

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200 and 241

[Release No. 34-58092]

#### Commission Guidance and Amendment to the Rules Relating to Organization and Program Management Concerning Proposed Rule Changes Filed by Self-Regulatory Organizations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule and interpretation.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is providing guidance regarding a rule under the Securities Exchange Act of 1934 (“Exchange Act”) concerning filings with respect to proposed rule changes of self-regulatory organizations (“SROs”) that the Commission expects will streamline the process by which SROs file proposed rule changes with the Commission and result in a broader range of rule changes qualifying for immediate effectiveness. Further, the Commission is amending its rules to delegate authority to the Director of the Division of Trading and Markets. These actions are intended to facilitate more expeditious handling of proposed rule changes submitted by SROs pursuant to Exchange Act section 19(b).

**DATES:** *Effective Date:* July 11, 2008.

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#### I. Introduction

Self-regulation, with oversight by the Commission, is a basic premise of the Exchange Act. For example, Congress recognized the regulatory role of national securities exchanges in section 6 of the Exchange Act,<sup>1</sup> requiring all existing securities exchanges to register with the Commission and to function as self-regulatory organizations. SROs (such as exchanges, registered national securities associations, and clearing agencies) are subject to various requirements under the Exchange Act, including the requirement in section 19(b) and Rule 19b-4 thereunder<sup>2</sup> to file

their proposed rule changes with the Commission. Commission review and the public comment process are intended, among other things, to help ensure that SROs carry out the purposes of the Exchange Act.<sup>3</sup>

National securities exchanges registered under section 6(a) of the Exchange Act<sup>4</sup> face increased competitive pressures from entities that trade the same or similar financial instruments, such as foreign exchanges, futures exchanges,<sup>5</sup> electronic communications networks (“ECNs”), and alternative trading systems (“ATSs”). These competitors, however, can change their trading rules or trade new products with greater ease and without the required Commission review.<sup>6</sup>

The Commission previously has stated its belief that, “investors are best served by a regulatory structure that facilitates fair and vigorous competition among market participants and fosters investor protection” and that, “[e]nhancing the SROs’ ability to implement and to respond quickly to changes in the marketplace should encourage innovation and better services to investors. \* \* \*<sup>7</sup> Consequently, the Commission periodically has revised the SRO rule filing requirements to balance the needs of the exchanges in a competitive financial marketplace against maintaining the statutorily required Commission oversight of the SROs and the SRO rule change process.

In 1994, the Commission adopted amendments to Rule 19b-4 to allow certain non-controversial proposed rule changes and proposed rule changes for minor systems changes to “become immediately effective” upon filing and without Commission approval.<sup>8</sup> In 1998,

clearing agencies, and the Municipal Securities Rulemaking Board (“MSRB”).

<sup>3</sup> See Section 19 of the Exchange Act, 15 U.S.C. 78s. See also Market 2000: An Examination Of Current Equity Market Developments, Study VI, Division of Market Regulation, U.S. Securities and Exchange Commission (January 1994).

<sup>4</sup> 15 U.S.C. 78f(a).

<sup>5</sup> Certain futures exchanges are also registered as national securities exchanges under Section 6(g) of the Exchange Act, 15 U.S.C. 78f(g), solely for the purpose of trading security futures products.

<sup>6</sup> While a security futures exchange registered under Section 6(g) of the Exchange Act is required to file certain proposed rule changes with the Commission, few such filings must receive Commission approval under Section 19(b)(2). If they must be filed at all, most may be filed under Section 19(b)(3)(A) of the Exchange Act. See 15 U.S.C. 78f(g)(4)(B).

<sup>7</sup> Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001) (S7-03-01) (“Rule 19b-6 Proposing Release”).

<sup>8</sup> See Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994) (S7-17-94) (“Non-Controversial Rule Adopting Release”).

the Commission again amended Rule 19b-4 to allow for the listing and trading of certain derivative securities products without prior submission of a proposed rule change under section 19(b).<sup>9</sup> The 1998 rulemaking was intended to speed the introduction of new derivative securities products and enable exchanges to remain competitive with foreign and over-the-counter derivatives markets that are not subject to section 19(b).

In 2001, the Commission proposed comprehensive changes to the SRO rule filing process.<sup>10</sup> The Commission proposed to completely replace Rule 19b-4, the rule governing the requirements for SRO rule filings, with proposed new Rule 19b-6. Proposed Rule 19b-6, among other things, would have defined terms used in proposed Rule 19b-6 to allow most exchange trading rules, other than proposals involving fundamental market structure changes, to be immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Exchange Act. The Commission also proposed related changes that would have imposed a number of new obligations on SROs filing proposed rule changes with the Commission. For example, in proposed Rule 19b-6, the Commission would have required, among other things, that a senior SRO official certify the accuracy and completeness of the proposal. The Commission also proposed to eliminate the 30-day operational date and the five-day pre-filing requirement for non-controversial rule filings.

The Commission received 21 comment letters on proposed Rule 19b-6, many of which opposed various aspects of the proposal, though for widely divergent reasons. Four commenters explicitly supported the proposal to make certain trading rules effective upon filing.<sup>11</sup> Several SROs believed that the proposal provided only minor benefits that were potentially outweighed by new burdensome requirements.<sup>12</sup> A few

<sup>9</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (S7-13-98) (“New Products Adopting Release”).

<sup>10</sup> See Rule 19b-6 Proposing Release, *supra* note 7.

<sup>11</sup> See Comment letters from Nasdaq (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); Bloomberg Tradebook LLC (dated April 5, 2001); and the Chicago Stock Exchange (dated April 5, 2001).

<sup>12</sup> See, e.g., Comment letters from The Options Clearing Corporation (dated April 6, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); the Chicago Stock Exchange (dated April 5, 2001); the International Securities Exchange (dated March 23, 1994); and the Chicago Board Options Exchange (dated April 11, 2001).

<sup>1</sup> 15 U.S.C. 78f.

<sup>2</sup> 15 U.S.C. 78s(b) and 17 CFR 240.19b-4, respectively. See also Form 19b-4. The rule filing requirements of Section 19(b) also apply to other SROs, such as national securities associations,

commenters believed that the category of trading rules eligible for immediate effectiveness was too narrow, or that more objective standards were needed to determine what qualifies as a trading rule.<sup>13</sup> In contrast, other commenters were concerned that the proposal might reduce the opportunity to comment on proposed rule changes,<sup>14</sup> and that the Commission might be hesitant to abrogate immediately effective filings.<sup>15</sup> Several commenters explicitly opposed making certain types of trading rules immediately effective, noting that such rule changes may have particular importance to the public or have a major impact on market participants.<sup>16</sup> Several commenters also opposed the proposal to remove the operative delay<sup>17</sup> from Rule 19b-4(f)(6).<sup>18</sup> In addition, several

<sup>13</sup> See, e.g., Comment letters from Credit Suisse First Boston (dated March 26, 2001); the International Securities Exchange (dated March 23, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); Nasdaq (dated April 6, 2001); the Chicago Board Options Exchange (dated April 11, 2001); the Chicago Stock Exchange (dated April 5, 2001); and the Mercatus Center of George Mason University (dated April 9, 2001).

<sup>14</sup> See, e.g., Comment letters from the Investment Company Institute (dated April 6, 2001); Bloomberg Tradebook LLC (dated April 5, 2001); Brunelle & Hadjickow (dated April 4, 2001); the Consumer Federation of America (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); and the American Council of Life Insurers (dated April 10, 2001). See discussion below in Section III.A.2(b) regarding the importance of public comment to the SRO proposed rule change process.

<sup>15</sup> See, e.g., Comment letters from Credit Suisse First Boston (dated March 26, 2001); the Council of Institutional Investors (dated March 26, 2001); the Investment Company Institute (dated April 6, 2001); and the Consumer Federation of America (dated April 6, 2001). See discussion below in Section IV regarding abrogation of immediately effective proposals.

<sup>16</sup> See, e.g., Comment letters from the Securities Industry Association (dated April 6, 2001) and Brunelle & Hadjickow (dated April 4, 2001). These commenters believed that entities that are familiar with the technology and operation of SRO trading systems should be given an opportunity to comment on proposed changes to such systems. See Section III.A.2(b), below (“Opportunity for Public Comment With Regard to Immediately Effective Rule Filings”).

<sup>17</sup> A proposed rule change designated immediately effective normally becomes operative upon filing with the Commission, except for a proposal submitted pursuant to Rule 19b-4(f)(6), which becomes operative 30 days after the date of filing with the Commission or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> See, e.g., Comment letters from the Investment Company Institute (dated April 6, 2001); the State of Wisconsin Investment Board (dated March 28, 2001); Brunelle & Hadjickow (dated April 4, 2001); the Consumer Federation of America (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); and the American Council of Life Insurers (dated April 10, 2001). One commenter suggested that a delay between the effective and operative date would allow the Commission to abrogate a rule with a minimum of disruption to an

commenters expressed support for Commission issuance of notice of a proposed rule change within 10 business days or such longer period as the SRO consents.<sup>19</sup>

The Commission has considered thoroughly all of these comments. The Commission is not taking action today on proposed Rule 19b-6 nor with regard to any of the other related changes,<sup>20</sup> but the Commission’s action in this release is consistent with the objectives underlying the Rule 19b-6 proposal and takes into account the varying views expressed in the comments.

The Commission notes that the guidance and rule adopted herein do not alter the existing legal obligations for SROs filing proposed rule changes. The Commission today is not modifying or replacing Rule 19b-4, nor is it imposing related obligations on SROs with regard to the rule filing process and, therefore, the Commission believes that the additional requirements proposed in the Rule 19b-6 Proposing Release are not necessary at this time.

As discussed below, the guidance in this release addresses a much narrower part of the SRO rule filing process and imposes no new obligations on SROs.

The Commission believes that it is now appropriate to issue guidance related to the filing of certain immediately effective proposed rule changes by SROs and to adopt a rule amendment designed to streamline further the SRO proposed rule change process. Specifically, the Commission today is (1) providing an interpretation of the Commission’s views as to which SRO rule filings could be filed as immediately effective and (2) modifying only its own internal processes.

## II. Background on the Current Rule Filing Process

Section 19(b)(1) of the Exchange Act requires an SRO to file with the

SRO’s operations. See Comment letter from the State of Wisconsin Investment Board (dated March 28, 2001).

<sup>19</sup> See Comment letters from Credit Suisse First Boston (dated March 26, 2001); the Chicago Stock Exchange (dated April 5, 2001); the Philadelphia Stock Exchange (dated April 6, 2001); Nasdaq (dated April 6, 2001); the Securities Industry Association (dated April 6, 2001); the Pacific Exchange (dated April 24, 2001); the Government Securities Clearing Corporation (dated March 20, 2001); NASD Dispute Resolution and NASD Regulation (dated May 3, 2001). One commenter suggested that the Commission publish notice of a proposed rule change within ten calendar days, not business days, and recommended that there be a mechanism to ensure compliance with the requirement. See Comment letter from the Chicago Board Options Exchange (dated April 11, 2001).

<sup>20</sup> For example, the Commission is taking no further action at this time on the Rule 19b-6 proposal to require certifications or to remove the pre-filing or operative delay from Rule 19b-4(f)(6) under the Exchange Act.

Commission any proposed rule change,<sup>21</sup> which must be “accompanied by a concise general statement of the basis and purpose of such proposed rule change” and be submitted electronically on Form 19b-4, in accordance with the General Instructions thereto.<sup>22</sup> Exhibit 1 of Form 19b-4 requires an SRO to prepare the notice of its proposed rule change for publication in the **Federal Register**.<sup>23</sup> A proposed rule change may not take effect unless it is approved by the Commission<sup>24</sup> or becomes immediately effective upon filing pursuant to section 19(b)(3)(A) of the Exchange Act.<sup>25</sup>

### A. Proposals Subject to Commission Approval

For those proposals that are subject to Commission approval, section 19(b)(2) of the Exchange Act specifies the standards and time periods for Commission action either to approve a proposed rule change or to institute proceedings to determine whether a

<sup>21</sup> Section 19(b)(1) of the Exchange Act defines a “proposed rule change” as “any proposed rule, or any proposed change in, addition to, or deletion from the rules of” an SRO. 15 U.S.C. 78s(b)(1). Section 3(a)(27) of the Exchange Act defines “rules” to include “the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing \* \* \* and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.” 15 U.S.C. 78c(a)(27).

<sup>22</sup> 17 CFR 249.819. Among other things, the General Instructions to Form 19b-4 specify that an SRO’s proposal must be clear and complete before it will be accepted as filed by the Commission. See General Instruction B to Form 19b-4 (“This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder \* \* \* The [SRO] must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner \* \* \* Any filing that does not comply with the requirements of this form may be returned to the [SRO] at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission”). See also Rule 0-3 under the Exchange Act, 17 CFR 240.0-3 (“The date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with. \* \* \*”).

<sup>23</sup> If the conditions of Rule 19b-4 and Form 19b-4 are satisfied, a proposed rule change submitted electronically via the Commission’s Electronic Form Filing System on or before 5:30 p.m. Eastern Time on a business day is deemed “filed” on that business day, and all filings submitted after 5:30 p.m. Eastern Time are deemed filed on the next business day. See Rule 19b-4(k), 17 CFR 240.19b-4(k).

<sup>24</sup> See 15 U.S.C. 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

proposed rule change should be disapproved.<sup>26</sup> After expiration of the applicable comment period and due consideration of any comment letters received, the Commission shall approve a proposed rule change if it finds such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO.<sup>27</sup> The Commission shall disapprove a proposed rule change if it cannot make such a finding.<sup>28</sup>

#### B. Immediately Effective Proposals

Section 19(b)(3)(A) of the Exchange Act provides that, notwithstanding the provisions of section 19(b)(2), a proposed rule change may take effect upon filing with the Commission if 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 self-regulatory organization;
- (ii) Establishing or changing a due, fee, or other charge imposed by the self-regulatory organization; or
- (iii) Concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule \* \* \* may specify \* \* \*.<sup>29</sup>

Section 19(b)(3)(A)(iii) of the Exchange Act grants the Commission authority to expand the scope of proposed rule changes entitled to qualify for immediate effectiveness to other matters which the Commission, by rule, consistent with the public interest and the purposes of section 19(b) of the Exchange Act, may specify. Rule 19b-4(f) under the Exchange Act<sup>30</sup> specifies the following types of proposed rule changes that may take effect upon filing with the Commission pursuant to section 19(b)(3)(A) if properly designated by an SRO as:

- (1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

<sup>26</sup> See 15 U.S.C. 78s(b)(2). The Commission must either approve or institute disapproval proceedings within thirty-five days of the date of publication of notice of the filing in the **Federal Register**, or within such longer period as the Commission may designate (up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding) or as to which the SRO consents. See *id.*

<sup>27</sup> The Commission may approve a proposed rule change on an accelerated basis prior to the 30th day after publication of the notice in the **Federal Register** if it finds good cause and publishes its reasons for so doing. See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f).

- (2) Establishing or changing a due, fee, or other charge applicable to a member;

- (3) Concerned solely with the administration of the self-regulatory organization;

- (4) Effecting a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

- (5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system; or

- (6) Effecting a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change (the "pre-filing"), or such shorter time as designated by the Commission.<sup>31</sup>

As with a proposed rule change filed pursuant to section 19(b)(2) of the Exchange Act, the Commission publishes notice in the **Federal Register** of a proposed rule change designated for immediate effectiveness under section

<sup>31</sup> The five-day period commences from the date the Commission receives the SRO's pre-filing. The pre-filing requirement was designed to serve as an opportunity for Commission staff to "discuss with the SRO whether there exists an adequate basis upon which the proposed rule change may properly qualify" for immediate effectiveness under Rule 19b-4(f)(6), and allows the SRO to "elicit guidance from Commission staff to help the SRO identify those aspects of a proposed rule change that the Commission deems important" in order to "help the SRO articulate in its subsequent filing the purpose and effects of the proposed rule change, which in turn should further facilitate and expedite the filing process." Securities Exchange Act Release No. 34140 (June 1, 1994), 59 FR 29393, 29395 (June 7, 1994) (S7-17-94) ("Non-Controversial Rule Proposing Release"). The Commission also notes that it has enhanced its electronic system through which SROs file proposed rule changes to allow the electronic submission of pre-filings.

19(b)(3)(A).<sup>32</sup> An immediately effective filing becomes operative upon filing with the Commission, except for a proposal submitted pursuant to Rule 19b-4(f)(6), which becomes operative 30 days after the date of filing with the Commission or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>33</sup>

Further, the Exchange Act provides that at any time within 60 days of the date of filing of a proposed rule change designated for immediate effectiveness under section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f) thereunder, the Commission summarily may abrogate the proposed rule change and require that the SRO re-file the proposal under section 19(b)(2) of the Exchange Act "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]." <sup>34</sup>

#### III. Interpretive Guidance on the Rule Filing Process

The Commission today takes several actions, discussed in greater detail below, intended to facilitate more expeditious handling of proposed rule changes submitted by SROs. The Commission is providing interpretive guidance regarding the range of proposed changes to exchange trading rules that qualify for immediate effectiveness pursuant to Exchange Act Rule 19b-4(f)(6) as not significantly affecting the protection of investors or the public interest and not imposing any significant burden on competition.<sup>35</sup> The Commission anticipates that the guidance will result in exchanges filing a broader range of proposed changes to trading rules for immediate effectiveness under Rule 19b-4(f)(6).

<sup>32</sup> An SRO must designate the basis for immediate effectiveness of the proposed rule change in Item 7 of Form 19b-4. See Item 7 of Form 19b-4 ("Basis for Summary Effectiveness Pursuant to Section 19(b)(3)(A) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)").

<sup>33</sup> With respect to amendments to filings designated for immediate effectiveness pursuant to Rule 19b-4(f)(6), the Commission has stated that "any substantive amendment would trigger a new 30-day period, assuming the changes do not render the filing ineligible for this category." Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66695. The Commission staff, however, has "discretion to accept editorial changes without triggering a new 30-day period." *Id.* Such proposals should not require extensive amendments, since "[a] filing requiring further substantive amendments may indicate that it is not appropriate for the expedited treatment afforded by the noncontroversial category." *Id.*

<sup>34</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>35</sup> See Rule 19b-4(f)(6), 17 CFR 240.19b-4(f)(6).

Additionally, the Commission is providing guidance on proposed rule changes relating to an SRO's minor rule violation plan ("MRVP") and "copycat" filings relating to SRO rules other than trading rules. The guidance provided herein as it relates to proposed changes to trading rules is directed at SROs that operate trading systems (*i.e.*, the national securities exchanges). The additional guidance is applicable to all SROs, including exchanges, national securities associations, clearing agencies, and the MSRB.

Further, as discussed in section V below, the Commission is adopting an amendment to Rule 200.30-3(a)(12) relating to the delegation of authority to the Director of the Division of Trading and Markets regarding the publication of proposed rule changes.<sup>36</sup> Amended Rule 200.30-3(a)(12) applies with regard to all SRO rule filings.

#### A. Interpretive Guidance on Immediately Effective Proposed Rule Changes

The national securities exchanges' need to implement quickly new trading rules has become increasingly critical, particularly given the evolving role of securities exchanges, innovations in U.S. and cross-border trading, and the increasingly competitive financial marketplace. Specifically, the Commission recognizes that the national securities exchanges registered under section 6(a) of the Exchange Act<sup>37</sup> face increased competitive pressures from entities that trade the same or similar financial instruments—such as foreign exchanges, futures exchanges, ECNs, and ATs. These competitors can change their trading rules or trade new products with greater ease, and without filing them with the Commission.

Accordingly, to inform exchanges' understanding of the range of exchange trading rules eligible for immediate effectiveness and to encourage exchanges to consider filing a broader range of proposed changes to trading rules that do not "significantly affect the protection of investors or the public interest"<sup>38</sup> or do not "impose any

significant burden on competition,"<sup>39</sup> and thus qualify for immediate effectiveness under Rule 19b-4(f)(6), the Commission is providing the interpretive guidance set forth in this release.

#### 1. Previous Commission Guidance on Immediately Effective Proposals

As discussed above, Rule 19b-4(f)(6) permits a proposed rule change to become immediately effective if, among other things, it is properly designated by an SRO as effecting a change that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. Further, an immediately effective rule pursuant to Rule 19b-4(f)(6), by its terms, may not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the SRO has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

When adding paragraph (f)(6) to Rule 19b-4 in 1994, the Commission referred to it as the "noncontroversial category" and noted that it was intended to accommodate proposed rule changes that were generally "less likely to engender adverse comments or require the degree of review attendant with more controversial filings."<sup>40</sup> Accordingly, the Commission contemplated that proposals eligible for filing under paragraph (f)(6) of Rule 19b-4 would generally be "inherently simple and concise" and "otherwise require little in the way of extended review or analysis by the Commission."<sup>41</sup>

#### 2. Interpretation of Rule 19b-4(f)(6) for Rule Proposals Involving Exchange Trading Rules

The rule filing process, by which national securities exchanges are required to file their proposed rule changes with the Commission, currently allows the exchanges to implement many of their proposed rule changes relating to trading rules on an expedited basis. The Commission believes that more rule filings pertaining to the

operation of an SRO's trading systems qualify for immediate effectiveness than are currently filed as such. A number of proposed rule changes that could qualify for immediate effectiveness under section 19(b)(3)(A) of the Exchange Act are filed, instead, "regular way" under section 19(b)(2), thus requiring the Commission to issue a notice and an approval order.<sup>42</sup>

The Commission believes that a proposed trading rule change appropriately may be filed as an immediately effective rule so long as each policy issue raised by the proposed trading rule (i) has been considered previously by the Commission when the Commission approved another exchange's trading rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval. The Commission believes that filing such proposed rule changes for immediate effectiveness not only will reduce the time before which an exchange could implement its new rule or modify an existing one, but also will eliminate the need for the Commission to issue both a notice and an approval order for each such filing.

The Commission notes that certain types of proposals remain ineligible for immediate effectiveness under Rule 19b-4(f)(6). For example, proposals that introduce potentially anti-competitive or unfairly discriminatory aspects to an SRO's operation, or otherwise conflict with stated Commission policy, would not be eligible for immediate effectiveness since they would not meet the standard of Rule 19b-4(f)(6) and the interpretation. Similarly, proposals that would substantially alter an exchange's market structure would continue to be ineligible for immediate effectiveness.

#### (a) Examples of Trading Rules Eligible for Immediate Effectiveness

Below is a partial list of the types of trading rules that the Commission believes are appropriate for filing as immediately effective rule changes under this interpretation. The Commission emphasizes that this is a partial—not exhaustive—list, designed to assist exchanges in determining the types of proposed trading rule changes that are appropriately filed as immediately effective.

- *Protection of Limit Orders.* In approving exchange trading rules, the

<sup>36</sup> To assist the Commission in processing proposed rule changes expeditiously, the Commission emphasizes the obligation of each SRO to prepare proposed rule changes that are clear and complete. See *supra* note 22 and accompanying text. The Commission encourages SROs to devote sufficient resources to the rule filing process to assure quality work product to enable the Commission to evaluate efficiently whether the proposed rule change is consistent with the Exchange Act and applicable rules and regulations thereunder as well as the SRO's own rules.

<sup>37</sup> 15 U.S.C. 78f(a).

<sup>38</sup> 17 CFR 240.19b-4(f)(6)(i).

<sup>39</sup> 17 CFR 240.19b-4(f)(6)(ii).

<sup>40</sup> Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66696.

<sup>41</sup> *Id.* at 66695.

<sup>42</sup> The Commission understands, however, that there may be a variety of reasons why an SRO may file a proposed rule change under Section 19(b)(2), even though the rule change would have been appropriately filed as an immediately effective rule filing.

Commission carefully reviews whether they protect limit orders that are displayed on an exchange's book, since limit orders contribute to price discovery, provide liquidity to the market, and may narrow the quoted spread.<sup>43</sup> A proposed trading rule change is eligible for immediate effectiveness if the proposal facilitates trading of public customer orders, or otherwise enables them to interact with order flow on the exchange on an equitable basis (such as price/time priority).

- *Market Maker Obligations.* The Commission carefully reviews special advantages provided to market makers when it considers exchange trading rule proposals. Market makers can play an important role in providing liquidity to the market, and an exchange can appropriately reward them for that as well as the services they provide to the exchange's market, so long as the rewards are not disproportionate to the services provided.<sup>44</sup> For example, a proposed trading rule change that strengthens the market while providing benefits to market makers is eligible for immediate effectiveness if the benefits conferred are offset by corresponding responsibilities to the market that provide customer trading interest a net benefit.

- *Preferred Order Flow.* The Commission recognizes that exchanges

<sup>43</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (S7-30-95) (adopting Rule 11Ac1-4) ("The Commission believes that limit orders are a valuable component of price discovery. The uniform display of such orders will encourage tighter, deeper, and more efficient markets.")

<sup>44</sup> See, e.g., Securities Exchange Act Release Nos. 54580 (October 6, 2006), 71 FR 60781, 60782 (October 16, 2006) (SR-ISE-2006-40) (order approving the establishment of ISE's Second Market); 54238 (July 28, 2006), 71 FR 44758, 44761 (August 7, 2006) (SR-NYSE Arca-2006-13) ("Market Makers receive certain benefits for carrying out their duties. \* \* \* The Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment."); 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (SR-Amex-2005-100) (order approving the establishment of a new class of registered options trader called a Remote Registered Options Trader); 52094 (July 21, 2005), 70 FR 43913, 43915 (July 29, 2005) (SR-CHX-2004-11) (order approving a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a specialist) ("Because market makers receive certain benefits for carrying out their duties, the Commission believes that they should have an affirmative obligation to hold themselves out as willing to buy and sell securities for their own account on a regular or continuous basis to justify this favorable treatment."); and 51366 (March 14, 2005), 70 FR 13217, 13221 (March 18, 2005) (order approving the introduction of Remote Market Makers) ("In particular, the Commission believes that RMMs' affirmative obligations are sufficient to justify the benefits they receive as market makers.")

compete for preferenced order flow. A proposal to allow broker-dealers to execute preferenced orders on an exchange is eligible for immediate effectiveness if the rule change provides other market participants a reasonable opportunity to interact with preferenced orders and the proposal does not impinge upon the incentive for market participants to post competitive quotes.<sup>45</sup>

- *Trading Hours.* With respect to trading hours, the Commission believes that proposals to modify the trading hours of an exchange, provided there is a sufficient degree of quotation and last-sale transparency during any extended hours, also are eligible for immediate effectiveness under Rule 19b-4(f)(6).<sup>46</sup>

- *Conforming Rules to Approved Changes to NMS Plan or Commission Rule.* The Commission believes that proposed rule changes to implement provisions of an approved national market system plan (such as the Options Linkage Plan<sup>47</sup>) or a Commission rule

<sup>45</sup> See, e.g., Securities Exchange Act Release No. 37406 (March 29, 1996), 61 FR 15322 (April 5, 1996) (SR-CSE-95-03) ("The Commission has concluded that preferencing, as supplemented by the order handling policies, is not necessarily inconsistent with the attainment of best execution of customer orders, the maintenance of fair and orderly markets, or the protection of investors and the public interest under Section 6(b)(5) of the Act."). See also, e.g., Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093, 75097 (December 15, 2004) (SR-ISE-2003-06) (order approving the establishment of rules to implement a price improvement mechanism) ("The Commission \* \* \* has expressed its concern that proposals by options exchanges that guarantee a significant portion of orders to any market participant could erode the incentive to display aggressively priced quotes. Thus, the Commission must weigh whether the proposed participation right would so substantially reduce the ability of other market participants to trade with an order that it would reduce price competition.")

<sup>46</sup> The Commission notes, however, that an exchange proposal to modify the "regular trading hours," as defined in Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(a)(64)) (defining "regular trading hours" as the time between 9:30 a.m. and 4 p.m., Eastern Time) for any NMS stocks that it lists—which thereby has the effect of extending the time during which all trading centers must protect quotations pursuant to Rule 611 of Regulation NMS (17 CFR 242.611)—must be filed under Section 19(b)(2) of the Exchange Act. The Commission believes that, because such a proposal could potentially raise significant competitive issues and could affect existing SRO surveillance and oversight programs, it must be considered by the Commission after prior notice and comment before it becomes operative. See Non-Controversial Rule Proposing Release, *supra* note 31, 59 FR at 29394 (noting that a proposal that would affect the surveillance or oversight capabilities of an SRO could directly impair the protection of investors and should be filed under Section 19(b)(2) of the Exchange Act).

<sup>47</sup> The Options Linkage Plan is a national market system plan for the purpose of creating and operating an intermarket linkage among the various participant exchanges.

are eligible for immediate effectiveness under Rule 19b-4(f)(6).

(b) Opportunity for Public Comment With Regard to Immediately Effective Rule Filings

Although the Commission is encouraging the exchanges to designate additional proposed changes in the category of trading rules as immediately effective, the Commission is not minimizing the importance of receiving public comments on proposed rule changes relating to trading rules. The Commission emphasizes that it continues to believe that the public interest is served by offering the public, investors, SRO members, and other market participants the opportunity to comment on SRO rule proposals. The Commission considers all comments it receives on each proposed rule change, and makes available all comments to the applicable SRO for its consideration as well.

Comments on an immediately effective filing help the Commission analyze the impact of the filing and evaluate whether to abrogate it.<sup>48</sup> Comments also help the exchange address legitimate concerns, in a manner that does not delay implementation of the proposed rule change, while still preserving the Commission's ability to act to abrogate when appropriate. For example, in response to a comment letter that raises significant concerns with an immediately effective rule change, an exchange could consider revising its rule (by submitting either another immediately effective proposal or a proposed rule change that requires notice and comment) in a manner that reasonably addresses the issues raised by the commenter.<sup>49</sup> As described below,<sup>50</sup> an exchange will decrease the likelihood of abrogation of an immediately effective filing by clearly describing the significance of the rule change and how the proposal is consistent with the standards applicable to exchange rules, such as the provisions set forth in section 6 and section 11A of the Exchange Act.<sup>51</sup>

<sup>48</sup> The Commission notes that no inference should be made regarding whether an SRO's proposed rule change "impose[s] a significant burden on competition" merely because an SRO's competitor objects to the rule filing.

<sup>49</sup> If the second proposal were filed under Rule 19b-4(f)(6), the Commission could consider waiving the five-day pre-filing period and the 30-day pre-operative period to permit the revision to the new rule to be operative as quickly as possible. See Rule 19b-4(f)(6)(iii).

<sup>50</sup> See *infra* Section IV.

<sup>51</sup> 15 U.S.C. 78f and 15 U.S.C. 78k-1, respectively.

### B. Other Types of Immediately Effective Proposed Rule Changes

#### 1. Filings Based on the Rules of Another SRO, Other Than Trading Rules

The Commission also is issuing interpretive guidance for all SROs with respect to “copycat” filings relating to SRO rules other than trading rules that are eligible for immediate effectiveness. The Commission previously had stated that filings that are “virtually identical” to an SRO filing already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6).<sup>52</sup> The Commission now clarifies that an SRO may designate a proposed rule change for immediate effectiveness even if not “virtually identical” to another SRO’s rules.<sup>53</sup>

In particular, the Commission recognizes that, while each SRO is unique and has modified its rulebook over time to reflect its particular structure and terminology, all share basic similarities such that a proposed rule change need not be “virtually identical” to the precise text of another SRO’s rules in order for the prescribed conduct and scope of the rule change to be consistent with the other SRO’s rule on which it is based. The Commission believes that a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO’s rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval. For this class of proposed rule changes, in support of its designation for immediate effectiveness, the SRO is required under Item 8 of Form 19b-4 to identify the original SRO rule(s) on which its proposed rule change is based and explain any differences between its proposed rule change and the rule(s) upon which it is based.<sup>54</sup>

<sup>52</sup> See Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66697.

<sup>53</sup> The Commission guidance contained herein applicable to “copycat” and MRVP filings that are based on SRO rule changes previously approved by the Commission is not intended to limit the ability of SROs to continue to file proposals under Section 19(b)(3)(A) of the Exchange Act where such proposals are based on another SRO’s rules that also were effective pursuant to Section 19(b)(3)(A) of the Act.

<sup>54</sup> In identifying a rule on which its proposal is based, the SRO should cite to the Commission’s approval order for that rule. See Item 8 of Form 19b-4.

#### 2. Changes to an SRO’s Minor Rule Violation Plan

The Commission also believes that more filings relating to an SRO’s MRVP could be appropriately filed as immediately effective upon filing under paragraph (f)(6) of Rule 19b-4. Based on its experience with MRVP proposals and various changes to those MRVPs over the years, the Commission believes that MRVPs have been useful elements of SROs’ disciplinary function. The MRVP allows an SRO to impose a limited sanction on a member using an abbreviated process when a full disciplinary proceeding may not be warranted. Proposed rule changes that enable SROs to bring new rules into the MRVP sanctioning process rarely raise significant issues and promote compliance by the SRO’s members with the SRO’s rules and the rules of the Commission.

The Commission previously has stated that certain changes to an SRO’s MRVP can be filed for immediate effectiveness pursuant to Rule 19b-4(f)(6) and reiterates that guidance here.<sup>55</sup> Moreover, consistent with “copycat” filings, the Commission believes that a change to an SRO’s MRVP appropriately may be filed as an immediately effective rule so long as each policy issue raised (i) has been considered previously by the Commission when the Commission approved another exchange’s MRVP rule change, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.<sup>56</sup>

<sup>55</sup> See Non-Controversial Rule Proposing Release, *supra* note 31, 59 FR at 29395 (noting that a proposed change that adds an existing rule to an SRO’s MRVP, that is objective in nature, such as a reporting obligation, and does not involve a violation of the federal securities laws or the rules thereunder, could be eligible for filing as a “non-controversial” proposed rule change). See also Non-Controversial Rule Adopting Release, *supra* note 8, 59 FR at 66696 (noting that an NYSE proposal to add violations of an NYSE rule would have been eligible for immediate effectiveness under Rule 19b-4(f)(6)).

<sup>56</sup> As with any immediately effective filing, the Commission could abrogate an MRVP-related immediately effective proposed rule change that raises significant issues. For example, an MRVP filing that has the effect of excusing certain rule violations (by, for example, aggregating several instances of violative behavior as a single offense under the SRO’s MRVP) would not be eligible for filing under Rule 19b-4(f)(6). In addition, when proposing a change to its MRVP, it would be helpful for the SRO to specify which violations trigger sanctions, and to cite the rules of conduct that may be enforced using the MRVP. If one of the rules of conduct is lengthy, to facilitate ease of reference, the SRO could consider including citations to the necessary sub-paragraphs in the MRVP rule. Providing a sufficient level of detail as to the rules and violations covered by the MRVP would help affected entities better understand the operation of the plan and would provide specificity useful to assist the SRO in administering its MRVP.

Immediate effectiveness of such proposals reduces the administrative burdens on SROs that seek to expand the use of their MRVPs.

### IV. Abrogation of Immediately Effective Proposals

We have designed the guidance to be principles-based because we cannot anticipate the content and nature of every proposed rule change that might be filed. By its nature, therefore, applying the guidance will involve an element of judgment. We encourage SROs to file immediately effective proposed rule changes when in the judgment of the SRO that approach is appropriate and consistent with the statute, rules, and this guidance.<sup>57</sup>

We acknowledge that the Commission ultimately may determine to abrogate the immediately effective proposed rule change. As described in greater detail above, pursuant to section 19(b)(3)(C), at any time within 60 days of the date of filing of an immediately effective proposed rule change, the Exchange Act permits the Commission summarily to abrogate the rule change “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].”<sup>58</sup>

In connection with the interpretation, the Commission also is removing its delegation of authority to the Director of the Division of Trading and Markets to abrogate SRO rule filings. We emphasize that abrogation does not necessarily imply that a proposed rule change is inconsistent with the Exchange Act.<sup>59</sup> If the Commission abrogates an SRO’s proposed rule change filed for immediate effectiveness after it became effective but before it becomes operative (*i.e.*, 30 days after filing or such shorter period as the Commission may designate), the SRO would not have to revert to its previous rules, because they

<sup>57</sup> An SRO that files an immediately effective proposed rule change with the Commission should try to anticipate and address concerns relating to the protection of investors, the public interest, and the burdens on competition. See generally Items 3 and 4 of Form 19b-4. The Commission further notes that conclusory statements made in Item 7 of Form 19b-4 could make it more difficult for the Commission to confirm that the proposed rule change has been properly designated. See Item 7 of Form 19b-4 (“Basis for Summary Effectiveness Pursuant to Section 19(b)(3)(A) or Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)”).

<sup>58</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>59</sup> By its terms, Section 19(b)(3)(C) states that the Commission may abrogate a proposal and “require that the proposed rule change be refiled \* \* \*” pursuant to Exchange Act Section 19(b)(1) to be reviewed by the Commission pursuant to Section 19(b)(2).

never ceased being operative.<sup>60</sup> A Commission determination to abrogate a proposed rule change does not affect the validity or force of the rule change during the period it was in effect.<sup>61</sup>

#### V. Amendment to Rule 200.30-3(a)(12)

The Commission believes that explicitly outlining the mechanism for issuance of notices of proposed SRO rule changes will further enhance the efficiency of the rule filing process. As such, the Commission is modifying its delegation of authority to the Director of the Division of Trading and Markets. The amended rule specifies that the Division shall issue notices of all proposed rule changes within 15 business days of filing thereof by the self-regulatory organization unless the Director of the Division personally directs otherwise, and, if the Director has so directed, he shall promptly notify the Commission and either the Commission or the Director may order publication of the notice thereafter.<sup>62</sup>

The Commission believes that this requirement will enhance transparency with respect to the rule filing process, which also will provide additional certainty to SROs with respect to the issuance of notices of proposed rule changes. The Commission also expects this requirement to significantly improve the efficiency of the processing of SRO proposed rule changes and the issuance of notices of proposed rule changes, particularly with respect to filings subject to notice and comment pursuant to section 19(b)(2) of the Exchange Act. The Commission believes that requiring the Division to issue notice of all proposed rule changes that are properly filed and comply with all applicable requirements within 15 business days of filing thereof will help SROs plan accordingly as well as assist the Commission staff in managing their work flow.

The Commission notes that SRO rule change proposals will continue to be required to be drafted with precision if

they are to provide information necessary to elicit meaningful public comment on the proposed rule change. As is currently the case, a proposal that does not comply with the requirements of Form 19b-4 and Rule 19b-4 under the Exchange Act will not be accepted as filed.<sup>63</sup>

In order to provide for the possibility that there may be unusual and infrequent circumstances in which the 15 business day requirement is impractical, the rule permits the Director of the Division of Trading and Markets in such circumstances to direct otherwise. The rule provides that this function cannot be subdelegated.

#### VI. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,<sup>64</sup> that the interpretive guidance issued today and amended Commission Rule 200.30-3(a)(12) relate solely to interpretations and agency organization, procedure, or practice. Accordingly, the guidance and Rule 200.30-3(a)(12) are not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication prior to their adoption.<sup>65</sup>

Further, publication of a substantive rule not less than 30 days before its effective date is required by the Administrative Procedure Act except as otherwise provided for in Section 553(d). However, interpretive rules may take effect less than 30 days after publication.<sup>66</sup> In addition, because the amended rule relates solely to the internal processes of the Commission with regard to the publication of proposed rule changes filed by SROs, the Commission finds that there is good cause for making amended Rule 200.30-3(a)(12) effective upon publication in the **Federal Register**.<sup>67</sup>

Finally, the rule and the Commission's interpretation do not contain any new or additional collections of information as defined by

the Paperwork Reduction Act of 1995, as amended.<sup>68</sup>

#### VII. Costs and Benefits of the Proposed Amendments

The Commission is sensitive to the costs and benefits of its rules, and has considered carefully the costs and the benefits of the interpretive guidance and the rule amendment. To the extent that SROs decide to avail themselves of the guidance contained in this release, the Commission believes that more rule changes will be filed as immediately effective rule filings and more proposed rule changes relating to trading rules, MRVPs, and "copycat" proposals that currently are filed under section 19(b)(2) will take effect upon filing with the Commission. As SROs increase their use of section 19(b)(3)(A) to file more proposed rule changes for immediate effectiveness, SROs will be able to modify their trading systems and rules more quickly in response to competitive pressures, while still being subject to the protections provided by Exchange Act section 19(b). Further, as more proposed rule changes become effective upon filing, the burdens on the SROs, as well as on the Commission and its staff, are expected to be reduced since such proposals will be processed and take effect more quickly, as those rule changes would not be subject to the issuance of a Commission order before they may take effect. Also, to the extent that the guidance increases the percentage of SRO proposed rule changes that may take effect upon filing with the Commission, there will be efficiencies as the processing of such proposed rule changes requires fewer staff resources since the Commission is not required to issue an order approving such proposed rule changes.

In addition, the revised rule regarding the issuance of a notice of a proposed rule change within 15 business days of filing with the Commission will benefit SROs by providing additional certainty to them regarding the process, thereby enabling them to plan according, and improving the efficiency and the speed with which the Commission processes SRO rule filings. The Commission believes that this rule will increase the speed with which the Commission handles SRO proposed rule changes. The Commission does not expect its guidance and the rule amendment to increase the costs on SROs of filing proposed rule changes with the Commission.

Certain costs associated with the Commission's action today may potentially result from the change in the

<sup>60</sup> See 15 U.S.C. 78s(b)(3)(C). A proposed rule change filed pursuant to Rule 19b-4(f)(6) becomes effective upon filing, but may not become operative until 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>61</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>62</sup> Nevertheless, the Division may continue to submit proposed rule changes and related matters to the Commission for its consideration as it considers appropriate.

The Commission notes that Commission rules require an SRO to post its proposed rule change on its Web site when the proposed rule change is submitted to the Commission. Further, the proposed rule change will be posted on the Commission's Web site shortly after the Commission issues notice thereof.

<sup>63</sup> See *supra* note 22.

<sup>64</sup> 5 U.S.C. 553(b)(3)(A).

<sup>65</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>66</sup> See 5 U.S.C. 553(d)(2).

<sup>67</sup> See 5 U.S.C. 553(d)(3).

<sup>68</sup> 44 U.S.C. 3501.

amount of time that interested persons will have to comment on proposed changes to trading rules before they become operative. In particular, to the extent that SROs designate a greater number of proposed rule changes for immediate effectiveness pursuant to section 19(b)(3)(A) where they previously would have submitted them pursuant to section 19(b)(2), then the opportunity for interested persons to comment on such proposals will now occur after the proposal has taken effect upon filing with the Commission, since such proposals are not be subject to Commission approval before they become effective.

The Commission believes that this potential cost is limited by a number of factors. First, interested persons will continue to have an opportunity to submit written data, views, and arguments concerning such proposed rule changes before market participants must comply with the new rules because proposals that take effect upon filing with the Commission pursuant to Rule 19b-4(f)(6) ordinarily will not become operative until 30 days after filing with the Commission unless the SRO demonstrates to the Commission that waiver of the operative delay would be consistent with the protection of investors and the public interest. In addition, the Commission summarily may abrogate a proposed rule change. If an SRO were to re-file the proposed rule change pursuant to section 19(b)(2), the proposed rule change will be published for notice and comment.<sup>69</sup> The Commission's action or inaction with regard to abrogation will be informed by its own views, as well as the views expressed by commenters.

Finally, as currently is the case, a proposed rule change may take effect upon filing with the Commission only if it satisfies the standards set forth in section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Additionally, the Commission guidance outlined above specifies that an immediately-effective proposed rule change involving a trading rule, MRVP, or copycat proposal may not raise policy issues that the Commission previously has not considered in a proposed rule change filed by another exchange that was approved by the Commission after notice and comment. Accordingly, since the rule on which the new proposal is modeled will have been previously subject to notice and comment, the interested persons will have had the opportunity to comment before the prior proposal (or proposals) became effective

and on the immediately-effective rule filing, as well.

In addition, amended Rule 200.30-3(a)(12) relates to internal agency management. The Commission's rule amendment is intended to increase the efficiency of the Commission's review of SRO proposed rule changes by outlining the Commission's expectations with respect to Commission review of and the timing of issuance of a notice of an SRO's proposed rule change. Any increase in the costs of this amended rule fall on the Commission and its staff. In particular, the Commission will have to concentrate staff resources on reviewing and noticing within 15 days the proposed rule changes submitted by SROs. However, the ability of SROs to devote sufficient resources to preparing clear and complete proposals should enable the staff to review expeditiously a proposed rule change and issue the notice substantially in the form provided by the SRO when both are clear, complete, and consistent with all applicable requirements.

#### VIII. Effect on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act<sup>70</sup> 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. Rule 200.30-3(a)(12) applies to the Commission's delegation of authority with regard to the publication of notice of proposed rule changes filed by SROs pursuant to section 19(b)(1) of the Exchange Act.<sup>71</sup> Specifically, the modifications to the rule, which require the Division of Trading and Markets to issue notice of a proposed rule change within 15 business days of filing with the Commission, do not impose any burdens or costs on SROs. Further, the interpretation likely will facilitate the ability of SROs to modify their trading systems and rules more quickly in response to competitive pressures, while still preserving the protections provided by Exchange Act section 19(b).

The Commission expects the interpretive guidance and amended Rule 200.30-3(a)(12) to have a positive effect on efficiency, competition, and capital formation in that the exchanges that utilize the guidance are expected to find themselves in a better position to compete with entities that operate trading systems that are not subject to the rule filing processes of section 19(b) of the Exchange Act.

Furthermore, any increase in the number of proposed rule changes that may become effective upon filing with the Commission should improve the ability of SROs to amend their rules efficiently, particularly with respect to rules relating to trading systems and "copycat" proposals, which will enhance their ability to respond to competitive pressures by allowing them to file changes to their systems on an immediately effective basis. In addition, to the extent that SROs file an increasing number of their proposed rule changes for immediate effectiveness pursuant to section 19(b)(3)(A) of the Exchange Act rather than for Commission approval pursuant to section 19(b)(2) of the Exchange Act, this guidance should allow the Commission to focus on those filings that raise significant issues and that are required to be submitted under section 19(b)(2) of the Exchange Act for Commission approval.<sup>72</sup>

#### IX. Statutory Basis and Text of Amendments

This amendment to 17 CFR Part 200.30-3(a)(12) is being adopted pursuant to statutory authority granted to the Commission, including sections 4A, 6, 11A, 15A, 15B, 17A, 19, and 23 of the Exchange Act.<sup>73</sup>

#### List of Subjects

##### 17 CFR Part 200

Administrative practice and procedures, Authority delegations (Government agencies).

##### 17 CFR 241

Securities.

#### Text of the Adopted Rules

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

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

##### Subpart A—Organization and Program Management

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

<sup>72</sup> 15 U.S.C. 78s(b)(2). The Commission notes that the majority of rule proposals filed by SROs are currently designated for immediate effectiveness. For example, in 2006, SROs filed 1,018 proposed rule changes with the Commission. Of those filings, 478 (47%) were filed pursuant to Section 19(b)(2) and 540 (53%) were filed pursuant to Section 19(b)(3)(A).

<sup>73</sup> 15 U.S.C. 78d-1, 78f, 78k-1, 78o-3, 78o-4, 78q-1, 78s, and 78w, respectively.

<sup>69</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>70</sup> 15 U.S.C. 78w(a)(2).

<sup>71</sup> 15 U.S.C. 78s(b)(1).



**Authority:** 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.  
\* \* \* \* \*

- 2. Section 200.19a is amended by:
  - a. Revising the section heading as set forth below;
  - b. In the first sentence of the introductory text of the section, revise the phrase “Division of Market Regulation” to read “Division of Trading and Markets”; and
  - c. Remove the authority citation following the section.

**§ 200.19a Director of the Division of Trading and Markets.**

\* \* \* \* \*

- 3. Section 200.30-1, paragraph (i), first sentence is amended by revising the phrase “Division of Market Regulation” to read “Division of Trading and Markets”.
- 4. Section 200.30-3 is amended by:
  - a. Revising the section heading as set forth below;
  - b. In the introductory text to the section, revising the phrase “Division of

Market Regulation” to read “Division of Trading and Markets”;

- c. Adding two sentences to the end of paragraph (a)(12); and
- d. removing and reserving paragraph (a)(58).

The revision and addition reads as follows:

**§ 200.30-3 Delegation of authority to Director of Division of Trading and Markets.**

\* \* \* \* \*

(a) \* \* \*

(12) \* \* \* The Division shall issue such notices of proposed rule changes within 15 business days of filing by the self-regulatory organization unless the Director of the Division personally otherwise directs. If the Director has so directed, the Division Director shall promptly notify the Commission and either the Commission or the Director may order publication of the notice thereafter.

\* \* \* \* \*

- 5. In § 200.30-4, paragraph (a)(12), the first sentence is amended by revising the phrase “Division of Market

Regulation” to read “Division of Trading and Markets”.

- 6. In § 200.30-11, paragraph (c)(2), is amended by revising the phrase “Division of Market Regulation” to read “Division of Trading and Markets”.

- 7. In § 200.30-18, introductory text of paragraph (h), is amended by revising the phrase “Division of Market Regulation” to read “Division of Trading and Markets”.

**PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER**

- 8. Part 241 is amended by adding Release No. 58024 and the release date of June 25, 2008 to the list of interpretive releases.

By the Commission.

Dated: July 3, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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