

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 202, 240 and 249

[Release No. 34-44279; 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 National Securities Exchanges and Limited Purpose National Securities Associations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is proposing new Rule 6a-4 under the Securities Exchange Act of 1934 ("Exchange Act") and new 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. The Commission also is proposing 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 proposing new Rule 19b-7, new Form 19b-7, and amendments to Rule 19b-4 and Form 19b-4 to accommodate proposed rule changes submitted by security futures product 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 proposed rules and forms and amendments to existing rules and forms are necessary to implement the Commodity Futures Modernization Act of 2000 ("CFMA") and will establish the registration and rule filing procedures for those entities that are interested in registering with the Commission for the purpose of trading security futures.

**DATES:** Comments must be received by June 14, 2001.

**ADDRESSES:** All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. S7-10-01; this file number should be included on the subject line if e-mail is

used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>). 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, Senior Special Counsel, at (202) 942-0075; Heather Traeger, Special Counsel, at (202) 942-0763; Kelly Riley, Special Counsel, at (202) 942-0752; Michael Gaw, Attorney, 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:** The Commission today is requesting public comment on proposed amendments to Rules 6a-2, 6a-3, and 19b-4,<sup>1</sup> and Form 19b-4 of the Exchange Act<sup>2</sup> as well as Rule 202.3 of the Commission's procedural rules,<sup>3</sup> regarding the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges and to accommodate proposed rule changes submitted by security futures product exchanges and limited purpose national securities associations under Sections 6(g) and 15A(k) of the Exchange Act, respectively.<sup>4</sup> The Commission also is requesting public comment on proposed new Rules 6a-4 and 19b-7<sup>5</sup> and new Forms 1-N and 19b-7 under the Exchange Act.

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<sup>1</sup> 17 CFR 240.6a-2, 240.6a-3, and 240.19b-4.

<sup>2</sup> 17 CFR 249.819.

<sup>3</sup> 17 CFR 202.3.

<sup>4</sup> 15 U.S.C. 78f(g) adn 78o-3(k).

<sup>5</sup> Proposed 17 CFR 240.6a-4 and 17 CFR 240.19b-7.

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#### I. Introduction

The Commodity Futures Modernization Act of 2000 ("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”).<sup>6</sup> The CFMA makes security futures “securities” under the Exchange Act,<sup>7</sup> the Securities Act of 1933,<sup>8</sup> the Investment Company Act of 1940,<sup>9</sup> and the Investment Advisers Act of 1940,<sup>10</sup> and contracts of sale for future delivery of a single security or a narrow based security index or options thereon under the Commodity Exchange Act (“CEA”).<sup>11</sup> 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.<sup>12</sup> New subsection 6(g) of the Exchange Act<sup>13</sup> provides an expedited process for an exchange that lists or trades security futures products to become registered with the Commission as a national securities exchange (“Security Futures Product 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.<sup>14</sup>

In addition, the CFMA amended the Exchange Act to require Security Futures Product Exchanges and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act (“Limited Purpose National Securities Associations”) <sup>15</sup> to file with the Commission proposed rule

changes relating only to specific types of rules, and to provide an expedited filing process for most of these rules.<sup>16</sup>

## II. Discussion of Proposed Rulemaking

### A. Notice Registration as an Exchange to Trade Security Futures Products, Amendments to Such Notice, and Other Supplemental Material

Section 6(g)(2)(A) of the Exchange Act provides that an exchange required to register with the Commission only because it lists or trades security futures products may register by filing a written notice with the Commission in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.<sup>17</sup> Such rule may require that the filing 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.<sup>18</sup> Consistent with this provision, the Commission is proposing new Form 1-N to be filed by exchanges to register with the Commission under Section 6(g) of the Exchange Act.<sup>19</sup> Proposed Form 1-N requests limited information from the exchange, including how it will operate, its rules and procedures, criteria for membership, information on subsidiaries or affiliates, and the security futures products it intends to trade. Proposed Form 1-N is not an application and the Commission would not “approve” an exchange before it begins to trade security futures products. Instead, proposed Form 1-N would be a notice to the Commission that the exchange would be trading security futures products and would provide information necessary for the Commission to exercise its regulatory responsibilities.

Pursuant to Section 6(g)(2)(B) of the Exchange Act, such “notice registration” will be effective contemporaneously with the submission of proposed Form 1-N, unless the registration would be subject to suspension or revocation by the CFTC.<sup>20</sup> A Security Futures Product Exchange would be required to file an amendment to proposed Form 1-N to correct any previously filed information that has been discovered to be incorrect, and to

provide any new information or correct any information rendered inaccurate.

The Commission also is proposing new Rule 6a-4<sup>21</sup> to set forth the information that must be submitted by an entity to register as a Security Futures Product Exchange and the ongoing filing requirements for Security Futures Product Exchanges, and to revise Exchange Act Rules 6a-2 and 6a-3<sup>22</sup> to exclude Security Futures Product Exchanges from the requirements of those rules.

#### 1. Filing of Notice of Registration

Proposed Rule 6a-4 would require an exchange registering pursuant to Section 6(g) of the Exchange Act<sup>23</sup> to file proposed Form 1-N with the Commission. Proposed Rule 6a-4 would provide that an exchange may register as a national securities exchange solely for purposes of trading security futures products by filing Form 1-N if the exchange is a board of trade<sup>24</sup> that: (i) Has been designated a contract market by the CFTC or is registered as a derivative transaction execution facility under Section 5a of the CEA,<sup>25</sup> and (ii) such designation or registration is not suspended by the CFTC;<sup>26</sup> 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 groups or indexes of securities, or options thereon.

Proposed Form 1-N is similar to 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.<sup>27</sup> Because, however, exchanges registering with the Commission pursuant to Section 6(g) of the Exchange Act<sup>28</sup> are also subject to the CFTC application and reporting requirements, the Commission is proposing to limit the information required to be filed on Form 1-N,<sup>29</sup> compared to the information currently required to be filed on the Form 1. Specifically, proposed Form 1-N consists of an execution page and nine exhibits, which relate generally to the organization of the exchange, its membership requirements, the manner in which

<sup>6</sup> Pub. L. No. 106-554, Appendix E, 114 Stat. 2763.

<sup>7</sup> Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

<sup>8</sup> Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. 77b(a)(1).

<sup>9</sup> Section 2(a)(36) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(36).

<sup>10</sup> Section 202(a)(18) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(18).

<sup>11</sup> Section 1a(31) of the CEA, 7 U.S.C. 1a(31).

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78f(g).

<sup>14</sup> Section 6(g)(1) of the Exchange Act, 15 U.S.C. 78f(g)(1).

<sup>15</sup> 15 U.S.C. 780-o3(k). Pursuant to this section, 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 its members with respect to security futures products.

<sup>16</sup> 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. 780-3(k)(3).

<sup>17</sup> 15 U.S.C. 78f(g)(2)(A).

<sup>18</sup> 15 U.S.C. 78f(a).

<sup>19</sup> 15 U.S.C. 78f(g).

<sup>20</sup> 15 U.S.C. 78f(g)(2)(B). Pursuant to its authority under the CEA, the CFTC may suspend or revoke registration of boards of trade. 7 U.S.C. 7b.

<sup>21</sup> Proposed Exchange Act Rule 6a-4.

<sup>22</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>23</sup> 15 U.S.C. 78f(g).

<sup>24</sup> The term “board of trade” has the same meaning as that term is defined in the CEA. 7 U.S.C. 1a(2).

<sup>25</sup> 7 U.S.C. 7(a).

<sup>26</sup> Section 6(g)(1)(A) of the Exchange Act, 15 U.S.C. 78f(g)(1)(A).

<sup>27</sup> 15 U.S.C. 78f(a).

<sup>28</sup> 15 U.S.C. 78f(g).

<sup>29</sup> See Proposed Form 1-N.

business is conducted on the exchange, and the security futures products traded or proposed to be traded. In those instances where the exchange has filed information with the CFTC, copies of documents filed with the CFTC could be filed with the Commission, instead of preparing a new document solely for purposes of filing with the Commission.<sup>30</sup>

Proposed Exhibit A to the proposed Form 1-N would require submission of the constitution, articles of incorporation or association with all subsequent amendments, and by-laws or corresponding rules of the Security Futures Product Exchange. Proposed Exhibit B to the proposed Form 1-N would require filings of written rulings, settled practices<sup>31</sup> and interpretations of the governing board or other committee of the exchange with respect to the rules, by-laws, constitution, or trading practices that are not included in Exhibit A. To ease preparation burdens, the Commission is proposing that Exhibits A and B be current as of the latest practicable date within 1 month of the date the proposed Form 1-N is filed. Because, pursuant to the regulatory framework set forth in the CFMA, the Commission does not approve the registration of exchanges filing proposed Form 1-N, or grant exemptions from registration, the Commission will not be required to make specific determinations as to whether such exchanges' systems, rules, and policies are consistent with the Exchange Act. Moreover, proposed Form 1-N would be filed with the Commission as a supplement to the continued oversight of the exchange by the CFTC. Accordingly, the Commission preliminarily believes that it would be reasonable for documents provided by exchanges filing proposed Form 1-N to be up-to-date within 1 month of the date of filing.

Proposed Exhibit C to the proposed Form 1-N would require information similar to that proposed to be included in Exhibits A and B but for affiliates, subsidiaries, and 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.<sup>32</sup> The exhibit would require

<sup>30</sup> See Proposed Form 1-N, instruction 9, and, for amendments, proposed Exchange Act Rule 6a-4(b)(6).

<sup>31</sup> For purposes of proposed Exhibit B to proposed Form 1-N, the Commission considers settled practices to be the policies of an exchange that are not otherwise covered in its written rulings.

<sup>32</sup> Specifically, proposed Exhibit C would require for all such entities: name and address of organization; form of organization; name of state

basic information regarding any subsidiary, affiliate, or other related entity involved in the trading of security futures products. The Commission preliminarily does not believe it is necessary for exchanges to file the contract or agreement itself as part of Exhibit C. Instead, the Commission is seeking to identify the general characteristics of the entities and their operational relationship with the Security Futures Product Exchange, such as networking, software, or other agreements associated with the execution, reporting, clearance, or settlement of transactions in security futures products.<sup>33</sup> For the same reasons discussed above, the Commission is proposing that Exhibit C be current as of the latest practicable date within 1 month of the date the proposed Form 1-N is filed.

Proposed Exhibit D would require a description of the manner of operation of the Security Futures Product Exchange's systems involving the trading of security futures products, including: The procedures governing entry and display of quotations; the procedures governing execution, reporting, clearance and settlement of transactions in connection with the system; proposed fees; the procedures for ensuring compliance; the hours of operation; the date of intended commencement of operations; and a copy of the users' manuals.<sup>34</sup>

Proposed Exhibit E would require that the Security Futures Product Exchange provide general information regarding officers, governors, or persons performing similar functions.<sup>35</sup> Proposed Exhibit F would require similar background information for persons with direct ownership and control for non-member owned Security

and statute citation under which organized; date of incorporation in present form; brief description of nature and extent of affiliation; brief description of business or functions; a copy of the constitution, articles of incorporation or association including all amendments, and existing by-laws or corresponding rules or instruments; the name and title of the present offices, governors, or persons performing similar functions; and an indication of whether such business or organization ceased to be associated with the Security Futures Product Exchange during the previous year and the reasons for such termination.

<sup>33</sup> Proposed Exchange Act Rule 61-4(b)(5)(i); see also note 44 and accompanying text.

<sup>34</sup> The Commission would expect a narrative description of how trading is done on the exchange. The Commission does not expect exchanges to submit technical specifications for their automated systems.

<sup>35</sup> For persons listed in proposed Exhibit E, the exchange would be 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.

Futures Product Exchanges.<sup>36</sup> Proposed Exhibit H would require similar background information for members, participants, subscribers or other users of the system.<sup>37</sup> To the extent not covered by an exchange's rules submitted in Exhibit A, proposed Exhibit G would require a description of the criteria for membership in the exchange, as well as a description of the conditions under which members may be subject to, and the procedures involved in, suspension or termination of a member. The information required in these exhibits would provide the Commission with the names and roles of the participants using the exchange's system, which the Commission preliminarily believes is necessary for reviewing the operation and function of the system.

Finally, a Security Futures Product Exchange would be required in proposed Exhibit I to provide a schedule of the security futures products it lists or proposes to list.

The Commission solicits comment on the proposed notice requirements in proposed Form 1-N, including the proposed exhibits. Specifically, the Commission seeks comment on whether the proposed requirements would be unreasonably burdensome for Security Futures Product Exchanges. Are all of the exhibits necessary? Is there other information that should be required to be provided or that could replace the information proposed to be submitted in the rule? For example, with respect to the timeframe as to when information must be current, is one month appropriate? Commenters are invited to address the possibility that intervening events may make information that is one month old outdated.

<sup>36</sup> Proposed Exhibit F would require a Security Futures Product Exchange that is a corporation to list each shareholder that directly owns 5% or more of a class of a voting security. If the exchange is a partnership, it would be required to list 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 these persons, the exchange would be required to list the full legal name, title or status, date title or status was acquired, approximate ownership interest, and whether the person has control (as defined in the instruction to proposed Form 1-N. The Commission is proposing that Exhibit F be current as of the latest practicable date within 1 month of the date the proposed Form 1-N is filed.

<sup>37</sup> For persons listed in proposed Exhibit H, the exchange would be required to provide the name, and 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 individual, and the individual's class of membership, participation, or other access. The Commission is proposing that Exhibit H be current as of the latest practicable date within 1 month of the date the proposed Form 1-N is filed.

## 2. Filing of Periodic Amendments

Once registered, proposed Rule 6a-4 would require a Security Futures Product Exchange to file with the Commission an amendment that contains written notice of actions that create new or render inaccurate information filed on the execution page or as part of proposed Exhibits C, E, F or H of its proposed Form 1-N.<sup>38</sup> Any amendment would be required to be filed within 10 days after such action is taken.<sup>39</sup> In addition, each exchange would be required to file as an amendment, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.<sup>40</sup> Proposed Rule 6a-4 also would require an exchange to 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 would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.<sup>41</sup> The proposed requirements for periodic amendments to the proposed Form 1-N parallel the existing requirements for periodic amendments to the Form 1. The Commission preliminarily believes that it would be inappropriate to require Security Futures Product Exchanges to provide additional information on a more frequent basis than is required currently of registered national securities exchanges.

As a mechanism to reduce the filing burdens on Security Futures Product Exchanges, the Commission is proposing to allow such exchanges to comply with certain filing requirements by maintaining the information on an Internet web page and providing the location of such web site to the Commission.<sup>42</sup> A Security Futures Product Exchange also would be 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, instead of filing that information in paper.<sup>43</sup>

The Commission is proposing to reduce the reporting burden further by

<sup>38</sup> Proposed Exchange Act Rule 6a-4(b)(1).

<sup>39</sup> *Id.*

<sup>40</sup> Proposed Exchange Act Rule 6a-4(b)(2).

<sup>41</sup> Proposed Exchange Act Rule 6a-4(b)(3). In addition, proposed Rule 6a-4 would require a Security Futures Product Exchange promptly to file an amendment correcting any inaccuracy discovered on the filed proposed Form 1-N.

<sup>42</sup> Proposed Exchange Act Rule 6a-4(b)(4)(iii).

<sup>43</sup> Proposed Exchange Act Rule 6a-4(b)(4)(i) and (ii).

providing that an exchange may be exempted from filing the required amendments for any affiliate or subsidiary listed in proposed Exhibit C of the exchange's notice registration that either is listed in Exhibit C of the form for registration or notice registration of one or more other national securities exchanges, or was an inactive subsidiary throughout the subsidiary's latest fiscal year.<sup>44</sup>

Finally, pursuant to Section 6(g)(2)(A) of the Exchange Act,<sup>45</sup> the Commission is proposing that if a Security Futures Product Exchange has filed documents with the CFTC, 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.<sup>46</sup>

The Commission seeks comment on the proposed requirements relating to the filing of periodic amendments to the proposed Form 1-N. Specifically, commenters are invited to comment on the requirement that an amendment be filed within 10 days after any action is taken by the Security Futures Product Exchange that creates new information or renders inaccurate certain information filed as part of the Form 1-N. Should a different timeframe be established for the filing of periodic amendments? If so, should it be shorter or longer than the proposed 10 days?

Should inaccuracies relating to information previously filed be material before additional disclosure is required? Is it appropriate to require annual updates of the information required in Exhibits F, H, and I? Should additional exhibits be required to be updated on an annual basis, as well? Commenters should also address the propriety of the requirement that Exhibits A, B, C, and E be updated every three years. Is information up to three months old sufficiently current for purposes of the periodic reporting requirements? Should information be provided more often or less frequently?

Commenters are also invited to comment on the propriety of permitting

<sup>44</sup> Proposed Exchange Act Rule 6a-4(b)(5). The exemption would be granted only if at least one national securities exchange is required to file the amendment required by proposed Exchange Act Rule 6a-4(b) for an affiliate or subsidiary. While "inactive subsidiary" is not defined for purposes of this provision, the Commission expects to consider a subsidiary to be inactive only if it has little or no income and liabilities and, thus, does not have the potential to have an impact on the financial condition of the Security Futures Product Exchange. The Commission has established procedures for an entity to apply for an exemption from its rules. 17 CFR 240.0-12.

<sup>45</sup> 15 U.S.C. 78f(g)(2)(A).

<sup>46</sup> Proposed Exchange Act Rule 6a-4(b)(6).

a Security Futures Product Exchange to comply with certain filing requirements by providing to the Commission the location where such information is located on a web site, or making the information available upon request at its office.

## 3. Filing of Supplemental Material

Paragraph (c) of proposed Rule 6a-4 would require Security Futures Product Exchanges to furnish to the Commission copies of any materials related to the trading of security futures products (including notices, circulars, bulletins, lists, and publications) issued or made available to members of, or participants in, or subscribers to, the exchange.<sup>47</sup> The exchange would be required to file such information within 10 days after issuing or making such material available to members of, or participants in, or subscribers to, the exchange.<sup>48</sup> The Commission also is proposing that exchanges be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site.<sup>49</sup>

Proposed paragraph (c) of proposed Rule 6a-4 also would require that an exchange 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 contracts. In addition, if the futures contract were for a single security, the exchange would be required to report the total number of shares underlying the contracts traded.<sup>50</sup> The proposed requirements for the filing of supplemental material parallel the existing requirements applicable to registered national securities exchanges that filed a Form 1 with the Commission. The Commission preliminarily believes that it would be inappropriate to require Security Futures Product Exchanges to provide this information on a more frequent basis than is required currently of registered national securities exchanges.

The Commission solicits comment on whether the type of information proposed to be required or the proposed frequency of filing should be modified in any way. For example, would it be more appropriate to change the monthly filing requirement for transaction reports to a quarterly filing requirement? The Commission also seeks comment on the proposed requirement that information relating to the trading of

<sup>47</sup> Proposed Exchange Act Rule 6a-4(c)(1)(i).

<sup>48</sup> *Id.*

<sup>49</sup> Proposed Exchange Act Rule 6a-4(c)(1)(ii).

<sup>50</sup> Proposed Exchange Act Rule 6a-4(c)(2).

security futures products be filed within 10 days after it is made available to members of, participants in, or subscribers to, the exchange. Comment is sought on the propriety of the proposed requirement that exchanges file certain transaction information within 15 days after the end of each calendar month. Specifically, is it appropriate for the Commission to request this type of information? Is 15 days after the end of each calendar month sufficient time to compile the requested information? Commenters are also invited to comment on the propriety of allowing exchanges to make the information available on an Internet web site.

#### 4. Proposed Amendments to Exchange Act Rules 6a-2 and 6a-3

Rules 6a-2 and 6a-3 under the Exchange Act<sup>51</sup> 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.<sup>52</sup> Because the Commission is proposing a new rule, Rule 6a-4, that incorporates the relevant provisions of Rules 6a-2 and 6a-3 that relate to ongoing filing obligations, the Commission is proposing to amend Rules 6a-2 and 6a-3 to exempt Security Futures Product Exchanges from the requirements of these rules.

#### 5. Processing of Proposed Form 1-N for Notice Registration

The Commission proposes to amend paragraph (b) of Rule 202.3 of the Commission's procedural rules, "Processing of Filings," to accommodate the proposed Form 1-N.<sup>53</sup> Specifically, the Commission proposes to add paragraph (b)(3), which would provide that notice forms for registration as a national securities exchange filed with the Commission pursuant to Section 6(g)(1) of the Exchange Act<sup>54</sup> are routed to the Division of Market Regulation, which would examine these applications to determine whether all necessary information has been supplied and whether all required documents have been furnished in proper form. Defective applications may be returned with a request for correction or held until corrected before being accepted as a filing.

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

If a self-regulatory organization ("SRO")<sup>55</sup> decides to amend, add, or delete any provision of its rules ("proposed rule change"), it must submit to the Commission, pursuant to Section 19(b) of the Exchange Act,<sup>56</sup> the proposed rule change for notice, comment, and Commission approval, prior to implementation, unless it is otherwise permitted to become effective pursuant to that Section. The purpose of this requirement is to help ensure that, through Commission review and the public comment process, SROs carry out the purposes of the Exchange Act.<sup>57</sup>

The CFMA amended the Exchange Act to exempt Security Futures Product Exchanges<sup>58</sup> and Limited Purpose National Securities Associations<sup>59</sup> from the requirement to submit proposed rule changes to the Commission pursuant to Section 19(b) of the Exchange Act, except in enumerated circumstances. Specifically, Sections 6(g)(4)(B)<sup>60</sup> and 15A(k)(3)<sup>61</sup> of the Exchange Act require Security Futures Product Exchanges and Limited Purpose National Securities Associations to submit, pursuant to Section 19(b)(7) 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.<sup>62</sup> In addition, Security

<sup>55</sup> Section 3(a)(26) of the Exchange Act defines a "self-regulatory organization" as any national securities exchange, registered securities association, registered clearing agency, and for the purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board ("MSRB"). 15 U.S.C. 78c(a)(26). Security Futures Product Exchanges and Limited Purpose National Securities Associations would fall within this definition.

<sup>56</sup> 15 U.S.C. 78s(b).

<sup>57</sup> The process of Commission review and public comment helps ensure, for example, that SROs refrain from using their regulatory powers in an unfair or anticompetitive manner to the detriment of investors.

<sup>58</sup> Section 6(g)(4)(B) of the Exchange Act, 15 U.S.C. 78f(g)(4)(B).

<sup>59</sup> Section 15A(k)(3) of the Exchange Act, 15 U.S.C. 78o-3(k)(3).

<sup>60</sup> 15 U.S.C. 78f(g)(4)(B).

<sup>61</sup> 15 U.S.C. 78o-3(k)(3).

<sup>62</sup> 15 U.S.C. 78s(b)(7). The Commission is also proposing 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)(a) of

Futures Product Exchanges and Limited Purpose National Securities Associations are required to submit, pursuant to Section 19(b)(1) of the Exchange Act,<sup>63</sup> proposed rule changes that relate to margin levels, except for those that result in higher margin levels, and proposed rule changes that have been abrogated by the Commission pursuant to Section 19(b)(7)(C) of the Exchange Act.<sup>64</sup>

#### 1. Proposed Rule 19b-7 and Form 19b-7

Pursuant to Section 19(b) of the Exchange Act,<sup>65</sup> the Commission has the authority to adopt rules regarding the filing of proposed rule changes by the SROs. Section 19(b)(7) of the Exchange Act,<sup>66</sup> which addresses Security Future Product Exchanges' and Limited Purpose National Security Associations' rule filings, 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. 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. Pursuant to Section 19(b)(7) of the Exchange Act,<sup>67</sup> any proposed rule change filed with the Commission must be concurrently submitted to the CFTC and may take effect: (i) when a written certification has been filed with the CFTC under Section 5c(c) of the CEA;<sup>68</sup> (ii) when the CFTC determines that review of the proposed rule change is not necessary; or (iii) when the CFTC approves the proposed rule change.<sup>69</sup>

Because the Commission is required to publish each proposed rule change filed pursuant to Section 19(b)(7) of the Exchange Act,<sup>70</sup> the Commission must develop rules to ensure that each notice of filing complies not only with the requirements of that section, but also, with the requirements of the **Federal Register**. Thus, in its efforts to ensure that such proposed rule changes conform to these requirements, the

the Exchange Act. See proposed Exchange Act Rule 19b-4 and proposed Form 19b-4.

<sup>63</sup> 15 U.S.C. 78s(b)(1).

<sup>64</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>65</sup> 15 U.S.C. 78s(b).

<sup>66</sup> 15 U.S.C. 78s(b)(7).

<sup>67</sup> Id.

<sup>68</sup> Section 5c(c) of the CEA, 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 a written certification that the new rule or rule amendment complies with the CEA.

<sup>69</sup> 15 U.S.C. 78s(b)(7)(B).

<sup>70</sup> 15 U.S.C. 78s(b)(7).

<sup>51</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>52</sup> 17 CFR 240.6a-1.

<sup>53</sup> 17 CFR 202.3.

<sup>54</sup> 15 U.S.C. 78f(g)(1).

Commission is proposing Rule 19b-7 and Form 19b-7.

Proposed Rule 19b-7 would require proposed rule changes filed pursuant to Section 19(b)(7)(A) of the Exchange Act<sup>71</sup> to be made on Form 19b-7. Further, proposed Rule 19b-7 would state that a proposed rule change would not be deemed filed with the Commission unless a completed Form 19b-7 is submitted, and it is accompanied by a clear and accurate statement of the basis and purpose of the proposed rule change, including any impact on competition or efficiency, and a summary of any written comments received by the SRO pertaining to the proposed rule change. As required by the statute, the proposed rule would require the Commission to promptly publish such proposed rule changes.<sup>72</sup>

Finally, because the statute provides that the Commission will not approve proposed rule changes submitted pursuant to proposed Rule 19b-7,<sup>73</sup> the proposed rule states that the effectiveness of a proposed rule change does not create an inference of whether the proposed rule change is in the public interest, including whether it has an impact on competition. The Commission would not be taking final action on the proposal unless, as discussed below, it abrogates the proposed rule change pursuant to Section 19(b)(7)(C) of the Exchange Act,<sup>74</sup> and subsequently issues an order approving or disapproving the proposal pursuant to Section 19(b)(7)(D) of the Exchange Act.<sup>75</sup> Therefore, the Commission will not necessarily make a final determination on whether a proposed rule change filed pursuant to proposed Rule 19b-7 is in the public interest, including whether it has an impact on competition.

On proposed Form 19b-7, Security Futures Product Exchanges and Limited Purpose National Securities Associations would have to provide information sufficient to permit interested persons to submit meaningful comment on the proposal and to permit the Commission to consider whether the proposal 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.<sup>76</sup> Proposed Form 19b-7 would require a

Security Futures Product Exchange or Limited Purpose National Securities Association to submit: (1) A complete description of the terms of its proposal; (2) a description of the impact of the proposed rule change on various market participants; and (3) a description of how the filing relates to existing rules of the exchange or association. Proposed Form 19b-7 also would require a senior member of the management of the Security Futures Product Exchange or Limited Purpose National Securities Association to certify that the filing contains an accurate statement of authority and the statutory basis for the proposal and, among other things, that the proposal does not conflict with the federal securities laws.

Proposed Form 19b-7 is modeled after proposed Form 19b-6.<sup>77</sup> The Commission preliminarily believes that it is appropriate to use proposed Form 19b-6 as a model for proposed Form 19b-7 because it reflects the review and evaluation recently conducted by Commission staff regarding the Section 19(b) rule filing process, currently applicable to SROs. Accordingly, the Commission is proposing that proposed Form 19b-7 closely resemble the proposed Form 19b-6.

## 2. Proposed Rule Changes Related to Security Futures Products Required To Be Filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations Pursuant to Section 19(b)(1) of the Exchange Act

As discussed above, the Exchange Act exempts Security Futures Product Exchanges and Limited Purpose National Securities Associations from the filing requirements of Section 19(b) of the Exchange Act.<sup>78</sup> Instead, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to file only proposed rule changes relating to specifically enumerated matters, which are listed in Section 19(b)(7)(A) of the Exchange Act.<sup>79</sup> In addition, pursuant to Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,<sup>80</sup> Security Futures Product Exchanges and Limited Purpose National Securities Associations, respectively, are required to file with the Commission, pursuant to Section

19(b)(1) of the Exchange Act<sup>81</sup> for notice, comment, and Commission approval or disapproval, pursuant to Section 19(b)(2) of the Exchange Act,<sup>82</sup> proposed rule changes that relate to margin, except for changes that result in higher margin levels.<sup>83</sup>

To implement the requirements of Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,<sup>84</sup> the Commission is proposing to require Security Futures Product Exchanges and Limited Purpose National Securities Associations to file proposed rule changes related to margin (except for changes that result in higher margin levels) under Rule 19b-4<sup>85</sup> for approval under Section 19(b)(2) of the Exchange Act.<sup>86</sup> Rule 19b-4 is the rule under which all other SROs currently file proposed rule changes pursuant to Section 19(b)(1) of the Exchange Act.<sup>87</sup> This rule requires that filings with respect to proposed rule changes by an SRO be made on Form 19b-4.<sup>88</sup>

Section 19(b)(7)(C) of the Exchange Act<sup>89</sup> provides the Commission, after consultation with the CFTC, with the authority to summarily abrogate a proposed rule change filed pursuant to Section 19(b)(7) of the Exchange Act<sup>90</sup> if it appears to the Commission that such rule change unduly burdens

<sup>81</sup> 15 U.S.C. 78s(b)(1). Section 19(b)(1) of the Exchange Act requires each SRO to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis for, and purpose of the proposed rule change. Once an SRO files a proposed rule change, the Commission must publish notice of it and provide opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it or it is otherwise permitted to become effective under Section 19(b)(3) of the Exchange Act.

<sup>82</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Exchange Act sets forth the standards and time periods for the Commission either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved.

<sup>83</sup> As discussed above, pursuant to Sections 6(g)(4)(B)(i) and 15A(k)(3)(B) of the Exchange Act, proposed rule changes that relate to higher margin levels must be filed by Security Futures Product Exchanges and Limited Purpose National Securities Associations with the Commission pursuant to Section 19(b)(7) of the Exchange Act.

<sup>84</sup> 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o-3(k)(3)(B).

<sup>85</sup> 17 CFR 240.19b-4.

<sup>86</sup> 15 U.S.C. 78s(b)(2).

<sup>87</sup> 15 U.S.C. 78s(b)(1).

<sup>88</sup> See note 77, *supra*. Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to submit their proposed rule changes that relate to margin, except those that result in higher margin levels, to the Commission on Form 19b-4 or such other form that the Commission may designate as effective as of the time of the filing.

<sup>89</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>90</sup> 15 U.S.C. 78s(b)(7). 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.

<sup>71</sup> 15 U.S.C. 78s(b)(7)(A).

<sup>72</sup> *Id.*

<sup>73</sup> Section 19(b)(7) of the Exchange Act, 15 U.S.C. 78s(b)(7).

<sup>74</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>75</sup> 15 U.S.C. 78s(b)(7)(D).

<sup>76</sup> See Section 19(b)(7)(C) of the Exchange Act, 15 U.S.C. 78s(b)(7)(C).

<sup>77</sup> 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).

<sup>78</sup> 15 U.S.C. 78s(b).

<sup>79</sup> 15 U.S.C. 78s(b)(7)(A).

<sup>80</sup> 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o-3(k)(3)(B).

competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.<sup>91</sup> 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)<sup>92</sup> and 15A(k)(3)(C)<sup>93</sup> of the Exchange Act, respectively, to refile the proposed rule change pursuant to the requirements of Section 19(b)(1) of the Exchange Act.<sup>94</sup> The Commission is proposing that Security Futures Product Exchanges and Limited Purpose National Securities Associations use Form 19b-4 to file the abrogated proposed rule change. The Commission is proposing amendments to Form 19b-4 to accommodate proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act.<sup>95</sup>

Section 19(b)(7)(D) of the Exchange Act<sup>96</sup> sets forth standards for review and approval of proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act<sup>97</sup> and refiled pursuant to Section 19(b)(1) of the Exchange Act.<sup>98</sup> 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.<sup>99</sup> The Commission is proposing to amend

<sup>91</sup> The Commission notes that it currently exercises similar 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).

<sup>92</sup> 15 U.S.C. 78f(g)(4)(B)(iii).

<sup>93</sup> 15 U.S.C. 78o-3(k)(3)(C).

<sup>94</sup> 15 U.S.C. 78s(b)(1).

<sup>95</sup> See *supra* note 77. If the Commission were to determine to adopt the proposed Rule 19b-6 and Form 19b-6, amendments similar to those proposed here for Rule 19b-4 and Form 19b-4 would be required to accommodate proposed rule changes related to margin (other than higher margin) and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act.

<sup>96</sup> 15 U.S.C. 78s(b)(7)(D).

<sup>97</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>98</sup> 15 U.S.C. 78s(b)(1).

<sup>99</sup> 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.

Form 19b-4 to add language to this effect.<sup>100</sup>

Section 19(b)(7)(D)(ii) of the Exchange Act<sup>101</sup> 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<sup>102</sup> 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. The Commission is proposing that Security Futures Product Exchanges and Limited Purpose National Securities Associations affirmatively set forth in Form 19b-4 that an abrogated proposed rule change that is being refiled satisfies these requirements.<sup>103</sup>

The Commission seeks comment on the proposed procedures for filing proposed rule changes pursuant to proposed Rule 19b-7 and Form 19b-7, and proposed amendments to Rule 19b-4 and Form 19b-4.

Commenters should specifically address the requirements of the proposed rules and associated forms, describing in detail any recommendations for modifying the proposed approach in such a way as to be consistent with the statutory requirements. For example, is the proposed certification requirement of the proposed Form 19b-7 appropriate? Is there a more appropriate procedure for the filing of proposed rule changes relating to margin (other than higher margin) and the re-filing of proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act that would not require the use of Form 19b-4?

Finally, if the Commission were to adopt the proposed Rule 19b-6 and Form 19b-6, amendments similar to those proposed for Rule 19b-4 and Form 19b-4 would need to be made to accommodate proposed rule changes relating to margin, other than higher margin, and proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act. The Commission seeks comment on how proposed Rule 19b-6 or Form 19b-6 would need to be modified to clarify the limited circumstances in which the proposed Rule 19b-6 and Form 19b-6 would be used by Security Futures Product Exchanges and Limited Purpose National Securities Associations.

<sup>100</sup> See Part E of proposed Form 19b-4. See also *supra* note 77.

<sup>101</sup> 15 U.S.C. 78s(b)(7)(D)(ii).

<sup>102</sup> 15 U.S.C. 78s(b)(1).

<sup>103</sup> See *Information to be Included in the Completed Form*, Item 3 of proposed Form 19b-4.

### III. Paperwork Reduction Act

Certain provisions of the proposed rules and forms contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.<sup>104</sup> Accordingly, the Commission submitted the collection of information requirements contained in the rules and forms to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to adopt two new collections of information titled "Rule 6a-4 and Form 1-N" and "Rule 19b-7 and Form 19b-7." The Commission is also proposing to revise a collection of information titled "Rule 19b-4 and Form 19b-4," OMB Control No. 3235-0045. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

#### A. Proposed Rule 6a-4 and Form 1-N

##### 1. Summary of Collection of Information

Proposed Rule 6a-4 would set out procedures for certain futures markets that wish to trade security futures products to file notices with the Commission on new Form 1-N to become Security Futures Product Exchanges. Proposed Form 1-N calls for information regarding: 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 under proposed Rule 6a-4 and proposed Form 1-N would provide the Commission and the public with basic information about exchanges that would trade security futures products but would not otherwise be required to register with the Commission. This information would assist the Commission to ascertain that such exchanges' activities do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

##### 3. Respondents

The Commission expects that 7 respondents could seek to become Security Futures Product Exchanges by filing notice on proposed Form 1-N.

<sup>104</sup> 5 U.S.C. 603(a).

#### 4. Total Annual Reporting and Recordkeeping Burden

##### a. One-Time Costs

Proposed Rule 6a-4 would require each entity wishing to become a Security Futures Product Exchange to file proposed Form 1-N. The Commission estimates that each Form 1-N submission would take approximately 31 hours to file at a cost of approximately \$3,000 (representing approximately 20 hours of legal work at \$128/hour,<sup>105</sup> 11 hours of clerical work at \$31/hour,<sup>106</sup> and \$100 for miscellaneous clerical expenses). As the Commission believes that 7 entities would file to become Security Futures Product Exchanges, the Commission estimates that the total burden for filing initial Form 1-Ns for all respondents would be 217 hours (7 respondents × 31 hours/respondent), for a total cost of \$21,000 (7 responses × \$3,000/response).

##### b. Annual Costs

After an entity becomes a Security Futures Product Exchange by properly filing the initial Form 1-N, the exchange would 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 initial Form 1-N; (2) periodic updates of certain information provided in the original 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.

The Commission estimates each Security Futures Product Exchange would have to file one amendment or periodic update per year, resulting in a burden of approximately 15 hours and \$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 would be 105 hours (15 hours/respondent per year ×

7 respondents), for a total cost of \$10,066 (\$1,438/response × 7 responses/year).

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

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

#### 5. Record Retention Period

As set forth in Rule 17a-1 under the Exchange Act,<sup>107</sup> 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, Security Futures Product Exchanges must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.<sup>108</sup>

#### 6. Collection of Information Is Mandatory

This collection of information is mandatory.

#### 7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information pursuant to proposed Rule 6a-4 and proposed Form 1-N would not be kept confidential.

#### *B. Proposed Rule 19b-7 and Proposed Form 19b-7*

##### 1. Summary of Collection of Information

Proposed Rule 19b-7 would require a Security Futures Product Exchange or Limited Purpose National Securities Association that proposes to add to,

change, or delete any of its existing rules relating to certain subjects<sup>109</sup> to submit such proposed rule change to the Commission on Form 19b-7. Proposed Form 19b-7 calls for a description of: the terms of the proposed rule change, the proposed rule change's impact on various market segments, and the relationship between the proposed rule change and the existing rules of the Security Futures Product Exchange or Limited Purpose National Securities Association. Proposed Form 19b-7 also calls for an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, the proposal's impact on competition, and a summary of any written comments 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 would use the information obtained under proposed Rule 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 would rely on the information provided in proposed Form 19b-7, as well as public comment regarding such proposals, in taking any action with respect to proposed rule changes. This information would assist the Commission to ascertain that the activities of Security Futures Product Exchanges and Limited Purpose National Securities Associations do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

##### 3. Respondents

As noted above, the Commission expects that 7 respondents could become Security Futures Product Exchanges by filing notice of registration on proposed Form 1-N. Upon doing so, these exchanges would become subject to the requirement to file proposed Form 19b-7 whenever they propose to add, delete, or amend certain rules relating to security futures products. In addition, the Commission anticipates that there would be one Limited Purpose National Securities Association (the National Futures Association) that also would be required to file certain rule changes relating to

<sup>105</sup> SIA Management and Professional Earnings, Table 107 (Attorney, New York), plus a 35 percent differential for bonus, overhead, and other expenses. The Commission believes that New York salaries are an appropriate basis for its estimates, as nearly all of the attorneys who would contribute to the filing of Form 1-Ns would be based in New York or cities with comparable legal markets. The same estimate for the cost of legal work has been used throughout this section.

<sup>106</sup> SIA Management and Professional Earnings, Table 012 (Secretary) plus a 35 percent differential for bonus, overhead, and other expenses. The same estimate for the cost of clerical work has been used throughout this section.

<sup>107</sup> 17 CFR 240.17a-1.

<sup>108</sup> See 15 U.S.C. 78q(b)(4)(B).

<sup>109</sup> See 15 U.S.C. 78f(g)(4)(B)(i) and 78o-3(k)(3)(A).

security futures products on proposed Form 19b-7. Therefore, the Commission estimates that there would be 8 respondents.

#### 4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that respondents would average 15 proposed rule changes per year that would have to be filed on proposed Form 19b-7. The Commission notes that, although it receives approximately 20 to 100 proposed rule changes on Form 19b-4 per year from each of the existing SROs, these Form 19b-4 filings cover a wide range of subject areas, including trading, membership, dispute resolution, exchange governance, and fees. By contrast, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to file on proposed Form 19b-7 only certain types of proposed rule changes regarding security futures products. Given the limited types of rule changes that the proposed Form 19b-7 filings would cover, the Commission believes that 15 filings per respondent per year is a reasonable estimate.

The Commission estimates that an average Form 19b-7 would require approximately 16.5 hours to complete at a cost of approximately \$1,824 (representing 12.5 hours of legal work at \$128/hour, four hours of clerical work at \$31/hour, and \$100 for miscellaneous clerical expenses). These figures represent approximately one-half of the burdens that the Commission recently estimated would be required for submissions on proposed Form 19b-6.<sup>110</sup> Although proposed Forms 19b-6 and 19b-7 are quite similar, the Commission believes that one-half is an appropriate reduction in the estimated burden for proposed Form 19b-7, as proposed rule changes submitted on Form 19b-7 generally would become effective on filing and would not require any action by the Commission or any additional supporting information from the SRO. By contrast, many of the rule changes filed on proposed Form 19b-6 would require specific Commission approval and, thus, would require supporting information and perhaps even formal amendments from the SRO before they could be approved. Thus, the Commission expects that the burden of filing a proposed rule change on proposed Form 19b-7 generally would be substantially less than the burden of filing a proposed rule change on proposed Form 19b-6.

The Commission estimates that the total annual burden for all respondents

to file proposed Form 19b-7 would be 1,980 hours (representing 15 filings/year per respondent  $\times$  8 respondents  $\times$  16.5 hours/filing), for a total cost of \$218,880 (\$1,824/filing  $\times$  15 filings/year per respondent  $\times$  8 respondents).

#### 5. Record Retention Period

As set forth in Rule 17a-1 under the Exchange Act,<sup>111</sup> a national securities exchange or a 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, 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.<sup>112</sup>

#### 6. Collection of Information Is Mandatory

The collection of information requirements imposed by proposed Rule 19b-7 under the Exchange Act and proposed Form 19b-7 would be mandatory.

#### 7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information pursuant to proposed Rule 19b-7 and proposed Form 19b-7 would 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<sup>113</sup> establishes a procedure by which SROs must file proposals to add, delete, or amend their rules. Rule 19b-4 implements this procedure and requires SROs to file proposed rule changes on Form 19b-4. Certain proposals submitted on Form 19b-4 must be approved by the Commission before they may take effect.

Although the primary means by which Security Futures Product Exchanges and Limited Purpose National Securities Associations would notify the Commission of proposed rule changes would be by filing a Form 19b-7, there are two circumstances in which such entities would be required to file a Form 19b-4: (1) a proposed rule change that relates to margin, except for a change that results in higher margin levels; or (2) a proposed rule change 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 was filed on proposed Form 19b-7 but is abrogated by the Commission must be refiled on Form 19b-4.

#### 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 the Form 19b-4, as well as public comment regarding such proposals, in taking any action with respect to proposed rule changes. This information would assist the Commission to ascertain that the activities of Security Futures Product Exchanges and Limited Purpose National Securities Associations do not unduly burden competition or efficiency, conflict with the securities laws, or are not inconsistent with the public interest and the protection of investors and, thus, assist the Commission's efforts to protect investors and the public interest.

#### 3. Respondents

Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to comply with Rule 19b-4 and use Form 19b-4 in the two circumstances described above. The Commission believes that 7 entities would likely seek to become Security Futures Product Exchanges, and that there would be 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 use Form 19b-4.

#### 4. Total Annual Reporting and Recordkeeping Burden

The Commission estimates that the proposed amendments to Rule 19b-4 would result in an additional 8 filings per year on Form 19b-4. The Commission estimates these new respondents would devote, on average, approximately 35 hours to the filing of each Form 19b-4, at a cost of \$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). The Commission estimates that the total annual burden for all respondents resulting from the proposed amendments to the Form 19b-4 would be 280 hours (8 filings  $\times$  35 hours/

<sup>110</sup> See *supra* note 77.

<sup>111</sup> 17 CFR 240.17a-1.

<sup>112</sup> See 15 U.S.C. 78q(b)(4)(B).

<sup>113</sup> 15 U.S.C. 78s.

filing), for a total cost of \$29,280 (8 filings × \$3,660/filing).<sup>114</sup>

#### 5. Record Retention Period

As set forth in Rule 17a-1 under the Exchange Act,<sup>115</sup> 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, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required to retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.<sup>116</sup>

#### 6. Collection of Information is Mandatory

The collection of information requirements imposed by existing Rule 19b-4 and Form 19b-4 under the Exchange Act are mandatory.

#### 7. Responses to Collection of Information Would Not Be Kept Confidential

The collection of information required pursuant to proposed Rule 19b-7 and proposed Form 19b-7 would be made publicly available.

#### D. Proposed Amendments to Rules 6a-2 and 6a-3

These amendments are technical in nature and are intended only to clarify that Security Futures Product Exchanges are not subject to the collection of information requirements imposed by these rules. The amendments would neither add new respondents nor increase the burden on existing respondents.

#### E. Request for Comment

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

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;

<sup>114</sup> However, 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 percent of Form 19b-4 filings are of this sort. Because these filings typically represents so few of the total number of Form 19b-4 filings, and he 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 respondent's reporting burden.

<sup>115</sup> 17 CFR 240.17a-1.

<sup>116</sup> See U.S.C. 78q(b)(4)(B).

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

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

Persons wishing to submit comments on the collection of information requirements proposed above should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, with reference to File No. S7-10-01. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-10-01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

#### IV. Costs and Benefits of the Proposed Rulemaking

The Commission is proposing new Rule 6a-4 under the Exchange Act<sup>117</sup> and new 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<sup>118</sup> 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 proposing conforming amendments to Rules 6a-2 and 6a-3 under the Exchange Act<sup>119</sup> and Rule 202.3 of the Commission's procedural rules.<sup>120</sup> In addition, the Commission is proposing new Rule 19b-7,<sup>121</sup> new

<sup>117</sup> Proposed Exchange Act Rule 6a-4.

<sup>118</sup> 15 U.S.C. 78f(g)(1).

<sup>119</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>120</sup> 17 CFR 202.3.

<sup>121</sup> Proposed Rule 19b-7.

Form 19b-7, and amendments to Rule 19b-4<sup>122</sup> and Form 19b-4 to accommodate certain proposed rule changes submitted by Security Futures Product Exchanges and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act.<sup>123</sup>

The proposed rules, forms, and conforming amendments are in response to the mandate of the CFMA,<sup>124</sup> which, among other things, requires the Commission to prescribe, by rule, the process for notice registration to be used by Security Futures Product Exchanges. Pursuant to the CFMA, the Commission has proposed Rule 6a-4 to prescribe information and documents to be submitted by Security Futures Product Exchanges that is comparable to the requirements applicable to national securities exchanges registered pursuant to Section 6(a) of the Exchange Act.<sup>125</sup> In addition, the CFMA directs the Commission to establish, by rule, the procedures for filing proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations 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 CFMA also amended the Exchange Act to require that 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<sup>126</sup> be filed under Section 19(b)(1) of the Exchange Act.<sup>127</sup>

The Commission is considering the costs and benefits of the proposed rules, forms, and conforming amendments and encourages commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs or benefits.

<sup>122</sup> 17 CFR 240.19b-4.

<sup>123</sup> 15 U.S.C. 78o-3(k).

<sup>124</sup> Pub. L. No. 106-554, Appendix E, 114 Stat. 2763

<sup>125</sup> 15 U.S.C. 78f(a).

<sup>126</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>127</sup> 15 U.S.C. 78s(b)(1).

*A. Costs and Benefits of Proposed Rule 6a-4, New Registration 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*

The Commission is proposing new Rule 6a-4<sup>128</sup> to set forth the information that must be submitted by an entity to register as a national securities exchange and the ongoing filing requirements for Security Futures Product Exchanges, and to revise Exchange Act Rules 6a-2 and 6a-3<sup>129</sup> to exclude Security Futures Product Exchanges from the requirements of those rules.

Proposed Rule 6a-4 would require an exchange registering pursuant to Section 6(g) of the Exchange Act<sup>130</sup> to file proposed Form 1-N<sup>131</sup> with the Commission. Once registered, proposed Rule 6a-4 would require a Security Futures Product Exchange to file with the Commission written notice of actions that create new information or render inaccurate information filed on the execution page or as part of proposed Exhibits C, E, F or H of its proposed Form 1-N within 10 days after such action is taken,<sup>132</sup> to file as an amendment, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I, which would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed,<sup>133</sup> and to 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 would be required to be up-to-date as of the latest date practicable within three months of the date the amendment was filed.<sup>134</sup> The conforming amendments to Rules 6a-2 and 6a-3 exclude respondents from the requirements of these rules, and, therefore, the Commission preliminarily believes that there would be no costs imposed on, nor benefits accruing to, the respondents arising from the proposed 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 to the Division of Market Regulation, and, therefore, the Commission preliminarily believes that there would be no costs imposed on, nor benefits accruing to, the respondents

arising from the proposed conforming amendment.

### 1. Benefits

The proposed rules provide for an expedited filing process for a market to become registered with the Commission as a Security Futures Product Exchange since 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<sup>135</sup> is also subject to the CFTC application and reporting requirements, the Form 1-N only requests limited basic information. Therefore, the Commission expects that the amount of time required to complete the Form 1-N to be one-third less than the amount of time currently required to complete the Form 1. Furthermore, pursuant to Section 6(g)(2)(A) of the Exchange Act,<sup>136</sup> in those instances where the exchange has filed information with the CFTC, 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 completing those portions of the Form, therefore reducing an exchange's burden of compiling information.<sup>137</sup> Pursuant to Section 6(g)(2)(B) of the Exchange Act,<sup>138</sup> such notice registration will be effective contemporaneously with the submission of proposed Form 1-N, unless the registration would be subject to suspension or revocation by the CFTC. The information provided by exchanges filing proposed Form 1-Ns would be required to be up-to-date as of 1 month of the date of filing, which should provide the exchanges 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 proposing to allow 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.<sup>139</sup> Instead of filing amendments in paper form, a Security Futures Product Exchange also would be permitted to refer to materials published by, or in cooperation with, the exchange that contains the required

information or to make the information available upon request at its office.<sup>140</sup> Permitting respondents to use the Internet as a means of compliance should ease burdens by reducing 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 proposing to exempt a Security Futures Product Exchange from filing the required amendments for any affiliate or subsidiary listed in proposed Exhibit C of the 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 subsidiary throughout the subsidiary's latest fiscal year.<sup>141</sup> Proposed amendments to Rules 6a-2 and 6a-3<sup>142</sup> also would exempt Security Futures Product Exchanges from the ongoing filing requirements for registered or exempted exchanges, which file applications with the Commission pursuant to Rule 6a-1.<sup>143</sup> This would further reduce the filing burdens placed on the Security Futures Product Exchanges.

The Commission's proposal also should enhance the Commission's ability to oversee the exchanges trading security futures products, which is critical to the continued integrity of our markets. The Commission believes that its oversight, in conjunction with that of the CFTC, over trading activities in security futures products should benefit the public and the markets generally by helping to prevent fraud and manipulation.

### 2. Costs

The proposed rules, forms, and conforming amendments would require the respondents to comply with the initial notice and amendment requirements, which would require some effort to gather this information to file with the Commission. Most of this information, however, already exists and is currently provided to the CFTC, and the exchanges may provide copies of existing documents provided to the CFTC to the Commission in lieu of completing the Form to the extent that such documents contain information satisfying the Commission's informational requirements.<sup>144</sup> Therefore, the Commission

<sup>128</sup> Proposed Exchange Act Rule 6a-4.

<sup>129</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>130</sup> 15 U.S.C. 78ff(g).

<sup>131</sup> Proposed Form 1-N, 17 CFR 249.10.

<sup>132</sup> Proposed Exchange Act Rule 6a-4(b)(1).

<sup>133</sup> Proposed Exchange Act Rule 6a-4(b)(2).

<sup>134</sup> Proposed Exchange Act Rule 6a-4(b)(3).

<sup>135</sup> 15 U.S.C. 78f(g).

<sup>136</sup> 15 U.S.C. 78f(g)(2)(A).

<sup>137</sup> Proposed Exchange Act Rule 6a-4(b)(6).

<sup>138</sup> 15 U.S.C. 78f(g)(2)(B).

<sup>139</sup> Proposed Exchange Act Rule 6a-4(b)(4)(iii) and (c)(1)(ii).

<sup>140</sup> Proposed Exchange Act Rule 6a-4(b)(4)(i) and (ii).

<sup>141</sup> Proposed Exchange Act Rule 6a-4(b)(5).

<sup>142</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>143</sup> 17 CFR 240.6a-1.

<sup>144</sup> Proposed Exchange Act Rule 6a-4(b)(6).

preliminarily 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 per initial registration would be \$3,000 for each respondent.<sup>145</sup>

The proposed amendments to Rules 6a-2 and 6a-3<sup>146</sup> would exclude Security Futures Product Exchanges from the ongoing collection of information required by these rules. However, Rule 6a-4 would impose ongoing requirements on respondents. Proposed Rule 6a-4 would require respondents to provide periodic amendments to their initial registration. First, respondents would be required to file amendments due to material

changes or new information filed on the execution page or as part of Exhibits C, E, F, or H of its proposed Form 1-N.<sup>147</sup> Second, respondents would be required to file amendments to, on or before June 30, 2002 and by June 30 every year thereafter, proposed Exhibits F, H, and I.<sup>148</sup> Third, proposed Rule 6a-4 also would require an exchange to file, as an amendment to its proposed Form 1-N, on or before June 30, 2004 and by June 30 every year thereafter, complete Exhibits A, B, C, and E.<sup>149</sup> As discussed above, the Commission estimates that the average paperwork cost for each amendment and periodic update would be \$1,438.<sup>150</sup>

Much of the required information would not change frequently, and the option of posting information on an Internet web site should encourage more frequent updating of current information and reduce the cost of filing the amendments on paper.

Finally, paragraph (c) of proposed Rule 6a-4 would require 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.<sup>151</sup> Exchanges would be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site. Paragraph (c) of proposed Rule 6a-4 also would require Security Futures Product Exchanges to file transaction reports within fifteen

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. In addition, if the futures contract were for a single security, the exchange would be required to report the total number of shares underlying the contracts traded.<sup>152</sup> As discussed above, the Commission estimates that each respondent would incur an average paperwork cost of \$21 for each filing.<sup>153</sup>

#### *B. Costs and Benefits of Proposed Rule 19b-7 and Form 19b-7 and Conforming Amendments to Rule 19b-4 and Form 19b-4*

Proposed Rule 19b-7 would require 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<sup>154</sup> on proposed Form 19b-7.

Pursuant to Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act,<sup>155</sup> the Commission is proposing to amend Rule 19b-4 to require Security Futures Product Exchanges and Limited Purpose National Securities Associations to file proposed rule changes related to margin (except for changes that result in higher margin levels) under Rule 19b-4 and to submit such margin changes on Form 19b-4. In addition, these amendments to Rule 19b-4 and Form 19b-4 should accommodate proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Exchange Act<sup>156</sup> and refiled under Section 19(b)(1) of the Exchange Act.<sup>157</sup>

#### 1. Benefits

Pursuant to the statutory mandate, the Commission would not be approving proposed rule changes submitted pursuant to proposed Rule 19b-7. Instead, a proposed rule change filed on

proposed Form 19b-7 would become effective upon: (i) an exchange's filing of a written certification with the CFTC under Section 5c(c) of the CEA;<sup>158</sup> (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 new rule and form and amendments to existing rule and form are designed to provide information sufficient to permit interested persons to submit meaningful comment on the proposal and permit the Commission to consider whether the proposal 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. These proposals should enable the Commission to carry out its statutorily-mandated oversight functions, including ensuring that SROs carry out their regulatory functions. This process protects the integrity of the markets, investors, and the public interest.

Proposed rule changes filed with the Commission would be required to be filed concurrently with the CFTC. However, although respondents must file with two agencies, there would, in effect, be only one effort in the collection and compilation of information.

#### 2. Costs

The Commission believes that the costs associated with filing rule changes are predominately the paperwork costs. As discussed above, the Commission estimates that the average paperwork cost per proposed rule change submitted on Form 19b-7 would be \$1,824.00.<sup>159</sup> The Commission estimates each respondent would file 15 proposed rule changes per year and incur an annual average burden of 247.5 hours for a total annual average cost of \$27,360.00. In addition, the Commission 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 19(b)(7)(C) of the Exchange Act<sup>160</sup> and refiled under Section 19(b)(1) of the Exchange Act,<sup>161</sup> would be \$3,660.00.<sup>162</sup> In addition, the Commission estimates that the time associated with refiled an abrogated

<sup>145</sup> See Paperwork Reduction Act discussion at notes 105-108 and accompanying text.

<sup>146</sup> 17 CFR 240.6a-2 and 240.6a-3.

<sup>147</sup> Proposed Exchange Act Rule 6a-4(b)(1).

<sup>148</sup> Proposed Exchange Act Rule 6a-4(b)(2).

<sup>149</sup> Proposed Exchange Act Rule 6a-4(b)(3).

<sup>150</sup> See Paperwork Reduction Act discussion at notes 105-108 and accompanying text.

<sup>151</sup> Proposed Exchange Act Rule 6a-4(c)(1)(i).

<sup>152</sup> Proposed Exchange Act Rule 6a-4(c)(2).

<sup>153</sup> See Paperwork Reduction Act discussion.

<sup>154</sup> Specifically, 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)(B), require Security Futures Product Exchanges and Limited Purpose National Securities Associations to submit, pursuant to Section 19(b)(7) of the Exchange Act, 15 U.S.C. 78s(b)(7), 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.

<sup>155</sup> 15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78o-3(k)(3)(B).

<sup>156</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>157</sup> 15 U.S.C. 78s(b)(1).

<sup>158</sup> 7 U.S.C. 7a-2(c).

<sup>159</sup> See Paperwork Reduction Act, Section III.B.

<sup>160</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>161</sup> 15 U.S.C. 78s(b)(1).

<sup>162</sup> See *supra* note.

19b-7 filing would delay the filing process by 30 days.

### C. Request for Comment

The Commission requests data to quantify the costs and the value of the benefits above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, which may result from the adoption of these proposed rules, forms, and conforming amendments.

The Commission requests comment on the estimated number of respondents that would be filing proposed Forms 1-N and 19b-7 and the costs and benefits associated with complying with proposed Rules 6a-4 and 19b-7. The Commission specifically requests comments on the recordkeeping costs and data maintenance associated with the proposals and whether these costs would be significant.

The Commission requests comment on the costs and benefits associated with the Commission's proposed amendments to Rules 6a-2, 6a-3, and 19b-4.

The Commission also requests comment on the costs and benefits of filing Form 19b-4 for respondents' proposed rule changes related 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<sup>163</sup> and refiled under Section 19(b)(1) of the Exchange Act,<sup>164</sup> including the accuracy of the Commission's estimates for the additional time necessary to refile an abrogated filing on Form 19b-4.

The Commission generally requests comment on the competitive or anticompetitive effects of the rules on any market participants if the proposals are adopted as proposed. The Commission also requests comment on what impact the proposals, if adopted, would have on efficiency and capital formation. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

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

Section 3(f) of the Exchange Act<sup>165</sup> 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<sup>166</sup> 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) of the Exchange Act 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.

The Commission has considered the proposed rules in light of the standards set forth in Sections 3(f)<sup>167</sup> and 23(a)(2)<sup>168</sup> of the Exchange Act. As noted above, the CFMA amended the Exchange Act and the CEA to allow trading of security futures products and to provide for joint regulation of the markets for such products by the Commission and the CFTC. Accordingly, the Commission preliminarily does not believe that the information required by the proposed rules and associated forms will create a competitive imbalance between the securities markets and the futures markets. These filings of proposed rule changes are specifically contemplated by the Exchange Act, as amended by the CFMA, and are designed to enable the Commission to discharge its regulatory responsibilities under the Exchange Act. The Commission does not anticipate that the requirement that these filings of proposed rule changes be made on the proposed forms pursuant to the proposed rules would place any unreasonable burden on competition. The Commission solicits comments on the impact of the proposed rules on competition, including competition between Security Futures Product Exchanges and Limited Purpose National Securities Associations, on the one hand, and all other SROs, on the other.

Although there are certain legal and clerical costs involved in responding to the collections of information set forth in the proposed rules, the Commission preliminarily believes that these burdens are relatively small. Commenters are invited to submit comments on the effect of the proposed rules on efficiency and capital formation.

### VI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act<sup>169</sup> requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>170</sup> Proposed Rule 6a-4 and proposed Form 1-N would apply to Security Futures Product Exchanges that list and trade security futures products. Proposed Rule 19b-7 and proposed Form 19b-7 would be used by these national securities exchanges and Limited Purpose National Securities Associations that propose rule changes that relate to certain matters.<sup>171</sup> The Commission believes there could be seven Security Futures Product Exchanges and one Limited Purpose National Securities Association that would be subject to the proposed rules, none of which are small entities. The Acting Chairman has certified that the proposed rules, forms, and conforming amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

### VII. Statutory Authority

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

#### List of Subjects

##### 17 CFR Part 202

Administrative practice and procedure, Securities.

<sup>169</sup> 5 U.S.C. 603(a).

<sup>170</sup> 5 U.S.C. 605(b).

<sup>171</sup> These matters are 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 affect transactions in security futures products, or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. See 15 U.S.C. 78s(b)(7)(A).

<sup>163</sup> 15 U.S.C. 78s(b)(7)(C).

<sup>164</sup> 15 U.S.C. 78s(b)(1).

<sup>165</sup> 15 U.S.C. 78c(f).

<sup>166</sup> 15 U.S.C. 78w(a)(2).

<sup>167</sup> 15 U.S.C. 78c(f).

<sup>168</sup> 15 U.S.C. 78w(a)(2).

## 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 Proposed Rules**

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be 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, 78ll(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 applications to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Defective applications 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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 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 follows:

**§ 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:

(i) The exchange is a board of trade, as that term is 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 10 days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(i) Information filed on the Execution Page of Form 1-N (§ 249.10 of this chapter), or amendment thereto; or

(ii) Information filed as part of Exhibits C, E, F, or H to Form 1-N (§ 249.10 of this chapter), or any amendments thereto.

(2) 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 up to date as of the latest date practicable within three months of the date the amendment is filed.

(3) 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. The information filed under this paragraph (b)(3) shall be current 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)(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)(2) and (b)(3) of this

section, in lieu of filing such information, a Security Futures Product Exchange may:

(A) Identify 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) Certify 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)(2) and (b)(3) 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 certify 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)(2) and (b)(3) 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:

(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.

(5) 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:

(i) 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

(ii) 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 (b)(5)(i) of this section.

(6) If such 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 national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) 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, or participants 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 fifteen days after the end of each calendar month, a national securities exchange registered pursuant to section 6(g)(1) of the Act (15 U.S.C. 78f(g)(1)) shall file a report concerning the security futures products traded on such exchange during the calendar month. Such report shall set forth:

(i) The number of contracts of sale for future delivery of a single security and the number of shares and type of security underlying such contracts; and

(ii) The number of contracts of sale for future delivery of a narrow-based security index and the type of index underlying such contracts.

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)(A) of the Act (15 U.S.C. 78s(b)(7)(A)), shall be made on Form 19b-4 (17 CFR 249.819).

\* \* \* \* \*

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)(A) of the Act (15 U.S.C. 78s(b)(7)(A)), shall be made on Form 19b-7 (17 CFR 249.822). 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 (17 CFR 249.822) 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) The effectiveness of a proposed rule change pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) does not create an inference of whether such proposed rule change is in the public interest, including whether it has an impact on competition.

**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 B to this document. Form 1-N will not appear 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)(A) 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 C 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 changes with the Commission pursuant to section 19(b)(7)(A) of that Act (15 U.S.C. 78s(b)(7)(A)) and Rule 19b-4 (17 CFR 240.19b-4) thereunder.

By the Commission.

Dated: May 8, 2001.

Margaret H. McFarland, Deputy Secretary.

Appendix A

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

Regulatory Flexibility Act Certification

I, Laura S. Unger, Acting Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. § 605(b) that proposed Rule 6a-4 and Form 1-N, conforming amendments to Rules 6a-2 and 6a-3 under the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 202.3 of the Securities and Exchange Commission's procedural rules, which would provide for the notice registration of designated contract markets and derivative transaction execution facilities as national securities exchanges ("Security Futures Product Exchanges") to list and trade futures on individual stocks and narrow-based stock indexes, would not have a significant economic impact on a substantial number of small entities. Proposed Rule 19b-7, Form 19b-7, and conforming amendments to Rule 19b-4 and Form 19b-4 under the Exchange Act, which propose procedures for the filing of proposed rule changes, likely would apply to seven Security Futures Product Exchanges and one limited purpose national securities association registered pursuant to Section 15A(k) of the Exchange Act, none of which is a small entity for the purpose of the Regulatory Flexibility Act. Accordingly, the proposed rules, forms, and conforming amendments, if adopted, would not have a significant impact on a substantial number of small entities.

Dated: May 8, 2001.

Laura S. Unger, Acting Chairman.

BILLING CODE 8010-01-P

Appendix B

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

Form 1-N

OMB APPROVAL
OMB Number:
Expires:
Estimated Average burden hours per form:

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, N.W., Washington, D.C. 20549-1005.
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, 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	<b>U.S. SECURITIES AND EXCHANGE COMMISSION</b> WASHINGTON, D.C. 20549 <b>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</b>	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 <span style="float: right;">* AMENDMENT</span>		
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) <span style="margin-left: 150px;">(Facsimile)</span>		
5. Provide the name, title and telephone number of a contact employee: _____ (Name) <span style="margin-left: 100px;">(Title)</span> <span style="margin-left: 100px;">(Telephone Number)</span>		
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: <input type="checkbox"/> Corporation <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> 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: _____		
<b>EXECUTION:</b> 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) <span style="margin-left: 150px;">_____ (Name of Exchange)</span> By: _____ _____ (Signature) <span style="margin-left: 150px;">_____ (Printed Name and Title)</span>		
Subscribed and sworn before me this _____ day of _____, _____ by _____ <span style="margin-left: 100px;">(Month)</span> <span style="margin-left: 100px;">(Year)</span> <span style="margin-left: 100px;">(Notary Public)</span>		
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.		
<b>DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY</b>		

Form 1-N Page 2	<b>U.S. SECURITIES AND EXCHANGE COMMISSION</b> <b>WASHINGTON, D.C. 20549</b> <b>FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL</b> <b>SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY</b> <b>FUTURES PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT</b>	OFFICIAL USE	OFFICIAL USE ONLY
<p><b>EXHIBITS</b></p> <p>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.</p> <p><b>Exhibit A</b> 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 of existing by-laws or corresponding rules or instruments, whatever the name, of the filing exchange.</p> <p><b>Exhibit B</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.</p> <p><b>Exhibit C</b> 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:</p> <ol style="list-style-type: none"> <li>1. Name and address of organization.</li> <li>2. Form of organization (e.g., association, corporation, partnership, etc.).</li> <li>3. Name of state and statute citation under which organized. Date of incorporation in present form.</li> <li>4. Brief description of nature and extent of affiliation.</li> <li>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.</li> <li>6. A copy of the constitution.</li> <li>7. A copy of the articles of incorporation or association including all amendments.</li> <li>8. A copy of existing by-laws or corresponding rules or instruments.</li> <li>9. The name and title of the present officers, governors, or persons performing similar functions.</li> <li>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.</li> </ol> <p><b>Exhibit D</b> Describe the manner of operation of the System involving trading of security futures products. This description should include the following:</p> <ol style="list-style-type: none"> <li>1. The means of access to the System.</li> <li>2. Procedures governing entry and display of quotations and orders in the System.</li> <li>3. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System.</li> <li>4. Proposed fees.</li> <li>5. Procedures for ensuring compliance with System usage guidelines.</li> </ol>			

Form 1-N Page 3	<b>U.S. SECURITIES AND EXCHANGE COMMISSION</b> <b>WASHINGTON, D.C. 20549</b> <b>FORM AND AMENDMENTS FOR NOTICE OF REGISTRATION AS A NATIONAL</b> <b>SECURITIES EXCHANGE FOR THE SOLE PURPOSE OF TRADING SECURITY FUTURES</b> <b>PRODUCTS PURSUANT TO SECTION 6(g) OF THE EXCHANGE ACT</b>	OFFICIAL USE	OFFICIAL USE ONLY
<p>Exhibit E</p> <p>Exhibit F</p> <p>Exhibit G</p> <p>Exhibit H</p> <p>Exhibit I</p>	<p>6. The hours of operation of the System, and the date on which the exchange intends to commence operation of the System.</p> <p>7. Attach a copy of the users' manual.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Name.</li> <li>2. Title.</li> <li>3. Dates of commencement and termination of term of office or position.</li> <li>4. Type of business in which each is primarily engaged.</li> </ol> <p>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:</p> <ol style="list-style-type: none"> <li>1. Full legal name.</li> <li>2. Title or Status.</li> <li>3. Date title or status was acquired.</li> <li>4. Approximate ownership interest.</li> <li>5. Whether the person has control, a term that is defined in the instructions to this Form.</li> </ol> <p>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 with regard to access to the Security Futures Product Exchange. Describe any procedures that will be involved in the suspension or termination of a member.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Name.</li> <li>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.).</li> <li>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.</li> <li>4. The class of membership, participation, subscription or other access.</li> </ol> <p>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.</p>		

Appendix C

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

**OMB Approval**

OMB Number:

Expires:

Estimated average burden  
hours

**FORM 19b-7**

File No. SR.....

Amendment No.....

(If Applicable)\*

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 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)

BILLING CODE 8010-01-C

**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), and 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** as well as any requirements for electronic filing as published by the Securities and Exchange Commission ("SEC" or "Commission") (if applicable). The Office of the Federal Register ("OFR") [<http://www.nara.gov/fedreg>] offers guidance on **Federal Register**

publication requirements in the **Federal Register Document Drafting Handbook**, October 1998 Revision. For example, all references to the federal securities laws and the Commodity Exchange Act must include the corresponding cite to the United States Code in a footnote. All references to SEC 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). Failure to provide this information will result in the proposed rule change being deemed not properly filed. In addition, the OFR's *Drafting Legal Documents* is a general style guide to clear and concise legal writing.

#### *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, any written Certification submitted to the CFTC pursuant to Section 5c(c) of the Commodity Exchange Act ("CFTC Certification"), and applicable Exhibits. The proposed rule change will be considered filed on the date that the Commission receives it if the filing complies with all requirements of this form 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 and II 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 by the proposed rule change.

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

If information on the Form 19b-7, the CFTC Certification, the 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. SROs may file amendments electronically in accordance with Commission instructions.

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

#### *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, N.W., Washington D.C. 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. The form also may be filed electronically with the Commission in compliance with such guidelines as may be published by the Commission from time to time. Please note that any information filed by the SRO requesting confidential treatment must be filed on paper with the Commission.

**BILLING CODE 8010-01-P**

**FORM 19b-7 CERTIFICATION**

The chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must review the Form 19b-7 (including the Notice and all required exhibits (See General Instructions)), complete the following certification, and sign the certification statement set forth below. The filing will not be considered filed with the Commission if the relevant items are not complete. This certification incorporates all statements made in the Notice.

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

Name(s): \_\_\_\_\_

Telephone number(s): \_\_\_\_\_

E-mail address(es): \_\_\_\_\_

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

- The filing provides an accurate statement of the authority and statutory basis for the proposed rule change.
- The filing does not unduly burden competition or efficiency, conflict with securities laws, and is not inconsistent with the public interest and protection of investors.
- The Board of Directors or other governing authority of the self-regulatory organization required under its constitution, articles of incorporation, bylaws, rules, or corresponding instruments has approved the proposed rule change.

The Notice provides a clear and accurate statement of the proposed rule change’s impact on competition, including whether the proposed rule change would unduly burden competition.

The proposed rule change is not inconsistent with the existing rules of the self-regulatory organization, and the Notice describes how the proposed rule change relates to these rules.

If applicable, the Notice contains an accurate summary of all comments received (solicited or unsolicited).

The Notice contains the text of the proposed rule change in the appropriate format required by the Commission.

The Notice identifies prior Commission and CFTC orders or releases impacting the proposed rule change.

I understand that all statements made in the Notice are incorporated by reference into this Certification as representations of [name of self-regulatory organization] to the Commission. In addition, I have reviewed this Form 19b-7 Certification, the Notice, and any other applicable exhibits, and certify that they are accurate, complete, do not unduly burden competition or efficiency, conflict with the securities laws, are not inconsistent with the public interest and the protection of investors, and are consistent with other rules of [name of the self-regulatory organization].

.....

(Signature of chief executive officer, general counsel, other officer or director)<sup>1</sup>

<sup>1</sup> \_\_\_\_\_  
Print name and title.

**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"),<sup>2</sup> and Rule 19b-7 under the Act,<sup>3</sup> notice is hereby given that on [date<sup>4</sup>], the [name of self-regulatory organization] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II 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. [Self-regulatory organization] has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

Section 19(b)(7)(B) provides that a proposed rule change may take effect upon the occurrence of one of three events. The self-regulatory organization should include the following sentence, if applicable.

Pursuant to section 19(b)(7)(B) of the Act,<sup>5</sup> the [self-regulatory organization] filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act on [date].

**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**

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

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

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

- Describe the text of the proposed rule change in a sufficiently detailed and specific manner as to 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;
- Describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder;
- Identify rules of the self-regulatory organization and provisions of the federal securities laws that the self-regulatory organization reasonably expects the proposed rule change to affect and describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the self-regulatory organization; and
- Set forth the file numbers and the Commission Release number, the **Federal Register** citation, and other identifying information for prior filings relating to the

affected rule and disclose any prior CFTC order or release impacting the proposed rule change.

**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.

**D. Text of the Proposed Rule Change**

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

<sup>2</sup> 15 U.S.C. 78s(b)(7).

<sup>3</sup> 17 CFR 240.19b-7.

<sup>4</sup> 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.

<sup>5</sup> 15 U.S.C. 78s(b)(7)(B).

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

The self-regulatory organization shall include the following, if applicable:

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].

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 Exchange 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 will also be available for inspection and copying at the principal office of the [name of self-regulatory organization]. Electronically submitted comments will be posted on the

Commission's Internet website (<http://www.sec.gov>). All submissions should refer to File No. [insert file number] and should be submitted by [insert date 21 days from date of publication in the **Federal Register** <sup>6</sup>.

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

[Insert name of Secretary],

*Secretary.*

[FR Doc. 01-12131 Filed 5-14-01; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> To be completed by the **Federal Register**.

<sup>7</sup> 17 CFR 200.30-3(a)(12).