

PAPERWORK REDUCTION ACT SUBMISSION

Rule 6h-1

Supporting Statement

A. Justification

1. Necessity for Information Collection.

The Securities Exchange Act of 1934 ("Exchange Act") provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or "SROs"), have primary responsibility for regulating their members or participants. The role of the Securities and Exchange Commission ("SEC") in this framework is primarily one of oversight: the Exchange Act charges the SEC with supervising SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Commodity Futures Modernization Act of 2000 ("CFMA") amended the Exchange Act by allowing the trading of futures on individual stocks or on narrow-based security indexes (collectively, "security futures products"), and providing that trading in security futures products would be regulated jointly by the SEC and the Commodity Futures Trading Commission.

Prior to trading security futures products, an SRO must establish listing standards for security futures products. The Exchange Act, as amended by the CFMA, provides that such listing standards must require, among other things, that: (1) trading in security futures products not be readily susceptible to price manipulation,¹ and (2) the market trading a security futures product has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product.² To further these statutory mandates, SEC Rule 6h-1 requires any SRO wishing to trade security futures products: (1) to require cash-settled security futures products to settle based on an opening price rather than a closing price, on the grounds that settlement based on the closing price creates greater volatility and more opportunity for price manipulation; and (2) to require the SRO to halt trading in a security futures product for as long as trading in the underlying security, or trading in one or more of the securities that make up 50 percent or more of the market capitalization of the underlying narrow-based security index, is halted on the listing market.

¹ See 15 U.S.C. 78f(h)(3)(H).

² See 15 U.S.C. 78f(h)(3)(K).

2. Purpose of, and Consequences of Not Requiring, the Information Collection

Rule 6h-1 will result in proposed rule changes filed with the SEC pursuant to Section 19(b) of the Exchange Act.³ The SEC will review these collections of information to ascertain whether an SRO's listing standards are in compliance with the listing requirements for security futures products set forth in the Exchange Act. Moreover, any listing standards established by an SRO must be published in the Federal Register. Without such publication, the public would be denied a principal means by which to review and offer input on SRO rules.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

The SEC and the SROs continue to upgrade their use of technology for the gathering, storage, and retrieval of information. Some of these improvements, such as the use of e-mail in correspondence between the SEC and the SROs, have improved the efficiency of the SEC's oversight. However, the process of preparing and filing proposed rule changes with the SEC reflects the complexity of the SRO's business. Improved technology, therefore, may not greatly reduce the respondents' burden in making these filings.

4. Efforts to Identify Duplication

The SEC does not believe that SROs' compliance with the relevant provisions of the Exchange Act would entail any duplicative filing requirements.

5. Effect on Small Entities

Not applicable. No small business entities are involved.

6. Consequences of Less Frequent Collection

If an SRO did not file its listing standards with the SEC, the SEC would not be able to publish them in the Federal Register, and the public would be denied a principal means by which to review and offer input on SRO rules.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The collection of information is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

On August 30, 2001, the SEC published for public comment proposed Rule 6h-1. The SEC received eight comment letters in response to the proposed Rule 6h-1. The commentators generally supported the proposed rule. After considering the comments, the SEC adopted Rule 6h-1, effective June 24, 2002, substantially as proposed with slight modification in response to the recommendations by the commentators.

³ 15 U.S.C. 78s(b).

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

Not applicable. Any SRO rule filing would be published in the Federal Register.

11. Sensitive Questions

Not applicable. No issues of a sensitive nature are involved.

12. Estimate of Respondent Reporting Burden

Since the SEC adopted Rule 6h-1, two respondents have complied with the requirements of Rule 6h-1. The two respondents are futures markets that have registered as national securities exchanges under Section 6(g) of the Exchange Act.⁴ The SEC estimates that there will be seventeen respondents to the collection of information among nine national securities exchanges registered under Section 6(a) of the Exchange Act,⁵ one national securities association (the National Association of Securities Dealers) that operates a securities market (the Nasdaq Stock Market), and seven futures markets that the SEC believes will register as national securities exchanges under Section 6(g) of the Exchange Act.⁶

The SEC believes that SROs would have to devote some professional resources to review Rule 6h-1 and to ensure that their listing standards (and the rule filings to implement them) were consistent with Rule 6h-1. The SEC estimates that this burden, per SRO, would be as follows:

10 hours of legal work at \$197/hour⁷ = \$1,970

The SEC estimates that the total hourly burden for all respondents would be 170 hours (ten hours/respondent x seventeen respondents). The SEC estimates that the total cost burden for all respondents would be \$33,490 (\$1,970/respondent x seventeen respondents). The SEC believes that these are one-time burdens that would not recur.

13. Estimate of Total Annualized Cost Burden

Not applicable. The SEC does not anticipate that respondents would have to incur any capital or start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements associated with Rule 6h-1.

⁴ 15 U.S.C. 78f(g).

⁵ 15 U.S.C. 78f(a).

⁶ 15 U.S.C. 78f(g).

⁷SIA Management and Professional Earnings (Deputy General Counsel, New York) plus a 35 percent differential for bonus, overhead, and other expenses.

14. Estimate of Annualized Cost to the Federal Government

The SEC does not believe that Rule 6h-1 would result in any cost to the federal government that has not already been accounted for. Even in the absence of Rule 6h-1, any SRO that wishes to trade security futures products would have to submit to the SEC a proposed rule change under Section 19(b) of the Exchange Act⁸ to establish listing standards for such products. Rule 6h-1 may affect the content of these filings, but not their number or length.

15. Explanation of Changes in Burden

Not applicable.

16. Information Collected Planned for Statistical Purposes

Not applicable. This information is not published for statistical use.

17. Explanation as to Why Expiration Date Will Not Be Displayed

The SEC is not seeking approval not to display the expiration date for OMB approval.

18. Exceptions to Certification

The SEC is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Methods

Not applicable. The collection of information would not employ statistical methods.

⁸ 15 U.S.C. 78s(b).