§ 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 initiate 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.

(ii) Subsequent to notice. If the Commission determines to institute proceedings subsequent 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 separately in the FEDERAL REGISTER 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 201.141(a) 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, 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. 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 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 that are applicable to the self-regulatory organization.
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.

(2) Public availability of materials received. During the conduct of the proceedings, the Commission generally will make available publicly all written comments it receives without change. 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 view 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.

(3) Record before the Commission. The Commission shall determine each matter on the basis of the record. The record shall consist of the proposed rule change filed on Form 19b-4 by the self-regulatory organization, including all attachments and exhibits thereto, and all written materials received from any interested parties on the proposed rule change, including the self-regulatory organization that filed the proposed rule change, through the means identified by the Commission as provided in paragraph (1), as well as any written materials that reflect communications between the Commission and any interested parties.

(e) Amended notice not required. The Commission is not required to amend its notice of grounds for disapproval under consideration in order to consider, during the course of the proceedings, additional matters of fact and law beyond what was set forth in the notice of the grounds for disapproval under consideration.

[76 FR 4070, Jan. 24, 2011]

§ 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]

INFORMAL PROCEDURES AND SUPPLEMENTARY INFORMATION CONCERNING ADJUDICATORY PROCEEDINGS

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) Guidelines for the timely completion of proceedings. (1) Timely resolution of adjudicatory proceedings is one factor in assessing the effectiveness of the adjudicatory program in protecting investors, promoting public confidence in the securities markets and assuring respondents a fair hearing. Establishment of guidelines for the timely completion of key phases of contested administrative proceedings provides a standard for both the Commission and the public to gauge the Commission's adjudicatory program on this criterion. The Commission has directed that, to the extent possible:

(i) A decision by the Commission on review of an interlocutory matter should be completed within 45 days of the date set for filing the final brief on the matter submitted for review.

(ii) A decision by the Commission on a motion to stay a decision that has already taken effect or that will take effect within five days of the filing of the motion, should be issued within five days of the date set for filing of the opposition to the motion for a stay. If the decision complained of has not taken effect, the Commission's decision should be issued within 45 days of the