 U.S.C. 78s(b)(7)(C).

[6] 15 U.S.C. 78s(b)(1).

[7] *See* Securities Exchange Act Release No. 44692 (August 13, 2001). The Commission also is adopting Rule 6a–4, Form 1–N, and amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules.

[8] 17 CFR 240.19b–7.

[9] 17 CFR 249.822.

[10] 17 CFR 240.19b–4.

[11] 17 CFR 249.819.

[12] 15 U.S.C. 78f(g).

[13] 15 U.S.C. 78o–3(k).

[14] 15 U.S.C. 78s(b)(7)(A).

[15] 15 U.S.C. 78s(b)(7)(C).

[16] 15 U.S.C. 78s(b)(7)(B). Pursuant to this Section, Commission action to abrogate a rule change will not affect the validity or force of the rule change during the period it was in effect.

[17] The Commission notes that it currently exercises similar abrogation authority pursuant to Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C. 78s(b)(3)(C), with respect to proposed rule changes filed by the existing self-regulatory organizations that are immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act, 15 U.S.C. 78s(b)(3)(A).

[18] 15 U.S.C. 78f(g)(4)(B)(iii).

[19] 15 U.S.C. 78o–3(k)(3)(C).

[20] 15 U.S.C. 78s(b)(1). Pursuant to Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C), a self-regulatory organization cannot enforce a rule that has been abrogated by the Commission, unless the self-regulatory organization refiles the proposed rule change under Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and it is approved by the Commission.

[21] 5 U.S.C. 553(b)(3)(A).

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraphs (a)(75) and (a)(76) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(75) Pursuant to Section 19(b)(7)(A) of the Act, 15 U.S.C. 78s(b)(7)(A), to publish notices of proposed rule changes filed by self-regulatory organizations relating to security futures products.

(76) Pursuant to Section 19(b)(7)(C) of the Act, 15 U.S.C. 78s(b)(7)(C), to abrogate a change in the rules of a self-regulatory organization relating to security futures products and require that it be refiled in accordance with Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1).

* * * * *

By the Commission.

Dated: August 13, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–20734 Filed 8–17–01; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 240, and 249

[Release No. 34–44692; File No. S7–10–01]

RIN 3235–AI20

Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting Rule 6a–4 under the Securities Exchange Act of 1934 (''Exchange Act'') and registration Form 1–N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to section 6(g)(1) of the Exchange Act to trade security futures products. The Commission also is adopting conforming amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules. In addition, the Commission is adopting Rule 19b–7, Form 19b–7, and amendments to Rule 19b–4 and Form 19b–4 to accommodate proposed rule changes submitted by national securities exchanges registered pursuant to section 6(g) of the Exchange Act and limited purpose national securities associations registered pursuant to section 15A(k) of the Exchange Act. These rules and forms, and amendments to existing rules and forms, are necessary to implement the Commodity Futures Modernization Act of 2000 (''CFMA''). In addition, the Commission is requesting public comment on whether the Commission should adopt changes to Rule 19b–7 and Form 19b–7 if the Commission were to adopt proposed Rule 19b–6 and proposed Form 19b–6.

DATES: *Effective Date:* August 20, 2001.

Comments Due: September 4, 2001.

ADDRESSES: All comments concerning whether the Commission should adopt changes to Rule 19b–7 and Form 19b–7 if the Commission were to adopt proposed Rule 19b–6 and proposed Form 19b–6, discussed below, 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 No. 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 Commission's 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*). Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Deborah Flynn, Assistant Director, at (202) 942–0075; Kelly Riley, Special Counsel, at (202) 942–0752; Michael Gaw, Special Counsel, at (202) 942–0158; and Cyndi Nguyen, Attorney, at (202) 942–4163, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice Registration of Security Futures Product Exchanges
A. Background
B. Discussion
1. Description of Proposed Rules
2. Registration Requirements for Security Futures Product Exchanges Filing Form 1–N
3. Filing of Periodic Amendments
a. Amendments in Case of Inaccurate or Incomplete Information
b. Other Periodic Updates
c. Exemption from Requirement to File Paper Copies of All Exhibits
4. Filing of Supplemental Material
a. Material Issued to Members, Participants, or Subscribers
b. Trading Reports
5. Exemption from Requirement to Update Exhibit C
6. Proposed Amendments to Exchange Act Rules 6a–2 and 6a–3
7. Processing of Form 1–N
III. Procedures for Filing Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations
A. Background
1. Proposed Rule Changes that Relate to Margin
2. Other Proposed Rule Changes Related to Security Futures Products
3. Proposed Rule Changes that Have Been Abrogated
B. Discussion
1. Description of Proposed Rules
2. Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations Related to Margin
3. Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations Required to Be Filed under Section 19(b)(7) of the Exchange Act
4. Proposed Rule Changes Abrogated by the Commission and Refiled by a Security Futures Product Exchange or Limited Purpose National Securities Association
C. Solicitation of Comments
IV. Administrative Procedure Act
V. Paperwork Reduction Act
A. Rule 6a–4 and Form 1–N
1. Summary of Collection of Information
2. Proposed Use of Information
3. Respondents
4. Total Annual Reporting and Recordkeeping Burden

a. One-time Costs
b. Annual Costs
1. Record Retention Period
2. Collection of Information Is Mandatory
3. Confidentiality
B. Proposed Rule 19b–7 and Proposed Form 19b–7
1. Summary of Collection of Information
2. Proposed Use of Information
3. Respondents
4. Total Annual Reporting and Recordkeeping Burden
5. Record Retention Period
6. Collection of Information Is Mandatory
7. Confidentiality
C. Proposed Amendments to Rule 19b–4 and Form 19b–4
1. Summary of Collection of Information
2. Proposed Use of Information
3. Respondents
4. Total Annual Reporting and Recordkeeping Burden
5. Record Retention Period
6. Collection of Information Is Mandatory
7. Confidentiality
VI. Costs and Benefits of Final Rules
A. Comments
B. Costs and Benefits of Rule 6a–4, Form 1–N, and Conforming Amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's Procedural Rules
1. Benefits
2. Costs
C. Costs and Benefits of Rule 19b–7 and Form 19b–7 and Conforming Amendments to Rule 19b–4 and Form 19b–4
1. Benefits
2. Costs
VII. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation
VIII. Summary of Regulatory Flexibility Act Certification
IX. Statutory Authority

I. Introduction

The CFMA authorizes the trading of futures on individual stocks and narrow-based stock indexes, including puts, calls, straddles, options, or privileges thereon (collectively, ''security futures products'').[1] Security futures products are ''securities'' under the Exchange Act,[2] the Securities Act of 1933,[3] the Investment Company Act of 1940,[4] and the Investment Advisers Act of 1940,[5] and are contracts of sale for future delivery under the Commodity Exchange Act (''CEA'').[6] Accordingly, the regulatory framework established by the CFMA for the markets and intermediaries trading security futures products provides the Commission and the Commodity Futures Trading Commission (''CFTC'') with joint jurisdiction.

Because security futures products are securities under the Exchange Act, any organization, association, or group of persons that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of security futures products must register with the Commission as a national securities exchange.[7] New subsection 6(g) of the Exchange Act[8] provides an expedited process for an exchange that lists or trades security futures products to register with the Commission as a national securities exchange if that exchange (i) is a board of trade that has been designated as a contract market or is registered as a derivative transaction execution facility; and (ii) does not act as a market place for transactions in securities other than security futures products (''futures markets'').[9]

In addition, the CFMA amended the Exchange Act to exempt exchanges registered pursuant to section 6(g) of the Exchange Act (''Security Futures Product Exchanges'')[10] and limited purpose national securities associations registered pursuant to section 15A(k) of the Exchange Act (''Limited Purpose National Securities Associations'')[11] from the requirement to file with the Commission proposed rule changes, except for certain specified types of rules, and to provide an expedited filing process for most of these rules.[12]

To implement the CFMA, the Commission proposed Rule 6a–4 and Form 1–N and proposed conforming amendments to Rules 6a–2, 6a–3, and Rule 202.3 of the Commission's procedural rules, which would establish the registration process for futures markets that wish to list and trade security futures products.[13] In addition, the Commission proposed Rule 19b–7, Form 19b–7, and amendments to Rule 19b–4 and Form 19b–4 to set forth the process for Security Futures Product Exchanges and Limited Purpose National Securities Associations to file proposed rule changes.[14]

In response to the Proposing Release, the Commission received four comment letters.[15] As discussed below, the Commission is adopting Rule 6a–4 and Form 1–N with slight modifications, and the amendments to Rules 6a–2 and 6a–3 and Rule 202.3 of the Commission's procedural rules substantially as proposed. In addition, the Commission is adopting Rule 19b–7, Form 19b–7, and amendments to Rule 19b–4 and Form 19b–4, with modifications, in response to recommendations made by commenters. Finally, the Commission is requesting public comment on whether the Commission should adopt changes to Rule 19b–7 and Form 19b–7 if the Commission were to adopt proposed Rule 19b–6 and proposed Form 19b–6.

II. Notice Registration of Security Futures Product Exchanges

A. Background

Section 6(g)(2)(A) of the Exchange Act[16] provides that an exchange required to register with the Commission only because it lists or trades security futures products may register with the Commission by filing a written notice in such form as the Commission may, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors. Such rule may require that the written notice contain the rules of the exchange and other information and documents concerning the exchange, comparable to the information and documents the Commission requires for national securities exchanges registered under section 6(a) of the Exchange Act.[17] Pursuant to section 6(g)(2)(B) of the Exchange Act,[18] such ''notice

[1] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[2] Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

[3] Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. 77b(a)(1).

[4] Section 2(a)(36) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(36).

[5] Section 202(a)(18) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(18).

[6] Section 1a(31) of the CEA, 7 U.S.C. 1a(31).

[7] *See* Section 5 of the Exchange Act, 15 U.S.C. 78e. *See also* Section 3(a)(1) of the Exchange Act for the definition of ''exchange.'' 15 U.S.C. 78c(a)(1).

[8] 15 U.S.C. 78f(g).

[9] Section 6(g)(1) of the Exchange Act, 15 U.S.C. 78f(g)(1).

[10] 15 U.S.C. 78f(g).

[11] 15 U.S.C. 78o–3(k). A futures association registered under Section 17 of the CEA shall be registered as a national securities association for the limited purpose of regulating the activities of broker-dealers registered pursuant to Section 15(b)(11) of the Exchange Act, 15 U.S.C. 78o(b)(11), with respect to their activities in security futures products.

[12] Sections 6(g)(4)(B) and 15A(k)(3) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B) and 15 U.S.C. 78o–3(k)(3).

[13] *See* Securities Exchange Act Release No. 44279 (May 8, 2001), 66 FR 26978 (May 15, 2001) (''Proposing Release'').

[14] *Id.*

[15] *See* letters to Jonathan G. Katz, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc., dated June 13, 2001 (''CBOE Letter''); Daniel J. Roth, Senior Executive Vice President, Chief Operating Officer, and General Counsel, National Futures Association, dated June 14, 2001 (''NFA Letter''); David J. Vitale, President and Chief Executive Officer, Chicago Board of Trade, dated June 14, 2001 (''CBOT Letter''); and Jerrold E. Salzman, Freeman, Freeman & Salzman, P.C., dated June 14, 2001 (''CME Letter'').

[16] 15 U.S.C. 78f(g)(2)(A).

[17] 15 U.S.C. 78f(a).

[18] 15 U.S.C. 78f(g)(2)(B).

registration'' would be effective contemporaneously with the submission of the written notice, unless the registration were subject to suspension or revocation by the CFTC.[19]

B. Discussion

1. Description of Proposed Rules

Consistent with these provisions, the Commission proposed Rule 6a–4 and Form 1–N, specifying the types of markets that could register as national securities exchanges, solely for the purposes of trading security futures products, and the information such markets would have to provide to the Commission. The Commission also proposed to amend Exchange Act Rules 6a–2 and 6a–3 [20] to exclude Security Futures Product Exchanges from the requirements of those rules. Finally, the Commission proposed to add a new provision to Rule 202.3 of its procedural rules [21] to indicate that Form 1–N filings would be routed to the Commission's Division of Market Regulation, which would be permitted to return a defective filing or hold it until corrected.

As discussed below, the Commission is adopting Rule 6a–4 and Form 1–N, with slight modifications, in response to concerns raised by commenters. The Commission also is adopting amendments to Exchange Act Rules 6a–2 and 6a–3,[22] and Rule 202.3 of the Commission's procedural rules,[23] substantially as proposed.

The Commission received two comment letters [24] regarding these proposals. Both commenters were critical of the Commission's proposal, arguing that it would not result in a level playing field between futures markets and securities markets. One commenter took the view that the process proposed by the Commission would be notice registration in name only, because it would require the same effort and expense as an application for registration as a national securities exchange.[25] This commenter further stated that the proposed requirements would require a wasteful duplication of information that futures markets have already filed with the CFTC, and urged the Commission to adopt the same standards and procedures proposed by the CFTC for its notice registration process. The second commenter added that the amount of information that the Commission would require from Security Futures Product Exchanges was unnecessary and unduly burdensome because the CFTC was the primary regulator of these entities.[26]

In proposing Rule 6a–4 and Form 1–N, the Commission was sensitive to the fact that markets trading security futures products would, pursuant to the regulatory framework set forth in the CFMA, be subject to the jurisdiction of both the Commission and the CFTC. However, as the second commenter acknowledges,[27] Section 6(g)(2)(A) of the Exchange Act specifically grants to the Commission the authority to require a Security Futures Product Exchange to provide information ''comparable to the information and documents required for national securities exchanges under Section 6(a)'' of the Exchange Act.[28] Accordingly, proposed Rule 6a–4 was closely modeled on Exchange Act Rules 6a–1, 6a–2, and 6a–3;[29] and Form 1–N was closely modeled on Form 1, the application used to register as a national securities exchange pursuant to Section 6(a) of the Exchange Act.[30] At the same time, Section 6(g)(2)(B) of the Exchange Act [31] requires that the registration of an eligible futures market as a Security Futures Product Exchange will become effective contemporaneously with the submission of the required notice. Thus, although the Commission may require futures markets to submit information ''comparable'' to that required to be provided by the securities markets, the Exchange Act expressly prohibits the Commission from instituting an approval process with respect to such information.

The two commenters compared the burden imposed on Security Futures Product Exchanges to notice register with the Commission with the burden imposed on securities exchanges to become notice designated by the CFTC.[32] The Commission believes, however, that a more appropriate comparison is between the requirements imposed by the Commission on Security Futures Product Exchanges and other national securities exchanges. In this regard, a futures market that wishes to become a national securities exchange pursuant to section 6(g) of the Exchange Act [33] would be expected to provide significantly less information than would a securities market that wishes to become a national securities exchange pursuant to section 6(a) of the Exchange Act.[34] Specifically, the Commission notes that a futures market that submits a Form 1–N would be required to provide information about its operations only to the extent that such information directly relates to its proposed trading of security futures products. Provided that all required information is filed with the Commission, the Security Futures Product Exchange's registration would be effective upon filing.

Furthermore, the Commission does not believe that its proposal would impose duplicative or unnecessary reporting requirements on Security Futures Product Exchanges. Section 6(g)(2)(A) of the Exchange Act [35] specifically provides that a futures market seeking to register with the Commission as a Security Futures Product Exchange may submit to the Commission copies of documents that it has already filed with the CFTC, to the extent that such documents contain information satisfying the Commission's informational requirements.[36] The Commission does not seek to dictate the form of filings made by futures markets, so long as the information required by the Commission is submitted. If a futures market has filed with the CFTC information required by the Form 1–N exhibits, discussed below, then the futures market may provide a copy of that filing to the Commission and identify the information relating to specified Form 1–N exhibit(s) that is included in the CFTC filing.[37]

For these reasons, the Commission has decided to adopt the procedures for notice registration of Security Futures Products Exchanges largely as proposed. However, in response to the comment letters, the Commission is modifying the original proposal, as discussed below, to further reduce the reporting burden on these entities.

2. Registration Requirements for Security Futures Product Exchanges Filing Form 1–N

The Commission is adopting paragraph (a) of Rule 6a–4 as proposed. Specifically, a ''board of trade,'' as defined in the CEA,[38] may register with

[19] Pursuant to its authority under the CEA, the CFTC may suspend or revoke the registration of boards of trade or other entities registered under the CEA. *See* 7 U.S.C. 7b.

[20] 17 CFR 240.6a–2 and 240.6a–3.

[21] 17 CFR 202.3.

[22] 17 CFR 240.6a–2 and 240.6a–3.

[23] 17 CFR 202.3.

[24] *See* CBOT Letter and CME Letter.

[25] *See* CME Letter.

[26] *See* CBOT Letter.

[27] *See* id.

[28] 15 U.S.C. 78f(g)(2)(A).

[29] 17 CFR 240.6a–1, 240.6a–2, and 240.6a–3.

[30] 15 U.S.C. 78f(a). Form 1 also may be used to apply for an exemption from exchange registration based on limited volume.

[31] 15 U.S.C. 78f(g)(2)(B).

[32] *See* CBOT Letter and CME Letter.

[33] 15 U.S.C. 78f(g).

[34] 15 U.S.C. 78f(a).

[35] *15 U.S.C. 78f(g)(2)(A).*

[36] The Commission is adopting this statutory provision in Rule 6a–4(b)(7), 17 CFR 240.6a–4(b)(7).

[37] However, information submitted in this manner would still, for most exhibits, have to be current within one month of the date that the futures market files its Form 1–N with the Commission. *See* Form 1–N.

[38] *See* 7 U.S.C. 1a(2).

the Commission pursuant to section 6(g) of the Exchange Act by filing Form 1–N if: (i) It has been designated a contract market by the CFTC or is registered as a derivative transaction execution facility under section 5a of the CEA; [39] (ii) such designation or registration is not suspended by the CFTC;[40] and (iii) such exchange does not serve as a market place for transactions in securities other than security futures products or futures on exempted securities or on groups or indexes of securities, or options thereon.[41]

The Commission also is adopting Form 1–N as proposed, with a modification to Exhibit G, in response to commenters' concerns, to clarify that the scope of information requested by the Commission is limited to that information which relates to the trading of security futures products.[42] Form 1–N is not an application, and the Commission is not required to publish the notice for comment or to make specific determinations as to whether an exchange's systems, rules, and policies are consistent with the Exchange Act. Instead, Form 1–N will serve as a notice to the Commission that the exchange seeks to trade security futures products and will provide to the Commission information it needs to exercise its regulatory responsibilities. As adopted, Form 1–N consists of an execution page and nine exhibits, lettered A through I. In response to commenters' concerns,

- Exhibit A requires a copy of an exchange's constitution, articles of incorporation or association with all subsequent amendments, and by-laws or corresponding rules.
- Exhibit B requires an exchange's written rulings, settled practices having the effect of rules,[43] and interpretations of its governing board or other committee with respect to its rules, by-laws, constitution, or trading practices that are not included in Exhibit A.
- Exhibit C requires basic information regarding any subsidiary, affiliate, or other related entity involved in the trading of security futures products.[44]
- Exhibit D requires a narrative description of how trading is carried out on the exchange's trading system.[45] Exhibit D also requires the exchange to submit a copy of the trading system users' manual.
- Exhibit E requires general information regarding an exchange's officers, governors, or persons performing similar functions during the previous year.[46]
- Exhibit F requires the exchange to provide certain information regarding an exchange's ownership.[47]
- Exhibit G requires a description of an exchange's criteria for membership, including conditions under which members may be subject to suspension or termination, and any procedures that would be involved in the suspension or termination of a member. Exhibit G applies only to the extent that the exchange has not provided such information pursuant to Exhibit A. As noted above, the Commission is modifying Exhibit G slightly from its proposal to clarify that the scope of information requested is limited to that information which relates to the exchange's members that trade security futures products.
- Exhibit H requires certain information relating to an exchange's members, participants, subscribers, or other users.[48] One commenter stated that it was unclear whether this proposed requirement would relate to all persons who have direct access to the exchange or to all customers, noting that in some instances these two categories of persons could be the same.[49] The commenter also noted that lists of registered terminal operators authorized to enter trades into electronic trading systems may be subject to frequent change, and that the Commission should not require such information in the first instance. In response to this comment, the Commission notes that Exhibit H does not seek to obtain information regarding customers. Instead, the Commission is requesting information only about members and other persons with whom the market has a contractual relationship. The Commission does not believe that it is necessary to modify Exhibit H and is adopting it as proposed.
- Exhibit I requires a schedule of the security futures products that the exchange proposes to list, indicating for each the name of the issuer and a description of the security.

An exchange filing Form 1–N is required to submit the information required by Exhibits A, B, C, F, and H current as of the latest date practicable within one month of the date that it files Form 1–N. In addition, if an exchange discovers that any information filed on Form 1–N was inaccurate when filed, it must promptly submit an amendment that corrects the inaccuracy.[50]

3. Filing of Periodic Amendments

a. *Amendments in Case of Inaccurate or Incomplete Information.* The Commission is adopting paragraph (b)(1) of Rule 6a–4 with slight modifications to the proposal.[51] As proposed, this provision would have required an exchange to file an amendment to Form 1–N if any action were taken that rendered inaccurate, or that caused to be incomplete, any information filed on the execution page of Form 1–N or any information filed as part of Exhibits C, E, F, or H. A Security Futures Product Exchange would have been required to file such an

[39] 7 U.S.C. 7a.

[40] *See* Section 6(g)(1)(A) of the Exchange Act, 15 U.S.C. 78f(g)(1)(A).

[41] 17 CFR 240.6a–4(a)(1).

[42] 17 CFR 249.10.

[43] For purposes of Exhibit B to Form 1–N, the Commission considers settled practices to be the policies of an exchange that are not otherwise covered in its written rulings.

[44] Specifically, Exhibit C requires for all such entities: the name and address of the organization; the form of the organization; the name of the state and statute citation under which organized; the date of incorporation in present form; a brief description of the nature and extent of affiliation; a brief description of business or functions; a copy of the constitution or articles of incorporation or association, including all amendments and existing by-laws or corresponding rules or instruments; the name and title of the present officers, governors, or persons performing similar functions; and an indication of whether such business or organization ceased to be associated with the exchange during the previous year and the reasons for such termination.

[45] This description must include: the means of access to the system; the procedures governing entry and display of quotations and orders in the system; the procedures governing the execution, reporting, clearance, and settlement of transactions in connection with the system; proposed fees; the procedures for ensuring compliance with system usage guidelines; the hours of operation of the system; and the date on which the exchange intends to commence operation of the system. The exchange is not required to submit technical specifications for the system.

[46] For such persons, the exchange is required to provide the name, title, dates of commencement and termination of term of office or position, and type of business in which each is primarily engaged.

[47] Exhibit F applies only to exchanges that have one or more owners, shareholders, or partners who are not also members of the exchange. An exchange that is a corporation is required to list each shareholder that directly owns 5% or more of any class of the exchange's voting securities. If the exchange is a partnership, it is required to list all general partners and those limited and special partners who have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital. For these persons, the exchange is required to list the full legal name, title or status, the date the title or status was acquired, approximate ownership interest, and whether the person has control (as defined in the instruction to Form 1–N).

[48] Specifically, Exhibit H requires the following information: name; if such user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity; a brief description of the type of activities primarily engaged in by the member, participant, subscriber, or user; and the class of membership, participation, or other access.

[49] *See* CBOT Letter.

[50] Rule 6a–4(a)(2), 17 CFR 240.6a–4(a)(2).

[51] 17 CFR 240.6a–4(b)(1).

amendment within 10 days of the action in question.

One commenter argued, as a preliminary matter, that such amendments should be required only with respect to material inaccuracies.[52] The commenter further suggested that the 10-day period should instead be at least 30 days, because a 30-day timeframe would be consistent with the requirement that information filed in the Form 1–N need be current only within one month of the date of filing. Moreover, the commenter noted that, on designated contract markets where memberships are held in the name of individuals, the markets' membership lists may change multiple times each month. Similarly, lists of registered terminal operators authorized to enter trades into electronic trading systems may be subject to frequent change. The commenter argued, therefore, that it would be particularly burdensome for Security Futures Product Exchanges to update Exhibits F and H within 10 days, and that annual resubmission of Exhibits F and H should be sufficient. The commenter urged the Commission not to require piecemeal amendments every time one individual is added to, or removed from, one of the categories of information covered by the exhibits.

In response to this comment and to the general comments discussed above,[53] Rule 6a–4(b)(1) as adopted does not require Security Futures Product Exchanges to submit updates to Exhibits C, E, or H within 10 days after actions render such information inaccurate or incomplete. In addition, the Commission is adopting a 30-day time period in which Security Futures Product Exchanges must update information on Exhibit F. Specifically, Rule 6a–4(b)(1), as adopted, requires a Security Futures Product Exchange to submit to the Commission updates to the execution page within 10 days and to submit updates to the information provided in Exhibit F within 30 days, after any action renders it inaccurate or incomplete. While the Commission believes that 30 days, rather than 10 days, is an appropriate timeframe for an exchange to update information on Exhibit F, the Commission believes that it is essential to the Commission's ability to fulfill its obligations under the Exchange Act for the basic information on the execution page to be complete and accurate at all times.

Finally, because the Commission has determined not to require the information in Exhibits C, E, and H to be updated within 10 days of becoming inaccurate, the Commission instead is adopting a requirement that Security Futures Product Exchanges provide the information required in Exhibits C and E upon request by the Commission and the public.[54] Security Futures Product Exchanges must maintain records relating to changes in information in Exhibits C and E as of the latest practicable date but, at a minimum, such information must be up-to-date within 30 days.

b. *Other Periodic Updates.* The Commission received no comments on its proposed requirements that every Security Futures Product Exchange periodically file, as an amendment to Form 1–N, certain information, regardless of whether that information has changed since the previous filing, and is adopting them as proposed. Specifically, every Security Futures Product Exchange must file updates of Exhibits F, H, and I on or before June 30, 2002, and by June 30 every year thereafter,[55] and Exhibits A, B, C, and E on or before June 30, 2004, and by June 30 every three years thereafter.[56] The information must be current as of the latest date practicable within three months of the date the Security Futures Product Exchange files the amendment. These requirements are designed to ensure that the Commission receives accurate and updated information about Security Futures Product Exchanges so that it may carry out its regulatory responsibilities.

c. *Exemption from Requirement to File Paper Copies of All Exhibits.* The Commission is adopting Rule 6a–4(b)(5), which permits a Security Futures Product Exchange '' in lieu of providing paper amendments to Exhibits A, B, C, E, F, H, and I '' to meet the obligation to update this information through certain alternate means. Under this provision, a Security Futures Product Exchange may provide responsive information that was available in a publication that is issued on an annual or more frequent basis.[57] Another alternative available to a Security Futures Product Exchange is to make the responsive information available to the Commission and to the public upon request.[58] Finally, a Security Futures Product Exchange may make the responsive information available on a web site.[59]

The Commission received one comment relating to the proposed alternate means of updating information.[60] This commenter acknowledged that the Commission's proposals represented useful attempts to reduce the burden on Security Futures Product Exchanges of filing amendments to Form 1–N. However, the commenter stated that these provisions would not be helpful because much of the information required by the exhibits is generally not made available to the public through an exchange's web site, its publications, or otherwise.

The Commission believes, nevertheless, that these alternate means of providing updates of certain required information will relieve much of the burden faced by those exchanges that currently, or choose in the future to, make this information available through these alternative means. Notably, a Security Futures Product Exchange may never have to file paper updates of the exhibits to Form 1–N, provided it makes the information available by one of the alternate means discussed above. Moreover, the Commission notes that these provisions were originally developed to alleviate the burden on national securities exchanges as they update Form 1. The Commission is extending these provisions to Security Futures Product Exchanges that now must file and update Form 1–N to ensure that Security Futures Product Exchanges are permitted to rely upon alternate means of compliance to the same extent as other national securities exchanges.

4. Filing of Supplemental Material

a. *Material Issued to Members, Participants, or Subscribers.* The Commission is adopting Rule 6a–4(c)(1)[61] as proposed. Under this provision, a Security Futures Product Exchange is required to file with the Commission any material related to the

[52] *See* CBOT Letter.

[53] *See supra* notes 24–37 and accompanying text.

[54] Rule 6a–4(b)(2), 17 CFR 240.6a–4(b)(2).

[55] Rule 6a–4(b)(3), 17 CFR 240.6a–4(b)(3).

[56] Rule 6a–4(b)(4), 17 CFR 240.6a–4(b)(4).

[57] To avail itself of this option, the Security Futures Product Exchange must identify to the Commission the name of such publication; the name, address, and telephone number of the person from whom it may be obtained; and the publication's price. The exchange also must certify to the accuracy of such information as of its publication date. Rule 6a–4(b)(5)(i), 17 CFR 240.6a–4(b)(5)(i).

[58] To avail itself of this option, the Security Futures Product Exchange must certify that this information is kept up-to-date and is available to the Commission and to the public upon request. Rule 6a–4(b)(5)(ii), 17 CFR 240.6a–4(b)(5)(ii).

[59] To avail itself of this option, the Security Futures Product Exchange must control the web site and the responsive information must be continuously available on it. The Security Futures Product Exchange also must indicate to the Commission the location of the web site where the information may be found and certify that the information available there is accurate as of the date that the exchange submits such certification. Rule 6a–4(b)(5)(iii), 17 CFR 240.6a–4(b)(5)(iii).

[1] *See* CBOT Letter.

[61] 17 CFR 240.6a–4(c)(1).

trading of security futures products (including notices, circulars, bulletins, lists, and periodicals) that is issued or made generally available to members of, participants in, or subscribers to, the exchange. This material must be filed within 10 days after the Security Futures Product Exchange issues it or makes it generally available. In lieu of making a hardcopy submission, a Security Futures Product Exchange may comply with this requirement by indicating the location of an Internet web site where such information may be found and certifying that the information available at that location is accurate as of the date that the exchange submits such certification. To avail itself of this option, the Security Futures Product Exchange must control the web site and the responsive information must be continuously available on it.

One commenter stated that Security Futures Product Exchanges should not be required to provide the Commission with copies of all of these supplemental materials on a continuing basis.[62] This commenter added that, if the Commission insisted on requiring submission of these items, then Security Futures Product Exchanges should be allowed 30 rather than 10 days to report them. The commenter also suggested that Security Futures Product Exchanges be permitted to fulfill the supplemental information requirement by making such information available on a web site.

From its experience with requiring such information from existing national securities exchanges, the Commission does not believe that the 10-day requirement in which to provide the supplemental materials is unduly burdensome. Furthermore, the Commission notes that its proposal, as well as its final rule, permits Security Futures Product Exchanges to fulfill this requirement by making the supplemental material available on a web site. b.

b. *Trading Reports.* The Commission received no comments on Rule 6a–4(c)(2)[63] and is adopting it with minor changes to the language in the rule to clarify the information that must be reported. Rule 6a–4(c)(2) requires every Security Futures Product Exchange to file a report within 15 days after the end of each calendar month concerning the security futures products traded on that exchange during the previous calendar month. The report must include: (1) for each contract of sale for future delivery of a single security, the number of contracts traded on the exchange during the relevant calendar month and the total number of shares underlying such contracts traded; and (2) for each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on the exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.

5. Exemption From Requirement To Update Exhibit C

The Commission is adopting a proposed provision to permit a Security Futures Product Exchange to request an exemption from the requirement that it update Exhibit C to its Form 1–N with respect to one of its affiliates or subsidiaries if another national securities exchange lists that entity in Exhibit C to its Form 1 or Form 1–N. The Commission is adopting this provision as proposed.[64]

The Commission also is adopting a provision that permits a Security Futures Product Exchange to request an exemption from the requirement that it update Exhibit C to its Form 1–N with respect to an inactive subsidiary or affiliate if such subsidiary or affiliate has been inactive throughout the subsidiary's or affiliate's latest fiscal year.[65] As proposed, the exemption would have been available only to inactive *subsidiaries* of a Security Futures Product Exchange. The rule, as amended, makes the exemption available to inactive *affiliates,* as well. The Commission generally believes that no regulatory purpose would be served by requiring a Security Futures Product Exchange to file updates with respect to such inactive entities.

6. Proposed Amendments to Exchange Act Rules 6a–2 and 6a–3

Rules 6a–2 and 6a–3 under the Exchange Act[66] set forth the ongoing filing requirements for registered or exempted exchanges that file applications with the Commission to become national securities exchanges pursuant to Rule 6a–1.[67] Because the Commission is adopting new Rule 6a–4, which incorporates the relevant provisions of Rules 6a–2 and 6a–3 that relate to filing obligations of Security Futures Product Exchanges, the Commission is adopting amendments to Rules 6a–2 and 6a–3, as proposed, to exempt Security Futures Product Exchanges from the requirements of these rules.

7. Processing of Form 1–N

The Commission proposed to amend paragraph (b) of Rule 202.3 of the Commission's procedural rules[68] to accommodate proposed Form 1–N. Specifically, the Commission proposed to add a new paragraph (b)(3), which would provide that notices for registration as a national securities exchange filed with the Commission pursuant to section 6(g)(1) of the Exchange Act[69] would be routed to the Division of Market Regulation, which would examine them to determine whether all necessary information had been supplied and whether all required documents had been furnished in proper form. The proposed amendment also would provide that the Division of Market Regulation could return defective filings with a request for correction or hold them until they are corrected.

The Commission received no comments on its proposed amendment to Rule 202.3 and is adopting this amendment with only one minor, technical revision. In the proposed amendment to Rule 202.3, the Commission on two occasions referred to Form 1–N filings as ''applications.'' However, as noted above, Form 1–N is not an application and the Commission would not ''approve'' an exchange before it begins to trade security futures products. Therefore, new Rule 202.3(b)(3)[70] refers to these filings as ''notices.''

III. Procedures for Filing Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations

A. Background

Pursuant to section 19(b)(1) of the Exchange Act,[71] all self-regulatory organizations (''SROs'') are required to file with the Commission copies of any proposed rule, or any addition to or deletion from the rules of such SRO (''proposed rule change''). National securities exchanges registered pursuant to section 6(g) of the Exchange Act[72] and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act[73] are SROs as defined by section 3(a)(26) of the Exchange Act.[74] Security Futures

[62] *See* CBOT Letter.

[63] 17 CFR 240.6a–4(c)(2).

[64] Rule 6a–4(b)(6)(i)(A), 17 CFR 240.6a–4(b)(6)(i)(A).

[65] Rule 6a–4(b)(6)(i)(B), 17 CFR 240.6a–4(b)(6)(i)(B).

[66] 17 CFR 240.6a–2 and 240.6a–3.

[67] 17 CFR 240.6a–1.

[68] 17 CFR 202.3(b).

[69] 15 U.S.C. 78f(g)(1).

[70] 17 CFR 202.3(b)(3).

[71] 15 U.S.C. 78s(b)(1).

[72] 15 U.S.C. 78f(g).

[73] 15 U.S.C. 78o–3(k).

[74] 15 U.S.C. 78c(a)(26).

Product Exchanges and Limited Purpose National Securities Associations are exempt from submitting proposed rule changes pursuant to section 19(b) of the Exchange Act,[75] except in the three circumstances described below.

1. Proposed Rule Changes that Relate to Margin

First, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to submit to the Commission proposed rule changes that relate to margin, except for those that result in higher margin levels, under sections 19(b)(1) and (b)(2) of the Exchange Act.[76] These are the statutory provisions under which all SROs currently file proposed rule changes with the Commission. Section 19(b)(1) of the Exchange Act requires that proposed rule changes be accompanied by a concise general statement of the basis and purpose of the proposed rule change. Upon filing, the Commission is directed to publish notice of such proposed rule change, together with the terms of substance or description of the subjects and issues involved, and give interested persons the opportunity to submit comments on the proposed rule change. Finally, section 19(b)(1) of the Exchange Act states that proposed rule changes are not effective unless approved by the Commission or otherwise permitted in accordance with the provisions of section 19(b).[77] Section 19(b)(2) of the Exchange Act sets forth the standards by which the Commission must determine whether a proposed rule change submitted pursuant to section 19(b)(1) of the Exchange Act must be either approved or disapproved. Specifically, the Commission is directed to approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such SRO or to disapprove a proposed rule change if it cannot make such a finding.

2. Other Proposed Rule Changes Related to Security Futures Products

Second, proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such SRO's obligation to enforce the securities laws must be submitted to the Commission pursuant to new section 19(b)(7) of the Exchange Act.[78] Specifically, section 19(b)(7)(A) of the Exchange Act is similar to the current rule filing requirements, set forth in section 19(b)(1) of the Exchange Act, in that it requires that a proposed rule change filed pursuant to this section contain a concise general statement of the basis and purpose of the proposed change. Similarly, upon such filing, the Commission is required to promptly publish notice of such proposed rule change and provide interested persons with the opportunity to submit comments.

Section 19(b)(7)(B) of the Exchange Act sets forth the requirements according to which a proposed rule change that is submitted pursuant to section 19(b)(7)(A) of the Exchange Act[79] may take effect. Section 19(b)(7)(B) of the Exchange Act differs from the process that applies to existing SROs, set forth in Section 19(b)(2) of the Exchange Act, by requiring the concurrent submission of the proposed rule change to the CFTC. In addition, section 19(b)(7)(B) of the Exchange Act, instead of requiring Commission approval of a proposed rule change submitted pursuant to section 19(b)(7)(A) of the Exchange Act, provides that a proposed rule change, upon filing with the Commission and the CFTC, may take effect when: (i) A written certification has been filed with the CFTC under section 5c(c) of the CEA;[80] (ii) the CFTC determines that review of the proposed rule change is not necessary; or (iii) the CFTC approves the proposed rule change.

The CFMA also added Section 19(b)(7)(C) to the Exchange Act,[81] which grants to the Commission, after consultation with the CFTC, the authority to summarily abrogate a proposed rule change that has taken effect pursuant to section 19(b)(7)(B) of the Exchange Act[82] if it appears to the Commission that such rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.[83] In the event that this occurs, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required, pursuant to sections 6(g)(4)(B)(iii)[84] and 15A(k)(3)(C)[85] of the Exchange Act, respectively, to refile the proposed rule change pursuant to the requirements of section 19(b)(1) of the Exchange Act.

3. Proposed Rule Changes that Have Been Abrogated

Finally, as just mentioned above, proposed rule changes that have been abrogated by the Commission must be refiled under section 19(b)(1) of the Act.[86] Section 19(b)(7)(D) of the Exchange Act[87] sets forth the Commission's timing requirements and standards for review of proposed rule changes that have been abrogated pursuant to section 19(b)(7)(C) of the Exchange Act and refiled pursuant to section 19(b)(1) of the Exchange Act. Specifically, the Commission must, within 35 days of the date of publication of notice of the filing of the proposed rule change, or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the SRO consents, either by order approve the proposed rule change or, after consultation with the CFTC, institute disapproval proceedings.[88]

The standard by which the Commission determines whether to approve a proposed rule change that has been abrogated pursuant to section 19(b)(7)(C) differs from the standard used by the Commission to consider

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

[76] Sections 6(g)(4)(B)(ii), 15 U.S.C. 78f(g)(4)(B)(ii); 15A(k)(3)(B), 15 U.S.C. 78o–3(k)(3)(B); 15 U.S.C. 78s(b)(1) and (b)(2).

[77] Section 19(b)(3) of the Exchange Act sets forth the categories of proposed rule changes that may take effect upon filing with the Commission. 15 U.S.C. 78s(b)(3).

[78] Sections 6(g)(4)(B)(i), 15 U.S.C. 78f(g)(4)(B)(i), and 15A(k)(3)(A), 15 U.S.C. 780–3(k)(3)(A). Section 19(b)(7) of the Exchange Act grants to the Commission the authority to adopt rules regarding the filing of proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations. 15 U.S.C. 78s(b)(7).

[79] 15 U.S.C. 78s(b)(7)(A).

[80] 7 U.S.C. 7a–2(c). Pursuant to Section 5c(c) of the CEA, a registered entity may elect to approve and implement any new rule or rule amendment by providing the CFTC with a written certification that the new rule or rule amendment complies with the CEA.

[81] 15 U.S.C. 78s(b)(7)(C).

[82] 15 U.S.C. 78s(b)(7)(B). Pursuant to this section, Commission action to abrogate a rule change will not affect the validity or force of the rule change during the period it was in effect.

[83] The Commission notes that it currently exercises similar abrogation authority pursuant to Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C. 78s(b)(3)(C), with respect to proposed rule changes filed by the existing SROs that are immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act, 15 U.S.C. 78s(b)(3)(A).

[84] 15 U.S.C. 78f(g)(4)(B)(iii).

[85] 15 U.S.C. 78o–3(k)(3)(C).

[86] 15 U.S.C. 78s(b)(1).

[87] 15 U.S.C. 78s(b)(7)(D).

[88] The Commission notes that this is similar to the system currently in place for SRO filings, except for the CFTC's role and the approval standard to be applied by the Commission.

whether a proposed rule change filed under section 19(b)(1) of the Exchange Act should be approved. Specifically, section 19(b)(7)(D)(ii) of the Exchange Act[89] states that the Commission must approve a proposed rule change that has been abrogated and refiled under section 19(b)(1) of the Exchange Act if the Commission finds that it does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors.

B. Discussion

1. Description of Proposed Rules

In the Proposing Release, the Commission proposed rules and forms, as well as amendments to existing rules and forms, to implement the CFMA's requirements regarding proposed rule changes filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations. First, the Commission proposed to use Form 19b–4 for proposed rule changes that relate to margin, except for changes that result in higher margin levels. The Commission also proposed amendments to Rule 19b–4[90] and Form 19b–4[91] to establish procedures for the filing and approval of proposed rule changes that take effect under section 19(b)(7)(B) of the Exchange Act but are subsequently abrogated by the Commission, pursuant to section 19(b)(7)(C) of the Exchange Act.[92] Finally, the Commission proposed Rule 19b–7 and Form 19b–7 to establish procedures for filing proposed rule changes pursuant to section 19(b)(7) of the Exchange Act.

After carefully considering the comment letters,[93] the Commission has decided to adopt the amendments to Rule 19b–4 and Form 19b–4 as proposed. In addition, the Commission is adopting Rule 19b–7 and Form 19b–7 with modifications that respond to concerns raised by commenters and to make the rule and form more closely comparable to the current rule filing process.

In response to these proposals, all of the commenters noted the differences between the rule filing processes of the Commission and the CFTC.[94] One commenter argued that the rule filing process proposed by the Commission was significantly more time-consuming and detailed than the process for proposed rule changes filed with the CFTC.[95] This commenter argued that copies of submissions made to the CFTC under the CEA are sufficient to meet the requirements of Section 19(b)(7) of the Exchange Act and should be considered sufficient for filing with the Commission. This commenter recognized, however, that some of the more detailed requirements imposed by proposed Rule 19b–7 and proposed Form 19b–7 are dictated by the publication requirements that are imposed by the Exchange Act, but not the CEA, and therefore, the commenter did not object to the Commission's proposals.

The differences noted by the commenters between the Commission's SRO rule filing process and that of the CFTC are the direct result of the different statutory mandates under which each agency operates. Unlike Section 19(b) of the Exchange Act, Section 5c of the CEA does not direct the CFTC to publish or solicit comment on rules or rule amendments of registered entities.[96] Rather, section 5c(c)(1) of the CEA states that a registered entity *may* elect to approve and implement any new rule or rule amendment by providing the CFTC with a written certification that the new rule or rule amendment complies with the CEA. A registered entity *may*, pursuant to section 5c(c)(2)(A) of the CEA, seek prior approval from the CFTC of a new rule or rule amendment. Section 5c(c)(2)(B) of the CEA does require prior approval of new rules or rule amendments that materially change the terms and conditions of any contract of sale, if the amendment applies to contracts already listed for trading that have open interest. Moreover, section 5c(c)(3) of the CEA directs the CFTC to approve any new rule or rule amendment, unless it finds that such rule or rule amendment would violate the CEA.

Clearly, the requirements of Section 5c of the CEA differ from the requirements set forth in Section 19(b) of the Exchange Act, which specifically requires the Commission to review, publish, and approve or institute proceedings to disapprove virtually *all* proposed rule changes of its SROs. The Commission cannot ignore its statutory mandate. The Commission, however, recognizes the evolving competitive landscape of the marketplace and is continuing to review its rule filing process. Nevertheless, at this time, the Commission believes that information required in Form 19b–7, as discussed below, is necessary for the Commission to fulfill its statutory obligations to fully implement the CFMA.

2. Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations Related to Margin

The Commission has decided to use Form 19b–4, as proposed, for proposed rule changes that relate to margin, except for those that result in higher margin. Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to file these margin rule changes under sections 19(b)(1) and 19(b)(2) of the Exchange Act, which, as discussed above, are the statutory provisions under which existing SROs file proposed rule changes.[97] Thus, no changes to either Rule 19b–4 or Form 19b–4 are needed to accommodate these proposed rule changes filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations.

3. Proposed Rule Changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations Required To Be Filed Under Section 19(b)(7) of the Exchange Act

The Commission is adopting Rule 19b–7 and Form 19b–7 to establish procedures for filing proposed rule changes pursuant to section 19(b)(7) of the Exchange Act.[98] In the Proposing Release, the Commission proposed to model Rule 19b–7 and Form 19b–7 on proposed Rule 19b–6 and proposed Form 19b–6[99] to incorporate the Commission's recent review of the SRO rule filing process. One commenter, however, questioned the appropriateness of using a process that only has been proposed for existing SROs and is still under consideration by

[89] 15 U.S.C. 78s(b)(7)(D)(ii).

[90] 17 CFR 240.19b–4.

[91] 17 CFR 249.819.

[92] 15 U.S.C. 78s(b)(7)(C). The Commission also proposed a technical amendment to paragraph (a) of Rule 19b–4 and Part A of Form 19b*ndash;4 to exclude from the requirement that SROs file proposed rule changes on Form 19b–4 those proposed rule changes submitted pursuant to Section 19(b)(7) of the Exchange Act.

[93] *See supra* note 15.

[94] *See supra* note 15.

[95] *See* NFA Letter.

[96] A registered entity is defined in Section 1a(29) as a board of trade designated as a contract market under Section 5 of the CEA; a derivatives transaction execution facility registered under Section 5a of the CEA; a derivatives clearing organization registered under Section 5b of the CEA; and a board of trade designated as a contract market under Section 5f of the CEA. 7 U.S.C. 1a.

[97] Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B)(ii) and 78o–3(k)(3)(B).

[98] 15 U.S.C. 78s(b)(7).

[99] The Commission recently published a proposal to replace Rule 19b–4 and Form 19b–4 with proposed Rule 19b–6 and proposed Form 19b–6. *See* Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001) (''Rule 19b–6 Proposing Release'').

the Commission.[100] This commenter noted that proposed Rule 19b–7 and Form 19b–7 could subject Security Futures Product Exchanges and Limited Purpose National Securities Associations to a different standard than existing SROs. The commenter also criticized the proposed Rule 19b–6 process as adding many new requirements, delays, and conditions to proposed rule changes of existing SROs. In light of the fact that the Commission is still considering proposed Rule 19b–6 and Form 19b–6, the Commission has decided to modify Rule 19b–7 and Form 19b–7 to more closely resemble current Rule 19b–4 and Form 19b–4.

Section 19(b) of the Exchange Act [101] sets forth specific requirements for both the SROs and the Commission concerning proposed rule changes. As discussed above, Security Futures Product Exchanges and Limited Purpose National Securities Associations, upon notice registration with the Commission, become SROs for purposes of the Exchange Act. The CFMA, however, exempted Security Futures Product Exchanges and Limited Purpose National Securities Associations from submitting proposed rule changes pursuant to section 19(b) of the Exchange Act as other SROs are required to do, except in certain circumstances, and it established different rule filing requirements for certain proposed rule changes filed by these markets. The Commission believes that Rule 19b–7 and Form 19b–7, as adopted, reflect and implement the Exchange Act's requirements regarding proposed rule changes submitted to the Commission by Security Futures Product Exchanges and Limited Purpose National Securities Associations.

Specifically, Rule 19b–7 requires that proposed rule changes submitted to the Commission pursuant to section 19(b)(7) of the Exchange Act be made on Form 19b–7. In addition, Rule 19b–7 provides that a proposed rule change will not be deemed filed on the date it is received unless a completed Form 19b–7 is submitted and, in order to elicit meaningful comment, Form 19b–7 is accompanied by (i) a clear and concise statement of the basis and purpose of such rule change, including the impact on competition or efficiency, if any; and (ii) a summary of any written comments received by the SRO on the proposed rule change. The Commission notes that these requirements are substantially the same requirements that are required by Form 19b–4.[102] The Commission also has incorporated such language in the Form 19b–7. The Commission has decided to include these requirements in Rule 19b–7, as well as Form 19b–7, for clarity.

In addition, the Commission has added language to Rule 19b–7 to require Security Futures Product Exchanges and Limited Purpose National Securities Associations to retain at their principal places of business a file, available to interested persons for public inspection and copying, containing all filings made pursuant to Rule 19b–7 as well as all correspondence and other communications reduced to writing. This language is the same as language in Rule 19b–4 [103] and also is incorporated in Forms 19b–4 [104] and 19b–7.[105]

Because the Commission has decided that Form 19b–7 should closely mirror the current rule filing procedures and requirements set forth in Form 19b–4, the Commission has decided not to adopt the proposed certification requirement. Proposed Form 19b–7 would have required a senior member of an exchange's or association's management to certify that the proposed rule change satisfied a number of requirements. The Commission agrees with commenters that the proposed certification requirement should not be part of Form 19b–7 at this time because it is not currently part of the rule filing requirements for existing SROs.[106] Form 19b–7, however, requires the signature of a senior member of an exchange's or association's management, as is currently required by Form 19b–4, to represent that the information contained in Form 19b–7 is current, accurate, and complete.

In addition, the Commission is not adopting two requirements proposed in the *Purpose* section of proposed Form 19b–7. As adopted, Form 19b–7 does not require Security Futures Product Exchanges and Limited Purpose National Securities Associations to describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder. Form 19b–7 also does not require a Security Futures Product Exchange or a Limited Purpose National Securities Association to identify the provisions of the federal securities laws that the SRO reasonably expects the proposed rule change to affect, or to describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws. In response to the concerns raised by a commenter,[107] the Commission is not adopting these proposed provisions because they are not required of existing SROs in the current Form 19b–4.

Further, in response to a commenter,[108] the Commission is adding language to Form 19b–7 to reflect the three events upon which a proposed rule change submitted under section 19(b)(7) of the Exchange Act may take effect pursuant to section 19(b)(7)(B) of the Exchange Act. The Commission had proposed to address only written certifications filed with the CFTC under section 5c(c) of the CEA. Specifically, in the opening paragraph of the Form 19b–7 notice, and Item III of the Form 19b–7 notice, the Commission is adding language to reflect that proposed rule changes submitted pursuant to section 19(b)(7) of the Exchange Act may take effect upon: (1) The filing of a written certification with the CFTC under section 5c(c) of the CEA; [109] (2) a determination by the CFTC that review of the proposed rule change is not necessary; or (3) the CFTC's approval of the proposed rule change. In addition to Form 19b–7, a Security Futures Product Exchange or Limited Purpose National Securities Association is required to file with the Commission as Exhibit 5, discussed below, a copy of any written

[100] *See* CBOE Letter, which recommended ''the rules and forms for proposed rule changes should be identical for fully-registered national securities exchanges and 6(g) exchanges to the maximum extent possible.'' The CBOE also argued that the regulatory disparity between the rule filing processes imposed on the options exchanges, compared to those proposed for Security Futures Product Exchanges, would impose an unfair regulatory burden on the options exchanges. The CBOE noted that options exchanges are subject to a detailed Commission review process for virtually all proposed rule changes, while Security Futures Product Exchanges would be subject to Commission review only in specific enumerated circumstances, with most filings becoming effective upon filing. The CBOE recommended that the Commission modernize its SRO rule review process to reflect the rapidly changing, competitive, and global marketplace, including the regulatory disparity between futures exchanges and national securities exchanges. *See also*, CME Letter, incorporating by reference the comments in the CBOE Letter.

[101] 15 U.S.C. 78s(b).

[102] *See* Form 19b–4, *General Instructions*, B. *Need for Careful Preparation of the Completed Form, Including Exhibits*; *Information to Be Included in the Completed Form*; Item 3, *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*; and Item 5, *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*.

[103] *See* Rule 19b–4(i), 17 CFR 240.19b–4(i).

[104] *See* Form 19b–4, *Exhibit 1*, Item II, *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*; and Item IV, *Solicitation of Comments*.

[105] *See* Form 19b–7 Notice, Item II, *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*; and Item IV, *Solicitation of Comments*.

[106] *See* CBOE Letter.

[107] *See* CBOE Letter.

[108] *See* NFA Letter.

[109] 7 U.S.C. 7a–2(c).

certification filed with the CFTC pursuant to section 5c(c) of the CEA; a copy of any request submitted to the CFTC for a determination that review of the proposed rule change is not necessary and any indication from the CFTC that it has determined that review of the proposed rule change is not necessary; or a copy of any request submitted to the CFTC for approval of the proposed rule change and any indication received from the CFTC that the proposed rule change has been approved.

The Commission notes that it is adopting a shortened format of Form 19b–4 for Form 19b–7. Specifically, Security Futures Product Exchanges and Limited Purposed National Securities Associations are required to prepare a cover page, five exhibits, and a **Federal Register** notice. The cover page includes the requirement, taken from Form 19b–4, that a senior member of the SRO's management sign the filing, to represent that the information contained in Form 19b–7 is current, accurate, and complete. The five exhibits each contain information that currently is required to be submitted in Form 19b–4. Exhibit 1 requires information to be submitted regarding comment letters received by the SRO, including the actual comment letters. Exhibit 2 requires copies of any form, report or questionnaire that the SRO proposes to use to help implement or operate the proposed rule change. Exhibit 3 requires the SRO to submit a statement that describes the procedures that have been taken with regard to the proposed rule change, including any vote of the SRO's board of directors or members. Exhibit 3 also requires the names and telephone numbers of the staff of the SRO who are prepared to respond to questions and comments on the proposed rule change. Exhibit 4 requires that the SRO file the text of the proposed rule change. Finally, Exhibit 5 requires that a Security Futures Product Exchange or Limited Purpose National Securities Association submit copies of any certification, request for review, or request for approval filed with the CFTC concerning the proposed rule change, and any responses received from the CFTC. These documents are necessary for the Commission to determine the effectiveness of a proposed rule change in order to calculate the date by which the Commission must decide whether to abrogate a proposed rule change. The Commission believes that the shortened format adopted today reduces the filing burden on Security Futures Product Exchanges and Limited Purpose National Security Associations, while satisfying the requirements of the Exchange Act.

One commenter suggested that Form 19b–7 be modified to limit the comment letters that are required to be submitted with the form to only substantive comments and communications regarding the version of the proposal that is filed with the Commission.[110] According to the commenter, its rulemaking process can generate a number of drafting or editing comments from its members, and the commenter believes that providing comments on earlier drafts of proposed rules would not only be burdensome, but also, would be of little value to the Commission. In response to the commenter, the Commission clarifies that comments that address editing changes of earlier drafts of proposed rule changes need not be filed with the Commission.

4. Proposed Rule Changes Abrogated by the Commission and Refiled by a Security Futures Product Exchange or Limited Purpose National Securities Association

As discussed above, the Commission has the authority to abrogate a proposed rule change that has become effective pursuant to Section 19(b)(7)(B) of the Exchange Act if, after consultation with the CFTC, it appears to the Commission that the proposed rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.[111] The Commission is adopting amendments, as proposed, to Rule 19b–4 [112] and Form 19b–4 to implement procedures to be used by Security Futures Product Exchanges and Limited Purpose National Securities Associations when filing proposed rule changes that were abrogated by the Commission and are being refiled pursuant to Section 19(b)(1) of the Exchange Act.[113]

C. Solicitation of Comments

As discussed above, the Commission recently published a proposal to replace Rule 19b–4 and Form 19b–4 with proposed Rule 19b–6 and proposed Form 19b–6.[114] The Commission seeks comment on whether the Commission should adopt changes to Rule 19b–7 and Form 19b–7 if the Commission were to adopt proposed Rule 19b–6 and proposed Form 19b–6. Specifically, if the Commission were to adopt proposed Rule 19b–6 and proposed Form 19b–6, should Rule 19b–7 and Form 19b–7 be amended to mirror some or all of the requirements of Rule 19b–6 and Form 19b–6? What differences, if any, should remain between Form 19b–7 and Form 19b–6? In the alternative, should all rule filings required to be made pursuant to Rule 19b–7 on Form 19b–7 be made, instead, on Form 19b–6? If so, the Commission seeks comment as to the modifications, if any, to Rule 19b–6 or Form 19b–6 that would be required.

IV. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act [115] generally provides that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the **Federal Register**. One exception to the 30-day requirement is an agency's finding of good cause for providing a shorter effective date.

The CFMA provides that principal-to-principal transactions between certain market participants in security futures products may commence on August 21, 2001. For futures markets to be able to trade such products, they must first register as exchanges with the Commission and file with the Commission listing standards for security futures products. In addition, for trading to commence on August 21, 2001, a Limited Purpose National Securities Association must have filed with the Commission proposed rule changes to satisfy the requirements set forth in section 15A(k)(2) of the Exchange Act.[116] Prior to the passage of the CFMA, there was no need for the Commission to have rules providing for the expedited registration of futures markets and process for filing of rule changes by futures markets and Limited Purpose National Securities Associations that the Commission is adopting today.

Since the passage of the CFMA, the Commission has moved quickly to propose and adopt rules that would allow futures markets to register as national securities exchanges with the

[110] *See* NFA Letter.

[111] Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C).

[112] The Commission also is adopting a technical amendment to paragraph (a) of Rule 19b–4 and Part A of Form 19b–4 to exclude from the requirement that SROs file proposed rule changes on Form 19b–4 those proposed rule changes submitted pursuant to Section 19(b)(7) of the Exchange Act. *See* Rule 19b–4 and Form 19b–4.

[113] Section 19(b)(1), 15 U.S.C. 78s(b)(1). Pursuant to Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C), an SRO cannot enforce a rule that has been abrogated by the Commission, unless the SRO refiles the proposed rule change under Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and it is approved by the Commission.

[114] *See* Rule 19b–6 Proposing Release, *supra* note 99.

[115] 5 U.S.C. 553(d).

[116] 15 U.S.C. 78o–3(k)(2).

Commission and allow futures markets and Limited Purpose National Securities Associations to file proposed rule changes with the Commission. The CFMA became law on December 21, 2000. The Commission proposed these rules, forms, and amendments to existing rules and form on May 15, 2001. The comment period for the rules, forms, and amendments to the existing rules and form expired on June 14, 2001. The Commission, after reviewing and considering the comments received, is now adopting the rules, forms, and amendments to the existing rules and form that would allow futures markets to register as national securities exchanges with the Commission and allow such exchanges and Limited Purpose National Securities Associations to file proposed rule changes with the Commission as required by the Exchange Act, as amended by the CFMA. By allowing certain principal-to-principal transactions to commence on August 21, 2001, Congress, in essence, established a statutory deadline for the adoption of the additional registration and listing rules. If the effective date is delayed for 30 days, the Commission will not have a rule filing process in place and, consequently, the National Futures Association, currently the only Limited Purpose National Securities Association, will be unable to file its proposed rule changes with the Commission before August 21, 2001.

The primary purpose of the 30-day delayed effectiveness requirement is to give affected parties a reasonable period of time to adjust to the new rules. Here, parties that must comply with the rules, forms, and amendments to the existing rules and form—the futures exchanges and the National Futures Association—would not be harmed by immediate effectiveness of the rules, forms, and amendments to the existing rules and form. The futures exchanges are familiar with the proposed rules, forms, and amendments to the existing rules and form, and the rules, forms, and amendments to the existing rules and form as adopted are similar to the proposals, which were published for comment. Moreover, the 30-day delay in effectiveness could interfere with the goals of the CFMA. For these reasons, the Commission finds that good cause exists for the rules, forms, and amendments to the existing rules and form to be immediately effective upon publication.

V. Paperwork Reduction Act

Certain provisions of the new rules and forms contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[117] Accordingly, the Commission submitted them to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission proposed to create a new collection of information titled ''Rule 6a–4 and Form 1–N.'' OMB approved the new collection and assigned it OMB Control No. 3235–0554. The Commission proposed a second new collection of information titled ''Rule 19b–7 and Form 19b–7.'' OMB approved this new collection and assigned it OMB Control No. 3235–0553. Finally, the Commission proposed to revise a collection of information titled ''Rule 19b–4 and Form 19b–4,'' which already had been assigned OMB Control No. 3235–0045. OMB approved this revision. 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.

In the Proposing Release, the Commission solicited comments on these collection of information requirements.[118] The Commission received no comments that specifically addressed the PRA portion of the Proposing Release. The Commission continues to believe that its estimates of the information collection burdens associated with the new rules and rule amendments are appropriate. These estimates are provided below, as are any changes to estimates resulting from modifications to the proposed rules.

A. Rule 6a–4 and Form 1–N

1. Summary of Collection of Information

As discussed above, Rule 6a–4 sets forth procedures pursuant to which futures markets that meet certain criteria and wish to trade security futures products may ''notice register'' with the Commission. Under Rule 6a–4, a futures market that wishes to trade security futures products must file a Form 1–N with the Commission to become a national securities exchange. Form 1–N requires information regarding, among other things, how the exchange operates, its criteria for membership, its subsidiaries and affiliates, its rules and procedures, and the security futures products it intends to trade.

2. Proposed Use of Information

The information obtained pursuant to Rule 6a–4 and Form 1–N would provide the Commission with basic information about a futures market that wishes to trade security futures products. This information will assist the Commission in fulfilling its regulatory obligations.

3. Respondents

The Commission estimates that seven respondents will seek to become Security Futures Product Exchanges by filing notices on Form 1–N.

4. Total Annual Reporting and Recordkeeping Burden

a. *One-time Costs.* Rule 6a–4 requires each entity wishing to become a Security Futures Product Exchange to file a Form 1–N. The Commission estimates that a Form 1–N submission will take approximately 31 hours to complete at a cost of approximately $3,000 (representing approximately 20 hours of legal work at $128/hour,[119] 11 hours of clerical work at $31/hour,[120] and $100 for miscellaneous clerical expenses). As the Commission believes that seven entities will file to become Security Futures Product Exchanges, the Commission estimates that the total burden on all respondents for filing Form 1–Ns will be approximately 217 hours (7 respondents x 31 hours/respondent), for a total cost of approximately $21,000 (7 responses x $3,000/response). The Commission received no comments on these estimates.

b. *Annual Costs.* After an entity becomes a Security Futures Product Exchange by properly filing the initial Form 1–N, it will be subject to ongoing responsibilities to file: (1) Amendments to the Form 1–N in the event of material changes to the information provided in the Form 1–N; (2) periodic updates of certain information provided in the Form 1–N; (3) certain supplemental information, such as information that is provided to the exchange's members; and (4) a monthly report summarizing the exchange's trading of security futures products.

In response to the comments received, the Commission made minor modifications to Rule 6a–4 and Form 1–N relating to the ongoing reporting requirements of Security Futures Product Exchanges. Specifically, the Commission: (1) Changed the time period within which respondents must report amendments to Exhibit F to Form 1–N from 10 days to 30 days; (2) removed the requirement that

[117] 44 U.S.C. 3501 *et seq.*

[118] *See* Proposing Release, *supra* note 13.

[119] SIA Management and Professional Earnings, Table 107 (Attorney, New York), plus a 35% differential for bonus, overhead, and other expenses. The same estimate for the cost of legal work has been used throughout this section.

[120] SIA Management and Professional Earnings, Table 012 (Secretary) plus a 35% differential for bonus, overhead, and other expenses. The same estimate for the cost of clerical work has been used throughout this section.

respondents provide amendments to Exhibits C, E, and H to Form 1–N within 10 days; (3) established Rule 6a–4(b)(2),[121] which requires respondents to maintain the information relating to Exhibits C and E and to provide such information to the Commission only on request; and (4) modified Exhibit G slightly to clarify that the scope of information required is limited to that information which relates to the trading of security futures products.

The Commission believes that these modifications will reduce the burdens on respondents in a general sense, but not for purposes of collection of information calculations required by the PRA. For example, respondents will incur the same costs and devote the same amount of time preparing amendments Exhibit F, but they will have 30 days rather than 10 days, as originally proposed, to submit such amendments. Similarly, respondents will have to devote the same amount of resources to maintaining the information relating to Exhibits C and E, but Rule 6a–4(b)(2) relieves them of performing the ministerial task of delivering this information to the Commission whenever it is updated. Finally, the Commission notes that alternate means of updating information provided in the Form 1–N are available and encourages respondents to use these means to reduce their reporting burdens. These alternate means were present in the Commission's proposal and, as such, were accounted for when the Commission prepared its initial estimates of the burden on respondents under the PRA.

Therefore, the Commission continues to estimate that each Security Futures Product Exchange will have to file one amendment or periodic update per year, resulting in a burden of approximately 15 hours and a total cost of approximately $1,438 (representing approximately 9 hours of legal work at $128/hour, 6 hours of clerical work at $31/hour, and $100 of miscellaneous clerical expenses). The Commission estimates that the total annual burden for all respondents to provide the required amendments and updates will be approximately 105 hours (15 hours/respondent per year × 7 respondents), for a total cost of approximately $10,066 ($1,438/response × 7 responses/year).

The Commission estimates that each year each Security Futures Product Exchange will file supplemental information 13 times and make 12 monthly reports. The Commission believes that, to meet these requirements, each respondent will be required only to copy and send documents likely to be prepared for its own internal uses. Accordingly, the Commission estimates that each of these 25 filings will impose a burden of approximately .5 hours and approximately $21 (0.5 hours of clerical work at $31/hour and $5 for miscellaneous clerical expenses). The Commission estimates that the total annual burden for the collection of the supplemental information and monthly reports will be approximately 87.5 hours (25 filings/respondent × 7 respondents × 0.5 hours/response), for a total cost of approximately $3,675 (25 filings/respondent per year × 7 respondents × $21/response).

Therefore, the Commission concludes that the total annual paperwork burden for all Security Futures Product Exchanges (not including the one-time cost of filing the Form 1–N) will be approximately 192.5 hours (105 + 87.5), for a total cost of approximately $13,741 ($10,066 + $3,675).

The Commission received no comments on these estimates.

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[122] a national securities exchange is required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, for purposes of the Commission's recordkeeping requirements, Security Futures Product Exchanges must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[123]

6. Collection of Information Is Mandatory

This collection of information is mandatory for any futures market that is required by the Exchange Act to notice register with the Commission because it wishes to list or trade security futures products.

7. Confidentiality

Any information collected pursuant to Rule 6a–4 and Form 1–N will be made publicly available.

B. Proposed Rule 19b–7 and Proposed Form 19b–7

1. Summary of Collection of Information

Rule 19b–7 requires a Security Futures Product Exchange or Limited Purpose National Securities Association that proposes to add, delete, or amend its rules relating to certain subjects[124] to submit such proposed rule change to the Commission on Form 19b–7. Form 19b–7 requires the respondent: (1) To state the purpose of the proposed rule change; (2) to state the authority and statutory basis for the proposed rule change; (3) to describe the proposal's impact on competition; and (4) to provide a summary of any written comments on the proposed rule change received by the Security Futures Product Exchange or Limited Purpose National Securities Association.

2. Proposed Use of Information

The Commission will use the information obtained on Form 19b–7 to review proposed rule changes of Security Futures Product Exchanges and Limited Purpose National Securities Associations and to provide notice of these proposals to the public. The Commission will rely on the information provided in Form 19b–7, as well as public comment regarding such proposals, in determining whether it would be appropriate to abrogate a proposed rule change.

3. Respondents

As noted above, the Commission expects that seven futures markets will become Security Futures Product Exchanges by filing Form 1–N. Upon doing so, these entities will become subject to the requirement to file Form 19b–7 with respect to most proposed rule changes relating to security futures products.[125] In addition, the Commission anticipates that one Limited Purpose National Securities Association will be required to file certain rule changes relating to security futures products on Form 19b–7. Therefore, the Commission estimates that there will be eight respondents.

4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that each respondent will submit, on average, 15 proposed rule changes per year on Form 19b–7. Although the Commission receives approximately 20 to 100 proposed rule changes on Form 19b–4 per year from each of the existing SROs, the Commission notes that these Form 19b–4 filings cover a wide range of subject areas, including trading, membership, dispute resolution, exchange governance, and fees. By

[121] 17 CFR 240.6a–4(b)(2).

[122] 17 CFR 240.17a–1.

[123] *See* 15 U.S.C. 78q(b)(4)(B).

[124] *See* 15 U.S.C. 78f(g)(4)(B)(i) and 78o–3(k)(3)(A).

[125] Security Futures Product Exchanges and Limited Purpose National Security Associations are required to file certain proposed rule changes pursuant to Rule 19b–4 rather than Rule 19b–7. *See infra* notes 97, 111–113 and accompanying text.

contrast, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to file on Form 19b–7 proposed rule changes relating only to security futures products. Given the limited types of rule changes that the proposed Form 19b–7 filings will cover, the Commission continues to believe that 15 filings per respondent per year is a reasonable estimate.

As noted above, based on the comments received, the Commission has modified proposed Rule 19b–7 and proposed Form 19b–7 to more closely resemble Rule 19b–4 [126] and Form 19b–4.[127] The Commission has decided, among other things, not to adopt the following proposed requirements: (1) That Security Futures Product Exchanges and Limited Purpose National Securities Associations describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder; (2) that a Security Futures Product Exchange or a Limited Purpose National Securities Association identify its rules and the provisions of the federal securities laws that the SRO reasonably expects the proposed rule change to affect, or to describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the SRO; and (3) that a senior member of the management of the Security Futures Product Exchange or Limited Purpose National Securities Association certify that the proposed rule change satisfies a number of requirements.

The Commission believes that the net effect of the changes to Rule 19b–7 will result in a slight decrease from the burden originally estimated. The Commission is reducing its estimate of the time required to complete a Form 19b–7 from 16.5 hours to 15.5 hours, with the cost required to complete a Form 19b–7 decreasing from approximately $1,824 to approximately $1,696 (representing 11.5 hours of legal work at $128/hour, 4 hours of clerical work at $31/hour, and $100 for miscellaneous clerical expenses). The Commission estimates that the total annual burden for all respondents to file proposed Form 19b–7 would now be approximately 1,860 hours (representing 15 filings/year per respondent × 8 respondents × 15.5 hours/filing), for a total cost of approximately $203,520 ($1,696/filing × 15 filings/year per respondent × 8 respondents).

The Commission received no comments on the accuracy of its initial estimates.[128]

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[129] a national securities exchange or national securities association is required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, for purposes of the Commission's recordkeeping requirements, Security Futures Product Exchanges and Limited Purpose National Securities Associations must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[130]

6. Collection of Information Is Mandatory

The collection of information requirements imposed by Rule 19b–7 and Form 19b–7 are mandatory for Security Futures Products Exchanges and Limited Purpose National Securities Associations.

7. Confidentiality

Any information collected pursuant to Rule 19b–7 and Form 19b–7 will be made publicly available.

C. Proposed Amendments to Rule 19b–4 and Form 19b–4

1. Summary of Collection of Information

Section 19 of the Exchange Act [131] establishes procedures whereby national securities exchanges and national securities associations (collectively, ''SROs'') must file with the Commission proposals to add, delete, or amend their rules. Rule 19b–4 [132] implements this procedure and requires SROs to file proposed rule changes on Form 19b–4. Certain proposals submitted on Form 19b–4 require the approval of the Commission before they may take effect.

Although Security Futures Product Exchanges and Limited Purpose National Securities Associations generally will file proposed rule changes on Form 19b–7, there are two circumstances in which such entities will be required to file Form 19b–4: (1) a proposed rule change that relates to margin, except for a change that results in higher margin levels; and (2) a proposed rule change originally filed on Form 19b–7 that has been abrogated by the Commission because it appears that the proposal unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. A proposed rule change that is filed on Form 19b–7 but subsequently abrogated by the Commission must be refiled on Form 19b–4.[133]

2. Proposed Use of Information

The Commission uses the information obtained under Rule 19b–4 to review proposed rule changes by SROs and to provide notice of these proposals to the public. The Commission relies on the information provided in Form 19b–4, as well as public comment regarding such proposals, in taking any action with respect to proposed rule changes. This information will assist the Commission in fulfilling its regulatory obligations.

3. Respondents

Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to comply with Rule 19b–4 and file proposed rule changes on Form 19b–4 in the two circumstances described above. The Commission believes that there will be seven Security Futures Product Exchanges and one Limited Purpose National Securities Association (the National Futures Association). In addition, all other SROs are currently required to comply with Rule 19b–4 and file proposed rule changes on Form 19b–4.

4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that the amendments to Rule 19b–4 adopted today will result in an additional eight filings per year on Form 19b–4. The Commission estimates that respondents devote, on average, approximately 35 hours to the filing of each Form 19b–4, at a cost of approximately $3,660 per filing (representing 25 hours of legal work at $128/hour, 10 hours of clerical work at $31/hour and $150 for miscellaneous clerical expenses). Therefore, the Commission estimates that the total annual burden for all respondents resulting from the amendments to Rule 19b–4 and Form 19b–4 will be approximately 280 hours (8 filings × 35 hours/filing), for a total cost of approximately $29,280 (8 filings

[126] 17 CFR 240.19b–4.

[127] *See supra* notes 98–110, and accompanying text.

[128] However, one commenter noted that, while the Commission originally estimated that an average Form 19b–7 filing would require approximately 12.5 hours of legal work and four hours of clerical work to complete, it estimated that a typical rule filing submitted to the CFTC would require less than a third of that time. *See* NFA Letter.

[129] 17 CFR 240.17a–1.

[130] *See* 15 U.S.C. 78q(b)(4)(B).

[131] 15 U.S.C. 78s.

[132] 17 CFR 240.19b–4.

× $3,660/filing).[134] The Commission received no comments on these estimates.

5. Record Retention Period

As set forth in Rule 17a–1 under the Exchange Act,[135] SROs are required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, for purposes of the Commission's recordkeeping requirements, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[136]

6. Collection of Information Is Mandatory

The collection of information requirements imposed by Rule 19b–4 and Form 19b–4 are mandatory for all SROs, including Security Futures Products Exchanges and Limited Purpose National Securities Associations.

7. Confidentiality

Any information collected pursuant to Rule 19b–4 and Form 19b–4 is made publicly available.

VI. Costs and Benefits of Final Rules

In response to the mandate of the CFMA,[137] which requires the Commission to prescribe, by rule, the process for notice registration to be used by designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to Section 6(g)(1) of the Exchange Act [138] (''Security Futures Product Exchanges''), the Commission is adopting Rule 6a–4 under the Exchange Act [139] and Form 1–N. Rule 6a–4 and Form 1–N prescribe the requirements for Security Futures Product Exchanges to list and trade futures on individual stocks and narrow-based stock indexes, including puts, calls, straddles, options, or privileges thereon. The Commission also is adopting conforming amendments to Rules 6a–2 and 6a–3 under the Exchange Act [140] and Rule 202.3 of the Commission's procedural rules.[141] Furthermore, the Commission is adopting Rule 19b–7,[142] Form 19b–7, and conforming amendments to Rule 19b–4 [143] and Form 19b–4 to accommodate certain proposed rule changes that will be submitted by Security Futures Product Exchanges and Limited Purpose National Securities Associations registered pursuant to Section 15A(k) of the Exchange Act.[144] Under Rule 6a–4, Security Futures Product Exchanges will submit information and documents that are comparable to the requirements applicable to national securities exchanges registered pursuant to Section 6(a) of the Exchange Act.[145] In addition, Rule 19b–7 [146] and Form 19b–7 establish the procedures to be used by Security Futures Product Exchanges and Limited Purpose National Securities Associations when filing proposed rule changes that relate to certain matters, including higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such Security Futures Product Exchanges' and Limited Purpose National Securities' obligations to enforce the securities laws. The conforming amendments to Rule 19b–4 [147] and Form 19b–4 apply to proposed rule changes relating to margin, except for changes that result in higher margin levels, and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act [148] and refiled under Section 19(b)(1) of the Exchange Act.[149]

A. Comments

In the Proposing Release,[150] the Commission requested comment on all aspects of the costs and benefits of the adopted rules, forms, and conforming amendments to existing rules and forms, including identification of additional costs and benefits of the changes. In addition, the Commission encouraged commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs or benefits.

Although there were no comments that specifically addressed the Costs and Benefits Analysis in the Proposing Release, there were comments that may apply generally to the costs and benefits of the adopted rules, forms, and amendments to existing rules and forms. Accordingly, the Commission anticipates that the rules, forms and conforming amendments to existing rules and forms adopted today will generate the costs and benefits described below and has incorporated the general comments into the applicable discussion.

B. Costs and Benefits of Rule 6a–4, Form 1–N, and Conforming Amendments to Rules 6a–2 and 6a–3 under the Exchange Act and Rule 202.3 of the Commission's Procedural Rules

As discussed above, the Commission is adopting Rule 6a–4 and Form 1–N, with slight modifications, in response to concerns raised by commenters. The Commission also is adopting amendments to Exchange Act Rules 6a–2 and 6a–3 [151] and Rule 202.3 of the Commission's procedural rules,[152] substantially as proposed.

Rule 6a–4 requires an exchange registering pursuant to Section 6(g) of the Exchange Act [153] to file Form 1–N [154] with the Commission.[155] Once registered, a Security Futures Product Exchange must file with the Commission written notice of actions that create new information or render inaccurate information filed on the Form 1–N.[156] A Security Futures Product Exchange also must file with the Commission an amendment to Form 1–N setting forth the nature and effective date of the action taken that creates new information or renders inaccurate information filed on the execution page within 10 days after such action is taken,[157] or as part of Exhibit F of its Form 1–N within 30

[134] These estimates do not include burdens associated with filings that propose wholesale additions or amendments to an SRO's rules. Such filings could result, for example, from the development of a new trading system. Past experience has demonstrated that about 1% of Form 19b–4 filings are of this sort. Because these filings typically represent so few of the total number of Form 19b–4 filings and the scope of these filings may vary greatly from one filing to the next, the Commission has omitted them from the computation of the average cost associated with the respondents' reporting burden. Moreover, because proposed rule changes filed with the Commission by Security Futures Products Exchanges and Limited Purpose National Securities Associations will relate only to security futures products, the Commission does not anticipate that any of these filings will be among the 1%.

[135] 17 CFR 240.17a–1.

[136] *See* 15 U.S.C. 78q(b)(4)(B).

[137] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763

[138] 15 U.S.C. 78f(g)(1).

[139] 17 CFR 240.6a–4.

[140] 17 CFR 240.6a–2 and 240.6a–3.

[141] 17 CFR 202.3.

[142] 17 CFR 240.19b–7.

[143] 17 CFR 240.19b–4.

[144] 15 U.S.C. 78o–3(k).

[145] 15 U.S.C. 78f(a).

[146] 17 CFR 240.19b–7.

[147] 17 CFR 240.19b–4.

[148] 15 U.S.C. 78s(b)(7)(C).

[149] 15 U.S.C. 78s(b)(1). Pursuant to Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C), an SRO cannot enforce a rule that has been abrogated by the Commission, unless the SRO refiles the proposed rule change under Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and it is approved by the Commission.

[150] *See* Proposing Release, *supra* note 13.

[151] 17 CFR 240.6a–2 and 240.6a–3.

[152] 17 CFR 202.3.

[153] 15 U.S.C. 78f(g).

[154] 17 CFR 249.10.

[155] 17 CFR 240.6a–4(a)(1).

[156] 17 CFR 240.6a–4(a)(2).

[157] 17 CFR 240.6a–4(b)(1)(i).

days after such action is taken.[158] Rule 6a–4(b)(2) also requires a Security Futures Product Exchange to maintain records relating to changes in information required in Exhibits C and E that are up-to-date within 30 days and available to the Commission upon request.[159] A Security Futures Product Exchange also has to file as an amendment, on or before June 30, 2002 and by June 30 every year thereafter, Exhibits F, H, and I, which are required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.[160] In addition, a Security Futures Product Exchange must file, as an amendment to its Form 1–N, on or before June 30, 2004 and by June 30 every three years thereafter, complete Exhibits A, B, C, and E, which are required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.[161] However, Rule 6a–4(b)(5) allows a Security Futures Product Exchange to meet the obligations of Rule 6a–4(b)(3) and (b)(4) through certain alternate means. First, pursuant to proposed Rule 6a–4(b)(5)(i), a Security Futures Product Exchange could provide responsive information that was available in a publication that is issued on an annual or more frequent basis.[162] Second, pursuant to proposed Rule 6a–4(b)(5)(ii), a Security Futures Product Exchange could make the responsive information available to the Commission and to the public upon request by certifying that this information is kept up-to-date and is available to the Commission and to the public upon request.[163] Third, pursuant to proposed Rule 6a–4(b)(5)(iii), a Security Futures Product Exchange could make the responsive information continuously available on a web site that the exchange controls.[164]

The Commission is adopting Rule 6a–4(c)(1)[165] and 6a–4(c)(2)[166] as proposed. Rule 6a–4(c)(1) requires a Security Futures Product Exchange to file with the Commission any material related to the trading of security futures products (including notices, circulars, bulletins, lists, and periodicals) that is issued or made generally available to members of, participants in, or subscribers to, the exchange within 10 days after issuing it or making it generally available. A Security Futures Product Exchange, in lieu of making a hardcopy submission, could comply with this requirement by indicating the location of a web site where such information may be continuously found and certifying that the information available at that location is accurate as of the date that the exchange submits such certification.[167] Furthermore, Rule 6a–4(c)(2) requires every Security Futures Product Exchange to file a report within 15 days after the end of each calendar month that includes: (1) For each contract of sale for future delivery of a single security, the number of contracts traded on the exchange during the relevant calendar month and the total number of shares underlying such contracts traded; and (2) for each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on the exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.[168]

The conforming amendments to Rules 6a–2 and 6a–3 exclude respondents from the requirements of these rules, and, therefore, the Commission believes that there would be no costs imposed on, nor benefits accruing to, the respondents arising from the conforming amendments. Finally, Rule 202.3 of the Commission's procedural rules provides that notice forms for registration as a national securities exchange filed with the Commission are routed within the Commission to the Division of Market Regulation, and, therefore, the Commission believes that there would be no costs imposed on, nor benefits accruing to, the respondents arising from the conforming amendment.

1. Benefits

Rule 6a–4 provides for an expedited process for a market to become notice-registered with the Commission as a Security Futures Product Exchange. Notably, Form 1–N is not an application that requires an approval from the Commission. Because an exchange registering with the Commission pursuant to section 6(g) of the Exchange Act[169] is also subject to the CFTC's application and reporting requirements, Form 1–N requests only limited, basic information the vast majority of which the respondents are likely to compile for their internal use. The Commission estimates that the amount of time required to complete Form 1–N will be one-third less than the amount of time currently required to complete Form 1, the application used to register as a national securities exchange or to apply for an exemption from exchange registration based on limited volume pursuant to section 6(a) of the Exchange Act.[170] Furthermore, pursuant to section 6(g)(2)(A) of the Exchange Act,[171] in those instances in which the market has filed information with the CFTC and to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents could be filed with the Commission in lieu of submitting those exhibits to the Form, therefore reducing a market's burden of compiling information.[172] Pursuant to section 6(g)(2)(B) of the Exchange Act,[173] such notice registration will be effective contemporaneously with the submission of Form 1–N, unless the registration is subject to suspension or revocation by the CFTC. The information provided by markets filing Form 1–Ns will be required to be up-to-date as of 1 month of the date of filing, which will provide the markets with additional flexibility in the preparation of the required documents.

As a mechanism to further reduce the filing burdens on Security Futures Product Exchanges, the Commission is allowing such exchanges to comply with the requirements for filing amendments and supplemental materials by maintaining the information on an Internet web page and providing the location of such web site to the Commission.[174] Instead of filing amendments in paper form, a Security Futures Product Exchange also is permitted to refer to materials published by, or in cooperation with, the exchange that contain the required information or to make the information available upon request at its office.[175] Permitting respondents to use the Internet as a means of compliance will reduce expenses associated with clerical time, postage, and copying and increase the speed, accuracy, and availability of information beneficial to investors and financial markets.

Furthermore, the Commission is exempting a Security Futures Product Exchange from filing the required amendments for any affiliate or subsidiary listed in Exhibit C of the

[158] 17 CFR 240.6a–4(b)(1)(ii).

[159] 17 CFR 240.6a–4(b)(2). A Security Futures Product Exchange need not file with the Commission updates of this information on an event–specific basis.

[160] 17 CFR 240.6a–4(b)(3).

[161] 17 CFR 240.6a–4(b)(4).

[162] 17 CFR 240.6a–4(b)(5)(i).

[163] 17 CFR 240.6a–4(b)(5)(ii).

[164] 17 CFR 240.6a–4(b)(5)(iii).

[165] 17 CFR 240.6a–4(c)(1).

[166] 17 CFR 240.6a–4(c)(2).

[167] 17 CFR 240.6a–4(c)(1)(ii).

[168] 17 CFR 240.6a–4(c)(2).

[169] 15 U.S.C. 78f(g).

[170] 15 U.S.C. 78f(a).

[171] 15 U.S.C. 78f(g)(2)(A).

[172] 17 CFR 240.6a–4(b)(7).

[173] 15 U.S.C. 78f(g)(2)(B).

[174] 17 CFR 240.6a–4(b)(5)(iii) and (c)(1)(ii).

[175] 17 CFR 240.6a–4(b)(5)(i) and (ii).

exchange's notice registration that either is listed in Exhibit C to the form for registration or notice registration of one or more other national securities exchanges, or was an inactive affiliate or subsidiary throughout the affiliate's or subsidiary's latest fiscal year.[176] This will limit the information required to be provided to that information that is relevant to the Security Futures Product Exchange's trading of security futures products.

The new rules also provide a mechanism by which entities that wish to notice register with the Commission may do so. By providing a mechanism for notice registration, the new rules will provide additional markets with the opportunity to trade security futures products, thereby enhancing competition. The rules also provide legal certainty and implement the statutory mandate imposed by the CFMA.

The new rules and forms will enhance the Commission's ability to oversee the exchanges trading security futures products, which is critical to the continued integrity of the markets, while enabling the Commission to fulfill its statutory obligations under the CFMA. The Commission believes that its oversight, in conjunction with that of the CFTC, over trading activities in security futures products will benefit the public and the markets generally by helping to prevent fraud and manipulation.

2. Costs

Rule 6a–4 and Form 1–N will require the respondents to comply with the notice and amendment requirements, which will require some effort in gathering the information to file with the Commission. The respondents have gathered most of this information, and currently provide it to the CFTC. The exchanges may provide copies of existing documents provided to the CFTC to the Commission in lieu of completing Form 1–N, to the extent that such documents contain information satisfying the Commission's informational requirements.[177] Therefore, the Commission believes that the costs incurred by the proposed rules and forms have been minimized. As discussed above, the Commission estimates that the average paperwork cost for each registration would be approximately $3,000 for each respondent.[178]

One commenter, however, felt that Form 1–N is notice registration only in the sense that the Commission does not approve the application.[179] Otherwise, this commenter felt that the proposed procedure requires the same effort and expense as a standard application for registration as a national securities exchange. The same commenter urged the Commission to not require a ''wasteful duplication of information that is on public file with the CFTC, [but instead] * * * to adopt the same standards and procedures proposed by the CFTC.'' The commenter, however, did not offer specific data or support calculating the amount of effort and expense believed to be incurred by completing Form 1–N. The Commission notes that Section 6(g)(2)(A) of the Exchange Act expressly states that exchanges that wish to register with the Commission may file written notice ''in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges * * *.'' The Commission continues to believe that Form 1–N not only implements the statute, but also, provides an expedited process of notice registration because, to the extent that information has been compiled for a market's internal use or for submission to the CFTC, copies of such documents may be provided to the Commission in lieu of submitting newly-prepared exhibits to Form 1–N.

Another commenter stated that the requirements in completing Form 1–N are unreasonably burdensome and there is a huge disparity when compared to the requirements that the CFTC imposes upon securities exchanges desiring to become designated contract markets in security futures products.[180] As a result, the commenter felt that it would be much more difficult to notice register with the Commission than it would be with the CFTC, since the Commission requires much more information than is routinely filed by a designated contract market with the CFTC. Because the CFTC is the primary regulator of the Security Futures Product Exchanges, the commenter stated that it is not necessary or appropriate in the public interest or for the protection of investors for the Commission to impose substantially similar filing requirements on Security Futures Product Exchanges as those imposed on other securities exchanges. The commenter urged the Commission to modify its Rule 6a–4 and Form 1–N to be consistent with the more moderate approach taken by the CFTC. The Commission believes, however, that the differences in approach proposed by the two agencies reflect the different statutory frameworks under which each agency operates. In addition, the Commission notes that contrary to the commenter's views, although permissible under section 6(g)(2)(A) of the Exchange Act, the Commission is not imposing substantially similar filing requirements on Security Futures Product Exchanges as are imposed on other securities exchanges. Instead, the Commission has limited the information required to information directly related to the Security Futures Product Exchanges' trading of security futures products. Finally, the Commission believes that the required information is necessary for the Commission to fulfill its regulatory responsibilities.

As discussed above, the conforming amendments to Rules 6a–2 and 6a–3 [181] will exclude Security Futures Product Exchanges from the costs associated with these rules. However, Rule 6a–4 will require respondents to provide periodic amendments to their initial notice registration. As discussed above, the Commission estimates that the average paperwork cost for each amendment and periodic update would be approximately $1,438.[182] Because the Commission expects that the exchanges will prepare the requested information for their internal use, the Commission anticipates that paperwork costs would be the only costs associated with this requirement.

One commenter stated that the Commission should adopt the CFTC's less burdensome approach given the fact that the Security Futures Product Exchanges remain subject to the primary jurisdiction of the CFTC.[183] In addition, the commenter suggested that the Commission, at the very least, require that amendments regarding new information or to correct information that has become inaccurate should be limited to material inaccuracies, and that the 10-day timeframe be changed to a minimum of 30 days. The commenter also noted that it would be particularly burdensome to require information pertaining to the addition of new, or the withdrawal of old, owners, members, participants, subscribers, or other users be provided within 10 days since these would be subject to frequent change. The commenter suggested that Exhibits F and H be submitted annually to meet the Commission's need for this information instead of requiring

[176] 17 CFR 240.6a–4(b)(6).

[177] 17 CFR 240.6a–4(b)(7).

[178] *See supra* Section V.A.4.a.

[179] *See* CME Letter.

[180] *See* CBOT Letter.

[181] 17 CFR 240.6a–2 and 240.6a–3.

[182] *See supra* Section V.A.4.b.

[183] *See* CBOT Letter.

piecemeal amendments every time an individual is added or removed from one of these categories.

The Commission notes that the addition of new, or the withdrawal of old, owners, members, participants, subscribers, or other users would not constitute a material change requiring an update within 10 days. In addition, much of the required information will not change frequently, and the option of posting information on an Internet web site will encourage more frequent updating of current information and reduce the cost of filing the amendments on paper. The Commission also is retaining the requirement that a Security Futures Product Exchange submit updates to the information provided in Exhibit F.

However, in response to the commenter's concerns, the Commission has slightly modified the filing requirements for respondents under Rule 6a–4. Specifically, the Commission changed the time period within which respondents must report amendments to Exhibit F to Form 1–N from 10 days to 30 days and removed the requirement that respondents provide amendments to Exhibits C, E, and H to Form 1–N within 10 days. The Commission believes that 30 days, rather than 10 days, would be an appropriate timeframe, particularly in light of the fact that these entities will be subject to the primary regulation of the CFTC. In addition, the Commission is adopting a new provision, Rule 6a–4(b)(2),[184] that requires Security Futures Product Exchanges to provide the information required in Exhibits C and E only upon request of the Commission. Under the rule, a Security Futures Product Exchange must maintain records relating to changes in information required in Exhibits C and E as of the latest practicable date, but, at a minimum, be up-to-date within 30 days, but need not file with the Commission updates of this information on an event-specific basis. Furthermore, periodic updates to Exhibits F, H, and I under Rule 6a–4(b)(3) and Exhibits A, B, C, and E under Rule 6a–4(b)(4) could be accomplished by using the alternate means discussed above, and, consequently, the modifications to the Commission's proposal should alleviate the burden on Security Futures Product Exchanges in preparing the amendments. These amendments also will help to ensure that the Commission receives accurate and updated information about Security Futures Product Exchanges so that it may carry out its regulatory responsibilities.

Finally, paragraph (c) of Rule 6a–4 requires Security Futures Product Exchanges to furnish to the Commission copies of all materials related to the trading of security futures products (including notices, circulars, bulletins, lists, and publications) issued or made available to members of, participants in or subscribers to, the exchange.[185] Exchanges will be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site.[186] Paragraph (c) of Rule 6a–4 also requires Security Futures Product Exchanges to file transaction reports within 15 days after the end of each calendar month containing, for each security futures product traded on such exchange, the number of contracts traded, and the type of security underlying such contract.[187] As discussed above, the Commission estimates that each respondent will incur an average paperwork cost of $21 for each filing.[188] Because the Commission expects that the exchanges will prepare the requested information for their internal use, the Commission anticipates that paperwork costs would be the only costs associated with this requirement.

One commenter believed that the Commission's proposal to allow certain requirements to be met by maintaining the information on an Internet web page, by referring to materials published by the exchange, or by making the information available upon request at the exchange's office are ineffective attempts at limiting the filing burden since a significant portion of the required information is information generally not made available to the public.[189] The same commenter also felt that the requirement to file copies of any materials related to the trading of security futures products that would be provided to their members, participants, or subscribers within 10 days of their provision should either not be adopted or be increased to within a timeframe of at least 30 days.

The Commission does not believe that the 10-day requirement in which to provide the supplemental materials is unduly burdensome and believes that providing alternate means, such as web sites or publications, for Security Futures Product Exchanges to provide updates of certain required information can relieve some of the burden imposed on the exchanges. In addition, the Commission believes that there should not be a discrepancy between the time periods in which Security Futures Product Exchanges and other national securities exchanges must revise inaccurate or incomplete information provided in their filings.

C. Costs and Benefits of Rule 19b–7 and Form 19b–7 and Conforming Amendments to Rule 19b–4 and Form 19b–4

Rule 19b–7 requires the Commission to promptly publish Security Futures Product Exchanges' and Limited Purpose National Securities Associations' proposed rule changes that were filed pursuant to section 19(b)(7) of the Exchange Act[190] on Form 19b–7.

Pursuant to section 19(b)(1) of the Exchange Act,[191] all self-regulatory organizations (''SROs'') are required to file with the Commission copies of any proposed rule, or any addition to or deletion from the rules of such SRO (''proposed rule change''). The CFMA exempted Security Futures Product Exchanges and Limited Purpose National Securities Associations from submitting proposed rule changes pursuant to section 19(b) of the Exchange Act,[192] except in three circumstances. First, pursuant to sections 6(g)(4)(B)(i)[193] and 15A(k)(3)(A)[194] of the Exchange Act, proposed rule changes that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such SRO's obligation to enforce the securities laws must be submitted to the Commission pursuant to new Section 19(b)(7) of the Exchange Act.[195] Second, pursuant to sections 6(g)(4)(B)(ii)[196] and 15A(k)(3)(B)[197] of the Exchange Act, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to submit proposed rule changes that relate to margin, except for those that result in higher margin levels, under sections

[184] 17 CFR 240.6a–4(b)(2).

[185] 17 CFR 240.6a–4(c)(1)(i).

[186] 17 CFR 240.6a–4(c)(1)(ii).

[187] 17 CFR 240.6a–4(c)(2).

[188] *See supra* Section V.A.4.b.

[189] *See* CBOT Letter.

[190] 15 U.S.C. 78s(b)(7).

[191] 15 U.S.C. 78s(b)(1).

[192] 15 U.S.C. 78s(b).

[193] 15 U.S.C. 78f(g)(4)(B)(i).

[194] 15 U.S.C. 78o–3(k)(3)(A).

[195] Section 19(b)(7) of the Exchange Act grants to the Commission the authority to adopt rules regarding the filing of proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations. 15 U.S.C. 78s(b)(7).

[196] 15 U.S.C. 78f(g)(4)(B)(ii).

[197] 15 U.S.C. 78o–3(k)(3)(B).

19(b)(1) and (b)(2) of the Exchange Act.[198] Finally, pursuant to sections 6(g)(4)(B)(iii)[199] and 15A(k)(3)(C)[200] of the Exchange Act, proposed rule changes that have been abrogated by the Commission pursuant to new section 19(b)(7)(C) of the Act[201] must be refiled under section 19(b)(1) of the Act.[202]

After carefully considering the comment letters,[203] the Commission has decided to adopt the amendments to Rule 19b–4 and Form 19b–4 as proposed and to adopt Rule 19b–7 and Form 19b–7 with modifications in response to concerns raised by commenters to make the rule and the form more closely comparable to the current rule filing process.

1. Benefits

Pursuant to the statutory mandate, the Commission will not be approving proposed rule changes submitted pursuant to Rule 19b–7.[204] Instead, a proposed rule change filed on Form 19b–7 will become effective upon: (i) An exchange's filing of a written certification with the CFTC under Section 5c(c) of the CEA;[205] (ii) a determination by the CFTC that review of the proposed rule change is not necessary; or (iii) approval of the proposed rule change by the CFTC. The Commission is adding language to Form 19b–7 to reflect the three events[206] upon which a proposed rule change submitted under to section 19(b)(7) of the Exchange Act[207] may take effect pursuant to Section 19(b)(7)(B) of the Exchange Act.[208] A Security Futures Product Exchange or Limited Purpose National Securities Association will be required to file with the Commission, along with Form 19b–7, a copy of any written certification filed with the CFTC pursuant to Section 5c(c) of the CEA.[209] As discussed above, if a proposed rule change is effective because of a CFTC determination not to review such proposal or because the CFTC has approved the proposal, the Securities Futures Product Exchange or Limited Purpose National Securities Association will be required to so state in the Form 19b–7.

In addition, Rule 19b–7 states that a proposed rule change will not be deemed filed on the date it is received unless a completed Form 19b–7 is submitted. To elicit meaningful comment, Rule 19b–7 requires proposed rule changes to include (i) A clear and concise statement of the basis and purpose of such rule change, including the impact on competition or efficiency, if any, and (ii) a summary of any written comments received by the SRO on the proposed rule change. The Commission notes that these requirements are substantially the same as are required to be submitted in Form 19b–4 for existing SROs[210] and should provide clarity to the filing requirements for proposed rule changes submitted under section 19(b)(7) of the Exchange Act.[211]

The Commission also has decided not to adopt proposed paragraph (c) to proposed Rule 19b–7, which stated that the effectiveness of a proposed rule change submitted pursuant to section 19(b)(7) of the Exchange Act[212] would not create an inference of whether the proposed rule change was in the public interest, including whether it had an impact on competition. The Commission notes that this language was proposed in proposed Rule 19b–6 and, therefore, it is not currently applicable to existing SROs.

The Commission also added language to Rule 19b–7 to require SROs to retain at their principal place of business a file, available to interested persons for public inspection and copying, containing all filings made pursuant to Rule 19b–7 as well as all related correspondence and other communications reduced to writing. This language mirrors Rule 19b-4[213] and also is incorporated in Forms 19b–4[214] and 19b–7.[215]

Further, the Commission has decided not to adopt the requirement that a senior member of an exchange's or association's management certify that the proposed rule change satisfied a number of requirements. In response to one commenter[216] the Commission agrees that the proposed certification requirement should not be imposed on Security Futures Product Exchanges and Limited Purpose National Securities Associations at this time because existing SROs are not currently subject to such a requirement. Form 19b–7, however, will require the signature of a senior member of an exchange's or association's management, as currently is required by Form 19b–4.

The adopted Form 19b–7 also will not require Security Futures Product Exchanges and Limited Purpose National Securities Associations to describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder, to identify its rules and the provisions of the federal securities laws that the SRO reasonably expects the proposed rule change to affect, or to describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the SRO. In response to the concerns raised by a commenter,[217] the Commission has decided not to adopt these proposed provisions because they are not required of existing SROs in the current Form 19b–4.

Proposed rule changes filed with the Commission will be required to be filed concurrently with the CFTC. However, pursuant to the CFMA, only the Commission is required to publish notice of the proposed rule change for comment. Consequently, although respondents must file certain proposed rule changes with two agencies, there will, in effect, be only one effort in the collection and compilation of information.

The Commission believes that Rule 19b–7 and Form 19b–7 and amendments to existing Rule 19b–4 and Form 19b–4 are designed to provide information sufficient to permit interested persons to submit meaningful comment on the proposals. By providing an opportunity for the public and market participants, including investors, to comment on proposed rule changes, the rule and the form should enhance the Commission's ability to

[198] 15 U.S.C. 78s(b)(1) and (b)(2).

[199] 15 U.S.C. 78f(g)(4)(B)(iii).

[200] 15 U.S.C. 78o–3(k)(3)(C).

[201] 15 U.S.C. 78s(b)(7)(C).

[202] 15 U.S.C. 78s(b)(1). Pursuant to Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C), and SRO cannot enforce a rule that has been abrogated by the Commission, unless the SRO refiles the proposed rule change under section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and it is approved by the Commission.

[203] *See supra* note 15.

[204] *See* Section 19(b)(7)(B) of the Exchange Act, 15 U.S.C. 78s(b)(7)(B).

[205] 7 U.S.C. 7a–2(c)

[206] In the Proposing Release, the Commission proposed to address only written certifications filed with the CFTC under Section 5c(c) of the CEA. See Proposing Release, *supra* note.

[207] 15 U.S.C. 78s(b)(7).

[208] 15 U.S.C. 78s(b)(7)(B).

[209] *Id.*

[210] *See* Form 19b–4, *General Instructions,* B. *Need for Careful Preparation of the Completed Form, Including Exhibits; Information to Be Included in the Completed Form,* Item 3, *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change;* and Item 5, *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.*

[211] 15 U.S.C. 78s(b)(7).

[212] *Id.*

[213] See Rule 19b–4(i), 17 CFR 240.19b–4(i).

[214] See Form 19b–4, *Exhibit 1*, Item II, *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*; and Item IV, *Solicitation of Comments.*

[215] *See* Form 19b–7 Notice, Item II, *Self-Regulatory Organization's Statement of the Purpose of, yand Statutory Basis for, the Proposed Rule Change;* and Item IV, *Solicitation of Comments.*

[216] *See* CBOE Letter.

[217] *Id.*

better assess the anticipated impact of such rule proposals. In addition, Rule 19b–7 and Form 19b–7 are intended to inform the Commission's consideration of whether a proposed rule change should be abrogated because it unduly burdens competition or efficiency, conflicts with securities laws, or is inconsistent with the public interest or the protection of investors. Accordingly, Rule 19b–7 and Form 19b–7 and amendments to Rule 19b–4 and Form 19b–4 should enable the Commission to carry out its statutorily-mandated oversight functions, including helping to ensure that SROs carry out their regulatory functions as well as protect the integrity of the markets, investors, and the public interest.

2. Costs

One commenter noted that the submission requirements proposed by the Commission are significantly more time consuming and detailed than those of the CFTC.[218] The commenter estimated that the time to file an individual rule proposal with the CFTC is less than a third of the time required with the Commission. The commenter, however, did not offer data to support this statement and noted that it did not keep records of the time spent on individual rule filings. This commenter also suggested that the expedited review provisions of Section 19(b)(7) could be met by sending the Commission a copy of the same rule filing sent to the CFTC. In addition, with respect to the requirement of providing the Commission with a summary of any written comments received by the Security Futures Product Exchange or Limited Purpose National Securities Association relating to the proposed rule change, the commenter stated that providing copies of communications that relate to earlier versions of the proposal would be both burdensome and of little value to the Commission, and suggested that the summary be limited to substantive comments and communications about the proposed rule change. Despite the suggestions, the commenter acknowledged that some of the more detailed requirements imposed by Rule 19b–7 and Form 19b–7 are dictated by the publication requirements imposed by the Exchange Act, but not by the CEA, and therefore, the commenter did not object to Rule 19b–7 and Form 19b–7.

In response, the Commission notes that the comment letters that the Commission receives relating to a given proposed rule change are beneficial in that they provide an understanding of the issues involved in a proposed rule change and its anticipated impact on market participants. The Commission also notes that comment letters that address editing changes of earlier drafts of proposed rule changes need not be filed with the Commission.

Two commenters stated that Rule 19b–7 and Form 19b–7 do not substantially expedite the rule filing process and would increase the regulatory burden on respondents.[219] For instance, the commenters felt that it would cost an SRO substantially more staff resources and legal fees to complete the new form then it does to complete current Form 19b–4. As a whole, these commenters felt that the costs in complying with the new requirements of the proposal may outweigh the benefits. They suggested that the Commission retain a shortened Form 19b–4 instead of using Form 19b–7, adopt a simple certification process like that proposed by the CFTC, remove legal uncertainty about the effectiveness of a rule filing being deemed filed based upon its completeness, and delete the assertion that the Commission will not necessarily make a final determination on whether a proposed rule change filed pursuant to Rule 19b–7 is in the public interest, including whether it has an impact on competition.[220] Furthermore, the commenters stated that Form 19b–7 contains numerous unnecessary, vague, and overwhelming information requirements that would increase the burden on respondents exponentially.[221] The commenters also stated that the conditions attached to a proposal being ''properly filed'' would create legal uncertainty for a respondent and cause respondents to spend a tremendous amount of additional staff and legal time on every proposed rule change.[222] The commenters also felt that the requirement that a senior official of a respondent file a detailed certification as part of a proposed rule change is ''completely unrealistic and unworkable.'' [223] The commenters recommended that the Commission instead require a simple certification that the official has reviewed the proposed rule change, without the detailed requirements, and state that the certification does not subject the official to liability if the certification was later found to be inconsistent with the securities laws.

The Commission has carefully considered the concerns raised by the commenters and, in response, has modified Rule 19b–7 and Form 19b–7 to more closely mirror the current rule filing process. Specifically, the Commission has decided not to adopt the certification requirement, nor the requirements that the filing describe how the proposed rule change relates to applicable provisions of the federal securities laws and the SRO rules. The Commission also has decided not to adopt the provision which stated that the effectiveness of a proposed rule change submitted pursuant to Section 19(b)(7) of the Exchange Act [224] would not create an inference of whether the proposed rule change was in the public interest, including whether it had an impact on competition. The Commission notes that the differences observed by the commenters between the Commission's SRO rule filing process and that of the CFTC is, in large part, the direct result of the different statutory mandates under which each agency operates. As discussed above, the requirements of Section 5c of the CEA differs markedly from the requirements set forth in Section 19(b) of the Exchange Act, which specifically requires the Commission to review and publish all proposed rule changes of the Security Futures Product Exchanges and Limited Purpose National Securities Associations, and the Commission must follow this statutory mandate.

Moreover, the Commission continues to believe that the costs associated with filing rule changes are predominately paperwork costs. As discussed above, the Commission estimates that the average paperwork cost per proposed rule change submitted on Form 19b–7 will be approximately $1,696.[225] The Commission estimates each respondent will file 15 proposed rule changes per year and incur an annual average burden of 232.5 hours for a total annual average cost of approximately $25,440. The Commission also estimates that the average paperwork cost per respondent to file proposed rule changes that relate to margin, except for changes that result in higher margin levels, or that have been abrogated pursuant to Section

[1] *See* NFA Letter.

[219] *See* CBOE Letter and CME Letter. One commenter applied its views of the Commission's proposed Rule 19b–6 and Form 19b–6 to Rule 19b–7 and Form 19b–7 due to the virtually identical wording of the proposed rules and forms. *See* CBOE Letter. The other commenter adopted this commenter's view of Rule 19b–7 and Form 19b–7. *See* CME Letter.

[220] *See* CBOE Letter and CME Letter.

[221] The commenters stated that the new form would require an SRO to conduct a comprehensive review of the federal securities laws, its own rules, prior filings relating to the proposed rule, and prior Commission action impacting the proposed rule.

[222] The commenters recommended that every rule filing be deemed filed when submitted to the Commission unless it is severely incomplete.

[223] *See* CBOE Letter and CME Letter.

[224] 15 U.S.C. 78s(b)(7).

[225] *See supra* Section V.B.4.

19(b)(7)(C) of the Exchange Act [226] and refiled under Section 19(b)(1) of the Exchange Act,[227] will be approximately $3,660.[228] In addition, the Commission estimates that the time associated with refiling an abrogated 19b–7 filing will delay the filing process by 30 days.

The Commission continues to believe that the rule filing process adopted today for Security Futures Product Exchanges and Limited Purpose National Securities Associations will enable the Commission and the markets to fulfill their statutory obligations and responsibilities, while imposing the minimum amount of burden necessary to fulfill the directives of the Exchange Act. As discussed above, the Commission has modified Rule 19b–7 and Form 19b–7 from the proposal to address concerns raised by commenters.

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

Section 3(f) of the Exchange Act [229] requires the Commission, whenever it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [230] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, in the Proposing Release, the Commission requested comment on these issues.[231]

Two comments were received that specifically addressed the proposal's effect on competition. The Commission has considered these comments and reviewed the proposed rules in light of the standards set forth in sections 3(f) and 23(a)(2) of the Exchange Act.[232]

The first commenter asserted that a competitive disparity would result because options exchanges and Security Futures Product Exchanges, although direct competitors, will be subject to different rule filing processes.[233] The commenter noted that, currently, the options exchanges are subject to Rule 19b–4,[234] pursuant to which they must file proposed rule changes and many of these filings are subject to Commission approval. By contrast, Security Futures Product Exchanges would, under the Commission's proposal, file the vast majority of their proposed rule changes pursuant to Rule 19b–7, pursuant to which these rule changes would be effective on filing and would not require Commission approval. The commenter urged the Commission to eliminate this disparity in the rule filing process.

The Commission does not believe that the rule filing process for Security Futures Product Exchanges and Limited Purpose National Securities Associations will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. First, the statute provides for different procedures for rules filed by Security Futures Product Exchanges as compared to exchanges registered pursuant to section 6(a) and national securities associations registered pursuant to section 15A(a) of the Exchange Act. Second, in response to concerns raised by commenters, Rule 19b–7 and Form 19b–7 have been modified to parallel existing Rule 19b–4 and Form 19b–4, respectively. Third, the Exchange Act provides that most proposed rule changes filed by Security Futures Product Exchanges pursuant to Rule 19b–7 [235] may become effective without Commission approval, although this is not the case for many proposed rule changes submitted by the existing options exchanges pursuant to Rule 19b–4.[236] Thus, the Commission believes that adopting Rule 19b–7 in the manner that it has furthers the purposes of the Exchange Act in a manner consistent with competitive considerations. The Commission continues to study means by which to streamline the rule filing process for existing national securities exchanges and national securities associations, but adopting Rule 19b–7 will, in itself, have no adverse effects on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The second commenter asserted that, if the Commission's proposed rules with regard to notice registration were adopted, it would be more difficult for a futures market to notice register with the Commission than it would be for a securities market to become notice-designated by the CFTC. This commenter concluded that a competitive disparity would thereby result.[237]

The Commission does not believe that the notice registration process as adopted will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange Act, as amended by the CFMA, specifically contemplates a notice registration process for futures markets that desire to register as Security Futures Product Exchanges, and gives the Commission the authority to require them to provide information ''comparable to the information and documents required for national securities exchanges.'' [238] The Commission believes that the notice registration process as adopted furthers the purposes of the Exchange Act in an appropriate manner. Moreover, Security Futures Product Exchanges will be subject to fewer reporting burdens imposed by the Commission than the existing securities exchanges, their direct competitors in the market for security futures products. Form 1–N (for Security Futures Product Exchanges) requires fewer exhibits than Form 1 (for other national securities exchanges), and, more importantly, Form 1–N is effective upon filing and does not require Commission approval, unlike Form 1. In addition, although the notice and amendments required by Rule 6a–4 [239] entail certain legal and clerical costs, these requirements have been carefully tailored to minimize the costs. The Commission concludes, therefore, that the anticompetitive effects of the notice registration process for Security Futures Product Exchanges—if any—would be minimal.

The Commission received no comments specifically relating to capital formation and one comment relating to efficiency.[240] This commenter described the rule filing process currently imposed by the CFTC on entities that will become Security Futures Product Exchanges and Limited Purpose National Securities Associations, and recommended that the Commission ultimately accept these CFTC filings,

[226] 15 U.S.C. 78s(b)(7)(C).

[227] 15 U.S.C. 78s(b)(1).

[228] *See supra* Section V.C.4.

[229] 15 U.S.C. 78c(f).

[230] 15 U.S.C. 78w(a)(2).

[231] *See* Proposing Release, *supra* note .

[232] 15 U.S.C. 78c(f) and 78w(a)(2).

[233] *See* CBOE Letter. A second commenter, although not commenting on proposed Rule 19b–7 itself, expressed concurrence with the views regarding proposed Rule 19b–7 expressed in the CBOE Letter. *See* CME Letter.

[234] 17 CFR 240.19b–4.

[235] 17 CFR 240.19b–7.

[236] 17 CFR 240.19b–4.

[237] *See* CBOT Letter. Another commenter, although not specifically discussing competitive considerations, stated that the Commission's proposal regarding notice registration would ''require a wasteful duplication of information that is on public file with the CFTC.'' CME Letter.

[238] 15 U.S.C. 78f(g)(2)(A).

[239] 17 CFR 240.6a–4.

[240] *See* NFA Letter.

with minor modifications, to satisfy the Commission's need to be informed of such entities' proposed rule changes. The commenter noted, however, that it ''is aware of the short deadlines that the CFMA imposes and recognizes that, given the time constraints SEC staff is working under, it may be more efficient in the short-term for the SEC to work from the model [for proposed rule changes] that it already has in place.'' The commenter also stated that it understood that some of the more detailed requirements imposed by proposed Rule 19b–7 and proposed Form 19b–7 were dictated by publication requirements imposed by the Exchange Act but not the Commodities Exchange Act. On this basis, the commenter stated that it would not object to the Commission's proposed Rule 19b–7 and proposed Form 19b–7.

The Commission continues to believe that the proposed rules will have a minimal effect on efficiency and capital formation. The Commission acknowledges that there are certain legal and clerical costs involved in notice registering and filing proposed rule changes with the Commission. The resources employed to meet these costs will not otherwise be available to Security Futures Product Exchanges and Limited Purpose National Securities Associations for other uses. Nevertheless, because filings made pursuant to Rules 6a–4 and 19b–7 [241] are effective on filing and do not require Commission approval, the Commission believes that the requirement to make these filings will have no substantial effect on efficiency.

VIII. Summary of Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[242] the Acting Chairman of the Commission certified that the adopted rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to the Proposing Release No. 34–44279 (May 8, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

IX. Statutory Authority

The Commission is adopting the rules pursuant to its authority under Exchange Act sections 3(b), 5, 6, 11, 11A, 15A, 17(a) and (b), 19, and 23(a).

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of the Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

2. The authority citation following § 202.3 is removed.

3. Section 202.3 is amended by adding paragraph (b)(3) to read as follows:

§ 202.3 Processing of filings.

* * * * *

(b)(1) * * *

(3) Notice forms for registration as national securities exchanges pursuant to Section 6(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)) filed with the Commission are routed to the Division of Market Regulation, which examines these notices to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Defective notices may be returned with a request for correction or held until corrected before being accepted as a filing.

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

4. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 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.

* * * * *

5. The authority citations following §§ 240.6a–2 and 240.6a–3 are removed.

6. Section 240.6a–2 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 240.6a–2 Amendments to application.

* * * * *

(e) The Commission may exempt a national securities exchange, or an exchange exempted from such registration based on limited volume, from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C of the exchange's application for registration, as amended, that either:

(1) Is listed in Exhibit C of the application for registration or notice of registration, as amended, of one or more other national securities exchanges; or

(2) Was an inactive subsidiary throughout the subsidiary's latest fiscal year. Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (e)(1) of this section.

(f) A national securities exchange registered pursuant to Section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall be exempt from the requirements of this section.

7. Section 240.6a–3 is amended by adding paragraph (c) to read as follows:

§ 240.6a–3 Supplemental material to be filed by exchanges.

* * * * *

(c) A national securities exchange registered pursuant to Section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall be exempt from the requirements of this section.

8. Section 240.6a–4 is added to read as follow:

§ 240.6a–4 Notice of registration under Section 6(g) of the Act, amendment to such notice, and supplemental materials to be filed by exchanges registered under Section 6(g) of the Act.

(a) *Notice of registration.* (1) An exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing Form 1–N (§ 249.10 of this chapter) (''notice of registration''), in accordance with the instructions contained therein, if:

[241] 17 CFR 240.6a–4 and 240.19b–7.

[242] 5 U.S.C. 605(b).

(i) The exchange is a board of trade, as that term in defined in the Commodity Exchange Act (7 U.S.C. 1a(2)), that:

(A) Has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; or

(B) Is registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) and such registration is not suspended by the Commodity Futures Trading Commission; and

(ii) Such exchange does not serve as a market place for transactions in securities other than:

(A) Security futures products; or

(B) Futures on exempted securities or on groups or indexes of securities or options thereon that have been authorized under Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a).

(2) Promptly after the discovery that any information filed on Form 1–N (§ 249.10 of this chapter) was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(b) *Amendment to notice of registration.* (1) A national securities exchange registered pursuant to Section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) (''Security Futures Product Exchange'') shall file an amendment to Form 1–N (§ 249.10 of this chapter), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1–N (§ 249.10 of this chapter), within:

(i) Ten days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed on the Execution Page of Form 1–N (§ 249.10 of this chapter), or amendment thereto; or

(ii) 30 days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed as part of Exhibit F to Form 1–N (§ 249.10 of this chapter), or any amendments thereto.

(2) A Security Futures Product Exchange shall maintain records relating to changes in information required in Exhibits C and E to Form 1–N (§ 249.10 of this chapter) which shall be current of as of the latest practicable date, but shall, at a minimum, be up-to-date within 30 days. A Security Futures Product Exchange shall make such records available to the Commission and the public upon request.

(3) On or before June 30, 2002, and by June 30 every year thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), Exhibits F, H, and I, which shall be current of as of the latest practicable date, but shall, at a minimum, be up-to-date within three months as of the date the amendment is filed.

(4) On or before June 30, 2004, and by June 30 every three years thereafter, a Security Futures Product Exchange shall file, as an amendment to Form 1–N (§ 249.10 of this chapter), complete Exhibits A, B, C, and E, which shall be current of as of the latest practicable date, but shall, at a minimum, be up-to-date within three months as of the date the amendment is filed.

(5)(i) If a Security Futures Product Exchange, on an annual or more frequent basis, publishes, or cooperates in the publication of, any of the information required to be filed by paragraphs (b)(3) and (b)(4) of this section, in lieu of filing such information, a Security Futures Product Exchange may satisfy this filing requirement by:

(A) Identifying the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of such publication; and

(B) Certifying to the accuracy of such information as of its publication date.

(ii) If a Security Futures Product Exchange keeps the information required under paragraphs (b)(3) and (b)(4) of this section up-to-date and makes it available to the Commission and the public upon request, in lieu of filing such information, a Security Futures Product Exchange may satisfy this filing requirement by certifying that the information is kept up-to-date and is available to the Commission and the public upon request.

(iii) If the information required to be filed under paragraphs (b)(3) and (b)(4) of this section is available continuously on an Internet web site controlled by a Security Futures Product Exchange, in lieu of filing such information with the Commission, such Security Futures Product Exchange may satisfy this filing requirement by:

(A) Indicating the location of the Internet web site where such information may be found; and

(B) Certifying that the information available at such location is accurate as of its date.

(6)(i) The Commission may exempt a Security Futures Product Exchange from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C to Form 1–N (§ 249.10 of this chapter), as amended, that either:

(A) Is listed in Exhibit C to Form 1 (§ 249.1 of this chapter) or to Form 1–N (§ 249.10 of this chapter), as amended, of one or more other national securities exchanges; or

(B) Was an inactive affiliate or subsidiary throughout the affiliate's or subsidiary's latest fiscal year.

(ii) Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (b)(6)(i) of this section.

(7) If a Security Futures Product Exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(c) *Supplemental material to be filed by Security Futures Product Exchanges.* (1)(i) A Security Futures Product Exchange shall file with the Commission any material related to the trading of security futures products (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, participants in, or subscribers to, the exchange. Such material shall be filed with the Commission within ten days after issuing or making such material available to members, participants, or subscribers.

(ii) If the information required to be filed under paragraph (c)(1)(i) of this section is available continuously on an Internet web site controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(A) Indicate the location of the Internet web site where such information may be found; and

(B) Certify that the information available at such location is accurate as of its date.

(2) Within 15 days after the end of each calendar month, a Security Futures Product Exchange shall file a report concerning the security futures products traded on such exchange during the previous calendar month. Such a report shall:

(i) For each contract of sale for future delivery of a single security, the number

of contracts traded on such exchange during the relevant calendar month and the total number of shares underlying such contracts traded; and

(ii)For each contract of sale for future delivery of a narrow-based security index, the number of contracts traded on such exchange during the relevant calendar month and the total number of shares represented by the index underlying such contracts traded.

9. Section 240.19b–4 is amended by revising paragraph (a) to read as follows:

§ 240.19b–4 Filing with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)), shall be made on Form 19b–4 (§ 249.819 of this chapter).

* * * * *

10. Section 240.19b–7 is added to read as follows:

§ 240.19b–7 Filings with respect to proposed rule changes submitted pursuant to Section 19(b)(7) of the Act.

(a) Filings with respect to proposed rule changes required to be submitted pursuant to Section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)), shall be made on Form 19b–7 (§ 249.822 of this chapter). The Commission will promptly publish a notice of filing of such proposed rule change.

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

(1) A completed Form 19b–7 (§ 249.822 of this chapter) is submitted; and

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

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

(ii) A summary of any written comments (including e-mail) received by the self-regulatory organization on the proposed rule change.

(c) Self-regulatory organizations shall retain at their principle place of business a file, available to 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 such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

12. Section 249.10 and Form 1–N are added to read as follows:

Note: Form 1–N is attached as Appendix A to this document. Form 1–N will not ppear in the Code of Federal Regulations.

§ 249.10 Form 1–N for notice registration as a national securities exchange.

This form shall be used for notice, and amendments to the notice, to permit an exchange to register as a national securities exchange solely for the purposes of trading security futures products pursuant to Section 6(g) of the Act (15 U.S.C. 78f(g)).

13. Section 249.819 is revised to read as follows:

§ 249.819 Form 19b–4, for filings with respect to proposed rule changes by all self-regulatory organizations, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934.

This form shall be used by all self-regulatory organizations, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file proposed rule changes with the Commission pursuant to Section 19(b)(1) of that Act (15 U.S.C. 78s(b)(1)) and Rule 19b–4 (17 CFR 240.19b–4) thereunder.

14. Form 19b–4 (referenced in § 249.819) is amended by:

a. In General Instruction A, ''Use of the Form,'' revise the first sentence;

b. In General Instruction C, ''Documents Comprising the Completed Form,'' revise the last sentence;

c. In General Instruction E, ''Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change,'' revise the last two sentences;

d. In General Instruction F, ''Signature and Filing of Completed Form,'' revise the first sentence;

e. In Information to Be Included in the Completed Form, item 3 ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,'' revise the second and third sentences of the introductory text and paragraph (b);

f. In Information to Be Included in the Completed Form revise item 6, ''Extension of Time Period for Commission Action;''

g. In Information to Be Included in the Completed Form, item 7, ''Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2),'' revise the title and paragraph (d); and

h. In Exhibit 1, Information to Be Included in the Completed Notice, add two undesignated paragraphs to the end of Item III, ''Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.''

The revisions and additions read as follows:

Note: Form 19b–4 and these amendments do not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

General Instructions

A. Use of the Form

This form shall 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 (the ''Act'') except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act. * * *

* * * * *

C. Documents Comprising the Completed Form

* * * Each filing shall be marked on the facing sheet with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year.

* * * * *

E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

* * * Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) or Section 19(b)(7)(D) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

F. Signature and Filing of the Completed Form

Nine copies of Form 19b–4, nine copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with, in the case of filings by securities exchanges, the Assistant Director for Derivatives and Exchange Oversight; in the case of filings by securities associations or the Municipal Securities Rulemaking Board, the Assistant Director for NMS and OTC; and in the case of filings by clearing agencies, the Assistant Director for Securities Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001; in the case of filings by securities exchanges registered pursuant to Section 6(g)(1) of the Act and national securities associations registered pursuant to Section 15A(k) of the Act, the Assistant Director for Security Futures Products, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1003. * * *

* * * * *

Information To Be Included in the Completed Form

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

* * * With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. * * *

* * * * *

(b) With respect to proposed rule changes filed pursuant to both Sections 19(b)(1) and 19(b)(2) of the Act, explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to proposed rule changes filed pursuant Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

* * * * *

6. Extension of Time for Commission Action

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

Note. The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until it shall file an amendment which specifically states that the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act shall begin to run on the date of filing such amendment.

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

* * * * *

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

* * * * *

Exhibit 1

* * * * *

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

* * * * *

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

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

(A) by order approve such proposed rule change, or

(B) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

* * * * *

15. Section 249.822 and Form 19b–7 are added to read as follows:

Note: Form 19b–7 is attached as Appendix B to this document. Form 19b–7 will not appear in the Code of Federal Regulations.

§ 249.822 Form 19b–7, for filings with respect to proposed rule changes by all self-regulatory organizations, pursuant to Section 19(b)(7)(A) of the Securities Exchange Act of 1934.

This form shall be used by all self-regulatory organizations, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file proposed rule 77 changes with the Commission pursuant to Section 19(b)(7) of that Act (15 U.S.C. 78s(b)(7)) and Rule 19b–7 (17 CFR 240.19b–7) thereunder.

Dated: August 13, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–U

Appendix A

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Form 1-N

OMB APPROVAL
OMB Number: 3235-0554
Expires: .....July 31, 2004
Estimated Average
burden hours per form: 31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT

FORM 1-N INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form 1-N is the form for notice of registration as a national securities exchange for the sole purpose of trading security futures products ("Security Futures Product Exchange") pursuant to Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act").

2. **UPDATING** - A Security Futures Product Exchange must file amendments to Form 1-N in accordance with Exchange Act Rule 6a-4.

3. **CONTACT EMPLOYEE** - The individual listed on the Execution Page (Page 1) of Form 1-N as the contact employee must be authorized to receive all contact information, communications, and mailings and is responsible for disseminating such information within the Security Futures Product Exchange's organization.

4. **FORMAT**
- Attach an Execution Page (Page 1) with original manual signatures.
- Please type all information.
- Use only the current version of Form 1-N or a reproduction.

5. If the information called for by any Exhibit is available in printed form, the printed material may be filed provided it does not exceed 8 1/2 X 11 inches in size.

6. If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

7. An exchange that is filing Form 1-N may not satisfy the requirements to provide certain information by means of an Internet web page. All materials must be filed with the Commission in paper.

8. **WHERE TO FILE AND NUMBER OF COPIES** - Submit one original and two copies of Form 1-N to: Securities and Exchange Commission, Division of Market Regulation, Office of Market Supervision, 450 Fifth Street, NW, Washington, DC 20549.

9. **PAPERWORK REDUCTION ACT DISCLOSURE**
- Form 1-N requires an exchange registering as a national securities exchange, for the sole purpose of trading security futures products, pursuant to Section 6(g) of the Exchange Act, to provide the Securities and Exchange Commission ("SEC" or "Commission") with certain information regarding its operation. If documents containing information satisfying the Commission's information requirements have been filed with the Commodity Futures Trading Commission, copies of such documents may be filed with the Commission. Security Futures Product Exchanges are also required to update certain information filed on Form 1-N on a periodic basis.

- 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. Sections 3(a)(1), 5, 6(a), and 23(a) of the Exchange Act authorize the Commission to collect information on this Form 1-N. *See* 15 U.S.C. §§ 78c(a)(1), 78e, 78f(a), and 78w(a).

- Form 1-N is designed to enable the Commission to determine whether a Security Futures Product Exchange is in compliance with the Exchange Act.

- It is estimated that an exchange will spend approximately 31 hours completing the initial application on Form 1-N pursuant to Rule 6a-4. It also is estimated that each Security Futures Product Exchange will spend approximately 15 hours to prepare each amendment to Form 1-N pursuant to Rule 6a-4.

- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

- It is mandatory that an exchange seeking to operate as a national securities exchange for the sole purpose of trading security futures products file a Form 1-N with the Commission. It is also mandatory that Security Futures Product Exchanges file amendments to Form 1-N under Rule 6a-4.

- No assurance of confidentiality is given by the Commission with respect to the responses made in Form 1-N. The public has access to the information contained in Form 1-N.

- This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

Form 1-N Page 1 Execution Page	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT	Date filed (MM/DD/YY):

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of a national securities exchange would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

❁ APPLICATION ❁ AMENDMENT

1. State the name of the exchange: _____

2. Provide the Security Futures Product Exchange's primary street address (Do not use a P.O. Box):

_____

_____

3. Provide the exchange's mailing address (if different):

_____

_____

4. Provide the business telephone and facsimile number:

_____

(Telephone) (Facsimile)

5. Provide the name, title and telephone number of a contact employee:

_____

(Name) (Title) (Telephone Number)

6. Provide the name and address of counsel for the exchange:

_____

_____

7. Provide the date that the exchange's fiscal year ends: _____

8. Indicate legal status of the exchange: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership

☐ Limited Liability Company ☐ Other (specify): _____

If other than a sole proprietor, indicate the date and place where the exchange obtained its legal status (e.g., state where incorporated, place where partnership agreement was filed, or where the Security Futures Product Exchange entity was formed):
(a) Date (MM/DD/YY): _____ (b) State/Country of formation: _____

(c) Statute under which the exchange was organized: _____

EXECUTION:

The exchange consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the exchange's activities may be given by registered or certified mail or confirmed telegram to the exchange's contact employee at the main address, or mailing address if different, given in Items 2 and 3. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said exchange. The undersigned and the exchange represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date: _____ _____
(MM/DD/YY) (Name of Exchange)

By: _____ _____
(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____
(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form 1-N Page 2	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT	OFFICIAL USE	OFFICIAL USE ONLY

EXHIBITS

File all Exhibits with: a form for notice of registration as a national securities exchange for the sole purpose of trading security futures products pursuant to Section 6(g) of the Exchange Act and Rule 6a-4, or amendments to such forms pursuant to Rule 6a-4. For each exhibit, include the name of the filing exchange, the date upon which the exhibit was filed, and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

Exhibit A As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of the constitution, articles of incorporation or association with all subsequent amendments, and existing by-laws or corresponding rules or instruments, whatever the name, of the filing exchange.

Exhibit B As of the latest date practicable within one (1) month of the date Form 1-N is filed, a copy of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any provisions of the constitution, by-laws, rules, or trading practices of the filing exchange which are not included in Exhibit A.

Exhibit C As of the latest date practicable within one (1) month of the date Form 1-N is filed, for each subsidiary or affiliate of the filing exchange that will be involved in the trading of security futures products, and for any entity with whom the exchange has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions in security futures products on the exchange ("System"), provide the following information:

1. Name and address of organization.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Name of state and statute citation under which organized. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation.
5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance (including the controls that will be implemented to ensure the safety of held funds or securities), or settlement of transactions in connection with operation of the System.
6. A copy of the constitution.
7. A copy of the articles of incorporation or association including all amendments.
8. A copy of existing by-laws or corresponding rules or instruments.
9. The name and title of the present officers, governors, or persons performing similar functions.
10. An indication of whether such business or organization ceased to be associated with the Security Futures Product Exchange during the previous year, and a brief statement of the reasons for termination of the association.

Exhibit D Describe the manner of operation of the System involving trading of security futures products. This description should include the following:

1. The means of access to the System.
2. Procedures governing entry and display of quotations and orders in the System.
3. Procedures governing the execution, reporting, clearance, and settlement of transactions in connection with the System.
4. Proposed fees.
5. Procedures for ensuring compliance with System usage guidelines.

Form 1-N Page 3	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT	OFFICIAL USE	OFFICIAL USE ONLY
	6. The hours of operation of the System, and the date on which the exchange intends to commence operation of the System. 7. Attach a copy of the users' manual.		
Exhibit E	A list of the officers, governors, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each: 1. Name. 2. Title. 3. Dates of commencement and termination of term of office or position. 4. Type of business in which each is primarily engaged.		
Exhibit F	This Exhibit is applicable only to filing exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange and should be current as of the latest date practicable within 1 month of the date Form 1-N is filed. If the exchange is a corporation, please provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Security Futures Product Exchange. If the exchange is a partnership, please provide a list of all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital. For each of the persons listed in the Exhibit F, please provide the following: 1. Full legal name. 2. Title or Status. 3. Date title or status was acquired. 4. Approximate ownership interest. 5. Whether the person has control, a term that is defined in the instructions to this Form.		
Exhibit G	To the extent not covered in an exchange's rules submitted under Exhibit A, describe the Security Futures Product Exchange's criteria for membership. Describe conditions under which members may be subject to suspension or termination for infractions relating to the trading of security futures products. Describe any procedures that will be involved in the suspension or termination of a member for such infractions.		
Exhibit H	As of the latest date practicable within 1 month of the date Form 1-N is filed, provide an alphabetical list of all members, participants, subscribers, or other users, including the following information: 1. Name. 2. If member, participant, subscriber, or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g., partner, officer, director, employee, etc.). 3. Brief description of the type of activities primarily engaged in by the member, participant, subscriber, or other user. A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in activities or functions, identify each type and state the number of members, participants, subscribers, or other users in each. 4. The class of membership, participation, subscription, or other access.		
Exhibit I	Provide a schedule of the security futures products proposed to be listed by the filing exchange, or for amendments to the Form 1-N the security futures products listed by the exchange, indicating for each the name of the issuer and a description of the security.		

BILLING CODE 8010–01–C

Appendix B

Note: Appendix B to the preamble will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0553
Expires: July 31, 2004
Estimated average burden hours 15.5

FORM 19b–7

File No. SR _____
Amendment No. _____
(If Applicable)*

Securities and Exchange Commission, Washington, DC 20549, Form 19b–7

Proposed Rule Change by

_____
(Exact Name of Self-Regulatory Organization)*

Pursuant to Rule 19b–7 Under the Securities Exchange Act of 1934

*(Do not include parenthetical material in completed form)

Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Self-Regulatory Organization)

By: _____
(Signature. Print name and title of signer below signature.)

General Instructions

When Should This Form Be Used?

This form must be used for filings of proposed rule changes by all self-regulatory organizations (''SROs'') that are required to submit proposed rule changes pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''). National securities exchanges registered pursuant to Section 6(g) of the Act, and limited purpose national securities associations registered pursuant to Section 15A(k) of the Act, are SROs for purposes of this form.

Terms

Unless the context clearly indicates otherwise, terms used in this form have the meaning ascribed to them in the Act, as amended, and Rule 19b–7 thereunder.

Format Requirements

The Notice section of this Form 19b–7 must comply with the guidelines for publication in the **Federal Register**. 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 and the Commodity Exchange Act (''CEA'') must include the corresponding cite to the United States Code in a footnote. All references to the Securities and Exchange Commission (''SEC'' or ''Commission'') and Commodity Futures Trading Commission (''CFTC'') rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases and CFTC decisions, orders, or letters must include the release number, release date, **Federal Register** cite, **Federal Register** date, and corresponding file number (*e.g.,* SR–[SRO]–xxxx–xx). In addition, the OFR's *Drafting Legal Documents* is a general style guide to clear and concise legal writing.

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–7 that includes the cover sheet, Notice, and applicable Exhibits. Each cover sheet, Notice and Exhibit must include a file number that is assigned by the SRO, which includes the initials of the SRO, the 4-digit year and the number of the filing for that year (SR–[SRO]–XXXX–XX). 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 and the requirements of Rule 19b–7. Any filing that does not comply with all of the requirements of this form will not be considered filed with the Commission and will be returned to the SRO.

The SRO must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal. This information also is necessary for the Commission to determine whether abrogation of the proposal is appropriate because it unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. It is the responsibility of the SRO to prepare Items I, II, and III of the Notice.

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

Exhibit 1

(a) Copies of all notices issued by the SRO soliciting comment on the proposed rule change.

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

(c) 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.

(d) Any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change prepared or received by the SRO. All correspondence or other communications should be presented in alphabetical order together with an alphabetical listing of the authors.

(e) If after the proposed rule change is filed but before the Commission takes final action on it, the SRO prepares or receives any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change, copies of the communications must be filed as previously instructed in paragraph (b) above.

Exhibit 2

Copies of any form, report, or questionnaire that the SRO proposes to use to help implement or operate the proposed rule change, or that is referred to in the proposed rule change.

Exhibit 3

A statement of the SRO that describes the procedures of the SRO taken with regards to the proposed rule change. Such statement must include:

(a) A description of the action taken on the proposed rule change by the members or board of directors or other governing body of the SRO.

(b) The name(s) and telephone number(s) of the persons on the staff of the SRO prepared to respond to questions and comments on the proposed rule change.

Exhibit 4

Text of the proposed rule change. Indicate new language by underscoring and language to be deleted by brackets. If the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the SRO, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule on the application of such other rule. If the proposed rule change amends an existing rule of the SRO, set forth the file numbers for any prior filings with respect to the existing rule.

Exhibit 5

A copy of any certification submitted to the CFTC pursuant to Section 5c(c) of the Commodity Exchange Act; a copy of any request submitted to the CFTC for a determination by the CFTC that review of the proposed rule change is not necessary and any indication from the CFTC that it has determined that review of the proposed rule change is not necessary; or a copy of any request submitted to the CFTC for approval of the proposed rule change and any indication received from the CFTC that the proposed rule change has been approved.

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

If information on the Form 19b–7 Notice or any applicable Exhibit is or becomes inaccurate or incomplete before the proposed rule change becomes effective, the SRO must file correcting amendments. Nine copies of amendments, including one manually signed copy, must be provided. 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.

Where and How To File

Nine copies of Form 19b–7 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 20549–1003. The chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must manually sign at least one copy of the completed Form 19b–7. Please note that any information filed by the SRO requesting confidential treatment must be filed on paper with the Commission.

FORM 19b–7 NOTICE

Securities and Exchange Commission
(Release No. 34–; File No. SR–)
Self-Regulatory Organization; 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)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on [date [3]], the [name of self-regulatory organization] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. [Name of self-regulatory organization] also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). (Section 19(b)(7)(B) of the Act provides that a proposed rule change may take effect upon the occurrence of one of three events. The self-regulatory organization should include one of the following sentences, whichever is applicable.)

The [name of self-regulatory organization] filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act on [date]; *or*

The [name of self-regulatory organization], on [date], has requested that the CFTC make a determination that review of the proposed rule change of the [self-regulatory organization] is not necessary. The CFTC has [made such determination on [date]]; or [has not made such determination]; *or*

The [name of self-regulatory organization], on [date] submitted the proposed rule change to the CFTC for approval. The CFTC [approved the proposed rule change on [date]]; or [has not approved the proposed rule change].

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

(Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate the changes in the rule by brackets for words to be deleted and underscoring for words to be added.)

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

[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. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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 permit interested persons to submit comments;
- 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 market participants, 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.)

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.)

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 unduly burden 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 not undue; 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.)

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

(The self-regulatory organization must include the following with the applicable phrase on the proposed rule change's effectiveness:)

The proposed rule change has become effective on [insert date of filing of written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act; or the date of determination by the CFTC that review of the proposed rule change is not necessary; or the date of approval of the proposed rule change by the CFTC]; *or*

The proposed rule change is not effective because the CFTC [has not determined that review of the proposed rule changes is not necessary] or [has not approved the proposed rule change].

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts 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 20549–0609. 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 also will 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 [insert date 21 days from date of publication in the **Federal Register** [4]].

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. *See* General Instructions.

[4] To be completed by the **Federal Register** when the notice is submitted for publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[5] 17 CFR 200.30–3(a)(75).

[Insert name of Secretary]
Secretary

[FR Doc. 01–20735 Filed 8–17–01; 8:45 am]

BILLING CODE 8010–01–U