§ 201.700 Initiation of proceedings for SRO proposed rule changes.

(a) Rules of Practice. For purposes of these Rules of Practice contained at 17 CFR 201.700 through 201.701, the following Rules of Practice apply:

(1) Rule 103, 17 CFR 201.103 (Construction of Rules);
(2) Rule 104, 17 CFR 201.104 (Business Hours); and

(b) Institution of proceedings; notice and opportunity to submit written views—

(1) Generally. If the Commission determines to institute proceedings to determine whether a self-regulatory organization’s proposed rule change should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change, as well as all interested parties and the public, by publication in the Federal Register of the grounds for disapproval under consideration.

(ii) Prior to notice. If the Commission determines to institute proceedings prior to initial publication by the Commission of the notice of the self-regulatory organization’s proposed rule change in the Federal Register, then the Commission shall publish notice of the proposed rule change simultaneously with a brief summary of the grounds for disapproval under consideration.

(iii) Service of an order instituting proceedings. In addition to publication in the Federal Register of the grounds for disapproval under consideration, the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the grounds for disapproval under consideration to the self-regulatory organization that filed the proposed rule change by serving notice to the person listed as the contact person on the cover page of the Form 19b–4 filing. Notice shall be made by delivering a copy of the order to such contact person either by any method specified in 17 CFR 201.135 or by electronic means including e-mail.

(2) Notice of the grounds for disapproval under consideration. The grounds for disapproval under consideration shall include a brief statement of the matters of fact and law on which the Commission instituted the proceedings, including the areas in which the Commission may have questions or may need to solicit additional information on the proposed rule change. The Commission may consider during the course of the proceedings additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

(3) Demonstration of consistency with the Exchange Act. The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization is on the self-regulatory organization that proposed the rule change. As reflected in the General Instructions to Form 19b–4, the Form is designed to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(d) Service required. Notwithstanding any provision of §201.322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) Failure to file required financial information: sanction. Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to §§201.135 or 201.180 shall be imposed for a failure to file such a statement.
change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all information elicited by the Form, including the exhibits, and must present the information in a clear and comprehensible manner. In particular, the self-regulatory organization must explain why the proposed rule change is consistent with the requirements of the Exchange 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, or that another self-regulatory organization has a similar rule in place, is not sufficient. Instead, the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder applicable to the self-regulatory organization.

(c) Conduct of hearings—(1) Initial comment period in writing. Unless otherwise specified by the Commission in its notice of grounds for disapproval under consideration, all interested persons will be given an opportunity to submit written data, views, and arguments concerning the proposed rule change under consideration and whether the Commission should approve or disapprove the proposed rule change. The self-regulatory organization that submitted the proposed rule change may file a written statement in support of its proposed rule change demonstrating, in specific detail, how such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the self-regulatory organization. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

(2) Oral. The Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.

(3) Rebuttal. At the end of the initial comment period, the self-regulatory organization that filed the proposed rule change will be given an opportunity to respond to any comments received. The self-regulatory organization may voluntarily file, or the Commission may request a self-regulatory organization to file, a response to a comment received regarding any aspect of the proposed rule change under consideration to assist the Commission in determining whether the proposed rule change should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(4) Non-response. Any failure by the self-regulatory organization to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(d) Record before the Commission—(1) Filing of papers with the Commission. Filing of papers with the Commission shall be made by filing them with the Secretary, including through electronic means. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change, the Commission shall inform interested parties of the methods by which they may submit written comments and arguments for or against Commission approval.
§ 201.701 Issuance of order.

At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(b)(4), the Commission may issue an order approving or disapproving the self-regulatory organization’s proposed rule change together with a written statement of the reasons therefor.

[76 FR 4070, Jan. 24, 2011]