hereby amends Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a–6p, 7, 7a, 7b, 7b–3, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.3 is amended by adding paragraph (zz) to read as follows:

§1.3 Definitions.

(zz) Agricultural commodity. This term means:

(1) The following commodities specifically enumerated in the definition of a “commodity” found in section 1a of the Act: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed or natural fiber;

(3) Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation or order designate after notice and opportunity for hearing; and

(4) Commodity-based indexes based wholly or principally on underlying agricultural commodities.

Issued in Washington, DC, on July 7, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Agricultural Commodity Definition—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O’Malley and Chilton voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking that defines the term, “agricultural commodity.” The Dodd-Frank Act requires that agricultural commodities be defined. In a separate rulemaking, the Commission will determine the requirements that apply to swaps on agricultural commodities.

[FR Doc. 2011–17626 Filed 7–12–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249


RIN 3235–AL18

Amendment to Rule Filing Requirements for Dually-Registered Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is adopting an interim final rule to amend Rule 19b–4 under the Securities Exchange Act of 1934 (“Exchange Act”). The amendment expands the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter effecting a change in an existing service of a clearing agency registered with the Commission (“Registered Clearing Agency”) that both primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. The Commission also is making a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. The amendments to Rule 19b–4 and Form 19b–4 are intended to streamline the rule filing process in areas involving certain activities concerning non-security products that may be subject to overlapping regulation as a result of, in part, certain provisions under Section 763(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) that would deem some clearing agencies to be registered with the Commission as of July 16, 2011.

DATES: Effective Date: July 15, 2011.

Comment Date: Comments on the interim final rule should be submitted on or before September 15, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
• Send an e-mail to rule-comments@sec.gov. Please include File Number S7–29–11 on the subject line; or
• Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–29–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/proposed.shtml). Comments are also available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Jeffrey S. Mooney, Assistant Director; Joseph P. Kamnik, Senior Special Counsel; and Andrew R. Bernstein, Attorney-Adviser, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010 at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 19b–4 under the Exchange Act as an interim final rule to expand the list of categories that qualify for
summary effectiveness under Section 19(b)(3)(A) of the Exchange Act. The Commission also is making a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. We will carefully consider the comments that we receive and intend to respond as necessary or appropriate.

I. Introduction

A. Background on Commission Process for Proposed Rule Changes

Section 19(b)(1) of the Exchange Act 1 requires each self-regulatory organization ("SRO"), including any Registered Clearing Agency, 2 to file with the Commission copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, "Proposed Rule Change"). 3 which must be submitted on Form 19b–4 4 in accordance with the General Instructions thereto. Once a Proposed Rule Change has been filed, the Commission is required to publish it in the Federal Register to provide an opportunity for public comment. 5 A Proposed Rule Change generally may not take effect unless the Commission approves it, 6 or it is otherwise permitted to become effective under Section 19(b). 7

Section 19(b)(2) of the Exchange Act sets forth the standards and time periods for Commission action either to approve, disapprove or institute proceedings to determine whether the Proposed Rule Change should be disapproved. 8 The Commission must approve a Proposed Rule Change if it finds that the underlying rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO proposing the rule change. 9

The SRO rule filing process for Registered Clearing Agencies serves two important policy goals. First, the notice and comment requirement helps assure that interested persons have an opportunity to provide input on proposed actions by Registered Clearing Agencies that could have a significant impact on the market, market participants (both professionals and individual investors) and others. 10 Second, the filing process allows the Commission to review Registered Clearing Agencies’ Proposed Rule Changes to determine whether they are consistent with the Exchange Act, including the goals of prompt and accurate clearance and settlement of securities transactions and the safeguarding of investors’ securities and funds. 11

At the same time, Section 19(b)(3)(A) of the Exchange Act provides that a Proposed Rule Change may become effective upon filing with the Commission, without notice and opportunity for hearing, if it is appropriately designated by the SRO as: (i) Constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (ii) establishing or changing a due, fee, or other charge imposed by the SRO (on any person, whether or not the person is a member of the SRO) or (iii) concerned solely with the administration of the SRO. 12

The Commission has the power summarily to temporarily suspend the change in rules of the SRO within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. 13 If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved. 14 In addition to the matters expressly set forth in the statute, Section 19(b)(3)(A) also provides the Commission with the authority, by rule and consistent with the public interest, to designate other types of Proposed Rule Changes that may be effective upon filing with the Commission. 15

The Commission has previously utilized this authority to designate, under Rule 19b–4 of the Exchange Act, certain rule changes that qualify for summary effectiveness under Section 19(b)(3)(A). 16

B. Clearing Agencies Deemed Registered Under the Dodd-Frank Act

Section 763(b) of the Dodd-Frank Act 17 provides that (i) A depository institution registered with the Commodity Futures Trading
Commission ("CFTC") that cleared swaps as a multilateral clearing organization prior to the date of enactment of the Dodd-Frank Act and (ii) a derivatives clearing organization ("DCO") registered with the CFTC that cleared swaps pursuant to an exemption from registration as a clearing agency prior to the date of enactment of the Dodd-Frank Act will be deemed registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps ("Deemed Registered Provision").16 The Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011.17 Once a clearing agency is deemed to be a Registered Clearing Agency, it will be required to comply with all requirements of the Exchange Act, and the rules and regulations thereunder, applicable to Registered Clearing Agencies to the extent it clears security-based swaps after the effective date of the Deemed Registered Provision, including, for example, the obligation to file Proposed Rule Changes under Section 19(b) of the Exchange Act.20 Clearing of futures and options on futures is generally regulated by the CFTC in connection with its oversight and supervision of DCOs. DCOs are generally permitted to implement rule changes by self-certifying that the new rule complies with the Commodity Exchange Act ("CEA") and the CFTC's regulations.21 The change effected by this interim final rule is intended to eliminate any burdens resulting from delays that could arise due to the differences between the Commission's rule filing process and the CFTC's self-certification process, which generally allows rule changes to become effective immediately upon or shortly after filing.22

The Commission has limited time to act without exposing certain dually registered clearing agencies to potential legal uncertainty and market disruption caused by delays that could result from the requirement that the Commission undertake a full review of Proposed Rule Changes related to a Registered Clearing Agency's futures clearing operations before these Proposed Rule Changes may be made effective. Specifically, and as discussed in greater detail in Section IV, the Commission only recently received urgent requests for the relief to be provided by the interim final rule. Accordingly, and in the interest of adopting the changes to Rule 19b–4 and the General Instructions for Form 19b–4 prior to effective date of the Deemed Registered Provision of the Dodd-Frank Act on July 16, 2011, the Commission finds that it has good cause to adopt the interim final rule immediately and without the notice and public comment procedures that would ordinarily apply to this type of rulemaking.

II. Interim Final Rule

A. Amendment to Rule 19b–4

The Commission is amending Rule 19b–4 to expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include Proposed Rule Changes made by Registered Clearing Agencies with respect to certain futures clearing operations.23 Specifically, new Rule 19b–4(f)(4)(ii) will allow a Proposed Rule Change concerning futures clearing operations filed by a Registered Clearing Agency to take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) so long as it is properly designated by the Registered Clearing Agency as effecting a change in a service of the Registered Clearing Agency that meets two conditions.24 The first condition, contained in new Rule 19b–4(f)(4)(ii)(A), is that the Proposed Rule Change primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures.25 For purposes of this requirement, a Registered Clearing Agency’s “futures clearing operations” would generally include any activity that would require the Registered Clearing Agency to register with the CFTC as a DCO in accordance with the CEA.26 In addition, to “primarily affect” such futures clearing operations would mean that the Proposed Rule Change is targeted to affect matters related to the clearing of futures specifically and that any effect on other clearing operations would be incidental in nature and not significant in extent.27 However, because a security futures product is a security for purposes of the Exchange Act,28 a Registered Clearing Agency will not be permitted to file Proposed Rule Changes related to its security futures business pursuant to Section 19(b)(3)(A) of the Exchange Act in reliance on new Rule 19b–4(f)(ii). Instead, such clearing agency will continue to be required to file Proposed Rule Changes with the Commission related to its respective security futures operations in accordance with Section 19(b)(1) of the Exchange Act, which the Commission will review in accordance with Section 19(b)(2), unless there is another basis for the Proposed Rule Change to be filed under Section 19(b)(3)(A).

The second condition, contained in new Rule 19b–4(f)(4)(ii)(B), is that the Proposed Rule Change does not significantly affect any securities clearing operations of the clearing agency.


27 For example, rules of general applicability that would apply equally to securities clearing operations, including securities clearing operations related to certain securities clearing operations, would not be considered to primarily affect such futures clearing operations. In addition, changes to general provisions in the constitution, articles, or bylaws of the Registered Clearing Agency that address the operations of entire clearing agency would not be considered to primarily affect such futures clearing operations.
agency or any related rights or obligations of the clearing agency or persons using such service. The Commission notes that the phrase "significantly affect" currently is used elsewhere in Rule 19b–4 in the context of defining other categories of Proposed Rule Changes that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act. Accordingly, "significantly affect" has the same meaning and interpretation as that phrase has in Rules 19b–4(f)(4)(i) (as amended by this interim final rule), 19b–4(f)(5) and 19b–4(f)(6). Also for purposes of this requirement, a Registered Clearing Agency’s "securities clearing operations * * * or any related rights or obligations of the clearing agency or persons using such service" would generally include any activity that would require the Registered Clearing Agency to register as a clearing agency in accordance with the Exchange Act. The Commission believes that permitting clearing agencies to submit Proposed Rule Changes that meet the two conditions referenced above (i.e., (A) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (B) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service) for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act is consistent with the public interest and the purposes of the Exchange Act.

In particular, this approach should help limit the potential for delays by providing a streamlined process for allowing rule changes to become effective that primarily concern the futures clearing operations of a clearing agency which, unless such operations were linked to securities clearing operations, would not be subject to regulation by the Commission. In addition, the information provided to the Commission by the Registered Clearing Agency in a filing made pursuant to Section 19(b)(1) of the Exchange Act is virtually identical to the information required to be included in a filing made pursuant to Section 19(b)(3)(A). At the same time, the Commission would retain the power summarily to temporarily suspend the change in rules of the Registered Clearing Agency within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Finally, and as discussed more fully in Section IV of this release, changes to a clearing agency’s futures clearing operations will continue to be subject to the CFTC’s normal process for reviewing rule changes.

B. Amendment to the General Instructions for Form 19b–4

In order to accommodate the amendment to Rule 19b–4 being adopted today, the Commission also is making a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. Specifically, the Commission is amending Item 7(b) of the General Instructions for Form 19b–4 (Information to be Included in the Completed Form), which requires the respondent SRO to cite to the statutory basis for filing a Proposed Rule Change pursuant to Section 19(b)(3)(A) in accordance with the existing provisions of Rule 19b–4(f). This amendment would revise Item 7(b)(iv) to include the option to file the form in accordance with new Rule 19b–4(f)(4)(ii), which provides for situations where a Registered Clearing Agency is effecting a change in an existing service that both (i) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (ii) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

C. Effective Date

The amendments to Rule 19b–4 and to the General Instructions for Form 19b–4 will be effective as of July 15, 2011.

III. Request for Comment

We are requesting comments from all members of the public. We will carefully consider the comments that we receive. We seek comment generally on all aspects of the interim final rule. In addition, we seek comment on the following:

1. Do the amendments contemplated by this interim final rule adequately address concerns regarding the application of the Commission’s process for reviewing Proposed Rule Changes once the Deemed Registered Provision becomes effective?

2. Given that the objectives and statutory authority of the CFTC differ from the Commission’s, does the degree to which the interim final rule uses a process that is similar to the CFTC’s process for reviewing rule changes by a Registered Clearing Agency that primarily affects its futures clearing operations and do not significantly affect its securities clearing operations provide for sufficient protection for investors and the securities markets? Why or why not?

3. Are there other amendments the Commission should consider making to Rule 19b–4, such as further expanding this list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act? If so, please describe any amendments the Commission should consider and reasons why.

4. Should any additional restrictions be placed on the ability of a Registered Clearing Agency to file Proposed Rule Changes under Exchange Act Section 19(b)(3)(A)?

IV. Other Matters

The Administrative Procedure Act ("APA") generally requires an agency to publish, before adopting a rule, notice of a proposed rulemaking in the Federal Register. This requirement does not apply, however, if the agency “for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.” Further, the APA also generally requires that an agency...
publish a rule in the Federal Register 30 days before the rule becomes effective. Alternatively, DCOs may request direct CFTC approval of a rule or amendment thereunder after it has been filed with the CFTC pursuant either to its self-certification process or as a request for direct approval of a rule or amendment. Because of the differences between the CFTC’s process and the Commission’s rules for reviewing Proposed Rule Changes, a rule or rule amendment proposed by a dually-registered clearing agency related exclusively to its futures clearing operations could be delayed by the CFTC’s rule filing process despite being permitted to become effective by the CFTC immediately upon or shortly after filing.

This interim final rule takes effect on July 15, 2011. For several reasons, including those discussed above, we have acted on an interim final basis. Specifically, affected clearing agencies requested action with respect to Registered Clearing Agencies’ obligations under Section 19(b) of the Exchange Act only shortly before the effective date of the Dodd-Frank Act. Based on discussions with these affected clearing agencies, the Commission understands that market participants believe that the Commission needs to provide relief prior to the effective date of the Deemed Registered Provision.

The Commission recognizes that the differences between the Commission’s rule filing process for Registered Clearing Agencies and the CFTC’s process for reviewing rule changes by DCOs could result in additional burdens on certain clearing agencies subject to the Deemed Registered Provision, which are discussed in greater detail below. Specifically, DCOs are generally permitted to implement new rules or rule amendments by filing with the CFTC a certification that the new rule or rule amendment complies with the CEA and the CFTC’s regulations.

Notwithstanding the limited amount of time before the Deemed Registered Provision becomes effective, and therefore the limited time the Commission has to act, these clearing agencies expressed their strong view that the Commission should provide relief immediately in order to prevent the above-described potential operational problems, legal uncertainty and market disruptions.
and market disruptions from manifesting into actual issues for Registered Clearing Agencies once the Deemed Registered Provision becomes effective on July 16, 2011.

In light of the concerns raised by these clearing agencies, the Commission believes that adopting an interim final rule to immediately amend Rule 19b–4 in the manner as set forth above would benefit the public interest by eliminating any undue delays and operational inefficiencies that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they become effective. This could potentially benefit market participants (including investors) by, among other things, preventing delays to beneficial enhancements within the futures markets. Accordingly, the Commission finds that there is good cause to have the rule effective as an interim final rule on July 15, 2011, and that notice and public procedure in advance of effectiveness of the interim final rule are impracticable, unnecessary and contrary to the public interest.\footnote{This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines.”)}

The Commission is requesting comments on the interim final rule and will carefully consider any comments received and respond to them as necessary or appropriate.

V. Paperwork Reduction Act

The Commission does not believe that the amendments to Rule 19b–4 and to the General Instructions for Form 19b–4 adopted pursuant to the interim final rule contain any “collection of information” requirements as defined by the Paperwork Reduction Act of 1995, as amended (“PRA”).\footnote{44 U.S.C. 3501, et seq.} The interim final rule amends Rule 19b–4 under the Exchange Act to expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter affecting a change in an existing service of a Registered Clearing Agency that both primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. The interim final rule also makes a corresponding technical modification to the General Instructions for Form 19b–4 under the Exchange Act. The Commission does not believe that these amendments would require any new or additional collection of information, as such term is defined in the PRA.\footnote{46 The PRA defines a “collection of information” as “the obtaining, causing to be obtained, soliciting or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons * * *” 44 U.S.C. 3502(9)(A). The Commission preliminarily does not believe that the reporting and recordkeeping provisions in this interim final rule contain “collection of information requirements” within the meaning of the PRA because fewer than ten persons are expected to rely on Rule 19b–4(f)(4)(ii). Based on discussions with market participants, the Commission believes that only three Registered Clearing Agencies will maintain a futures clearing business regulated by the CFTC. These include OCC, CME and ICE Clear Europe.}

VI. Cost-Benefit Analysis

As noted above, the Deemed Registered Provision, along with other general provisions under Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011. At such time, the Commission expects that there will be three Registered Clearing Agencies that maintain a futures clearing business regulated by the CFTC.\footnote{47 These include OCC, CME and ICE Clear Europe.} Accordingly, these entities will be required to file Proposed Rule Changes with the Commission under Section 19(b) of the Exchange Act, and to comply separately with the CFTC’s process for self-certification or direct approval of rules or rule amendments. The Commission is sensitive to the increased burdens these obligations will impose and agrees that it is in the public interest to eliminate any potential inefficiencies and undue delays that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they may be considered effective.

A. Benefits

New Rule 19b–4(f)(4)(ii) will eliminate the requirement for Registered Clearing Agencies to submit a significant number of Proposed Rule Changes that primarily affect their futures clearing operations with the Commission for pre-approval pursuant to Section 19(b)(1) of the Exchange Act. As a result, the rule would eliminate any potential inefficiencies and undue delays that could result from the requirement that the Commission review the Proposed Rule Change before it may be considered effective. At the same time, the Commission would retain the power summarily to temporarily suspend the change in rules of the Registered Clearing Agency within sixty days of its filing if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.\footnote{48 15 U.S.C. 78s(b)(3)(C). If the Commission takes such action, it is then required to institute proceedings to determine whether the Proposed Rule Change should be approved or disapproved.}

As a result, the Commission would be providing the Registered Clearing Agency with the ability to declare the Proposed Rule Change immediately effective, thereby limiting potential delays to activities related to its futures operations that may be beneficial to both the clearing agency and market participants, in a manner that does not impair the Commission’s ability to review the filing and to determine whether it would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, to conduct a more thorough analysis of the issues.

B. Costs

As noted above, the amendments to Rule 19b–4 would expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act. These amendments will not materially increase or decrease the costs of complying with Rule 19b–4, nor will they modify an SRO’s obligation to submit a Proposed Rule Change to the Commission; rather, the amendments will change the statutory basis under which a rule change is filed. As a result, new Rule 19b–4(f)(4)(ii) would impose minimal, if any, costs on a Registered Clearing Agency, which would consist solely of the time spent determining whether a Proposed Rule Change qualifies for summary effectiveness pursuant to new Rule 19b–4(f)(4)(ii).

The Commission requests that commenters provide views and supporting information regarding the costs and benefits associated with the proposals. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already identified.
VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

As discussed above, the amendment to Rule 19b–4 will expand the list of categories that qualify for summary effectiveness under Section 19(b)(3)(A) of the Exchange Act to include any matter that both (i) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and (ii) does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. Specifically, new Rule 19b–4(f)(4)(iii) is intended to avoid undue delays that could result from the requirement that the Commission review changes to rules primarily concerning futures clearing operations before they may be considered effective. Without new Rule 19b–4(f)(4)(ii), certain clearing agencies would be required to submit a significant number of Proposed Rule Changes to the Commission for consideration and approval pursuant to Section 19(b)(1) that relate primarily to their futures clearing operations. Accordingly, the Commission believes such changes would not result in any burden to competition and would instead contribute to a better capital formation and more efficient markets by limiting the potential for any undue delays for services or changes that may benefit market participants.

VIII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (“RFA”) requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the APA, as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on “small entities.” Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.

For the purposes of Commission rulemaking in connection with the RFA, a small entity includes, when used with reference to a clearing agency, a clearing agency that: (i) Compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year; (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter) and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization. Under the standards adopted by the Small Business Administration, small entities in the finance industry include the following: (i) For entities engaged in investment banking, securities dealing and securities brokerage activities, entities with $6.5 million or less in annual receipts; (ii) for entities engaged in trust, fiduciary and custodial activities, entities with $6.5 million or less in annual receipts and (iii) funds, trusts and other financial vehicles with $6.5 million or less in annual receipts. The amendments to Rule 19b–4 and to the General Instructions for Form 19b–4 would apply to all Registered Clearing Agencies as of July 16, 2011, there likely will be seven clearing agencies with active operations registered with the Commission. Of the seven Registered Clearing Agencies with active operations, three currently maintain a futures clearing business. Based on the Commission’s existing information about these three Registered Clearing Agencies, as well as on the entities likely to register with the Commission in the future, the Commission preliminarily believes that such entities will not be small entities, but rather part of large business entities that exceed the thresholds defining “small entities” set out above.

For the reasons stated above, the Commission certifies that the proposed amendments to Rule 19b–4 and to the General Instructions for Form 19b–4 would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies, and provide empirical data to support the extent of the impact.

IX. Statutory Basis and Text of Amendments


List of Subjects in 17 CFR Parts 240 and 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Rule

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

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

1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77l, 77t–2, 77p–3, 77eee, 77ggg, 77mm, 77sss, 77ttt, 77v, 78d, 78f, 78g, 78h, 78i, 78j–1, 78l, 78m–1, 78n, 78q, 78s, 78u–5, 78w, 78x, 78y, 78z–1, 78z–2, 78z–3, 80b–4, 80b–5, 80b–6, and 7210 et seq., 18 U.S.C. 1356, and 12 U.S.C. 5221 et seq., unless otherwise noted.

2. Amend § 240.19b–4 by:

a. Adding the word “either” before the colon in the introductory text in paragraph (f)(4);

b. Redesignating paragraph (f)(4)(i) as paragraph (f)(4)(i)(A);

c. Redesigning paragraph (f)(4)(ii) as paragraph (f)(4)(i)(B);

d. Adding the word “or” after the semicolon in newly designated paragraph (f)(4)(i)(B);

e. Adding new paragraph (f)(4)(ii)(A) and


3. The additions read as follows:
§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(f) * * *

(4) * * *

(ii)(A) Primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures; and

(B) Does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service, and set forth the basis on which such designation is made,

* * * * *

Dated: July 7, 2011.

By the Commission.

Cathy H. Ahn,

Deputy Secretary.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2009–HA–0151; 0720–AB37]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Inclusion of Retail Network Pharmacies as Authorized TRICARE Providers for the Administration of TRICARE Covered Vaccines

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule allows a TRICARE retail network pharmacy to be an authorized provider for the administration of TRICARE-covered vaccines in the retail pharmacy setting. The value of vaccines lies in the prevention of disease and reduced healthcare costs in the long term. When vaccines are made more readily accessible, a broader section of the population will receive them. It is an important public health initiative for TRICARE, making immunizations more readily available to beneficiaries. It is especially important as part of the Nation’s public health preparations for a potential pandemic, such as was threatened last fall and winter by a novel H1N1 virus strain. Ensuring that TRICARE beneficiaries have ready access to vaccine supplies allocated to the private sector pharmacies will facilitate making vaccines appropriately available to high risk groups of TRICARE.