

Rules of Practice Governing Disapproval Proceedings for SRO Proposed Rule Change Filings and For Proposed NMS Plans and Plan Amendments

Reg. §201.100. Scope of the Rules of Practice.

(a) Unless provided otherwise, these Rules of Practice govern proceedings before the Commission under the statutes that it administers.

(b) These rules do not apply to:

(1) Investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter; or

(2) Action taken by the duty officer pursuant to delegated authority under 17 CFR 200.43.

(3) Initiation of proceedings for SRO proposed rule changes under 17 CFR 201.700-701, except where made specifically applicable therein.

(c) The Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

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Reg. §201.103. Construction of Rules.

(a) The Rule of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(b) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.

(c) For purposes of these rules:

(1) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) Any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and

(3) Unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

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Reg. §201.104. Business Hours.

The Headquarters office of the Commission, at 100 F Street, NE, Washington D.C.20549, is open each day, except Saturdays, Sundays, and Federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, D.C. Federal legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday in Washington, D.C. by the President or the Congress of the United States.

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Reg. §201.160. Time Computation.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in §201.104), in which event the period runs until the end of the next day that is not

a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing. In the event an order of the Commission or the hearing officer specifies a date certain for filing, no time shall be added for service by mail.

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Reg. §201.700. Initiation of proceedings for SRO proposed rule changes and for proposed NMS plans and plan amendments.

(a) ***Rules of Practice.*** For purposes of these Rules of Practice contained at 17 CFR 201.700-701, the following Rules of Practice apply:

- (1) Rule 103, 17 CFR 201.103 (Construction of Rules);
- (2) Rule 104, 17 CFR 201.104 (Business Hours); and
- (3) Rule 160, 17 CFR 201.160 (Time Computation).

(b) ***Institution of proceedings; notice and opportunity to submit written views.***

(1) *Generally.* If the Commission determines to initiate proceedings to determine whether a self-regulatory organization's proposed rule change or whether a proposed national market system ("NMS") plan or a proposed amendment to an effective NMS plan (proposed NMS plan or NMS plan amendment hereinafter collectively referred to as "NMS plan filing")

should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change or to the NMS plan participants, as well as all interested parties and the public, by publication in the *Federal Register* of the grounds for disapproval under consideration.

(i) *Prior to notice.* If the Commission determines to institute proceedings prior to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change or the notice of the NMS plan filing in the *Federal Register*, then the Commission shall publish notice of the proposed rule change or the NMS plan filing simultaneously with a brief summary of the grounds for disapproval under consideration.

(ii) *Subsequent to notice.* If the Commission determines to institute proceedings subsequent to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change or the notice of the NMS plan filing in the *Federal Register*, then the Commission shall publish separately in the *Federal Register* a brief summary of the grounds for disapproval under consideration.

(iii) *Service of an order instituting proceedings.* In addition to publication in the *Federal Register* of the grounds for disapproval under consideration, the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the grounds for disapproval under consideration to the self-regulatory organization that filed the proposed rule change by serving notice to the person listed as the contact person on the cover page of the Form 19b-4 filing and shall serve a copy of the grounds for disapproval under consideration to the NMS plan participants by serving notice to the contact person for the NMS plan. Notice shall be made by delivering a copy of the

order to such contact person either by any method specified in § 201.141(a) or by electronic means including email.

(2) *Notice of the grounds for disapproval under consideration.* The grounds for disapproval under consideration shall include a brief statement of the matters of fact and law on which the Commission instituted the proceedings, including the areas in which the Commission may have questions or may need to solicit additional information on the proposed rule change or NMS plan filing. The Commission may consider during the course of the proceedings additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

(3) *Demonstration of consistency with the Exchange Act.*

(i) The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization is on the self-regulatory organization that proposed the rule change. As reflected in the General Instructions to Form 19b-4, the Form is designed 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 applicable to the self-regulatory organization. The self-regulatory organization must provide all information elicited by the Form, including the exhibits, and must present the information in a clear and comprehensible manner. In particular, the self-regulatory organization must explain why the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the

proposed rule change is consistent with those requirements, or that another self-regulatory organization has a similar rule in place, is not sufficient. Instead, the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(ii) The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. In particular, these plan participants must explain why the NMS plan filing is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NMS plans. A mere assertion that the NMS plan filing is consistent with those requirements is not sufficient. Instead, the description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.

(c) *Conduct of hearings.*

(1) *Initial comment period in writing.* Unless otherwise specified by the Commission in its notice of grounds for disapproval under consideration, all interested persons will be given an opportunity to submit written data, views, and arguments concerning the proposed rule change or NMS plan filing under consideration and whether the Commission should approve or disapprove the proposed rule change or NMS plan filing.

(i) The self-regulatory organization that submitted the proposed rule change may file a written statement in support of its proposed rule change demonstrating, in specific detail, how such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the self-regulatory organization. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

(ii) The NMS plan participants may file a written statement in support of a NMS plan filing demonstrating, in specific detail, how such NMS plan filing is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NMS plans, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the plan participants. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

(2) *Oral.* The Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral

presentation of views.

(3) *Rebuttal.*

(i) At the end of the initial comment period, the self-regulatory organization that filed the proposed rule change will be given an opportunity to respond to any comments received. The self-regulatory organization may voluntarily file, or the Commission may request a self-regulatory organization to file, a response to a comment received regarding any aspect of the proposed rule change under consideration to assist the Commission in determining whether the proposed rule change should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(ii) At the end of the initial comment period, the NMS plan participants will be given an opportunity to respond to any comments received. The plan participants may voluntarily file, or the Commission may request the plan participants to file, a response to a comment received regarding any aspect of such NMS plan filing under consideration to assist the Commission in determining whether such NMS plan filing should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(4) *Non-response.*

(i) Any failure by the self-regulatory organization to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed

rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(ii) Any failure by the NMS plan participants to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.

(d) *Record before the Commission.*

(1) *Filing of papers with the Commission.* Filing of papers with the Commission shall be made by filing them with the Secretary, including through electronic means. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change or a NMS plan filing, the Commission shall inform interested parties of the methods by which they may submit written comments and arguments for or against Commission approval.

(2) *Public availability of materials received.* During the conduct of the proceedings, the Commission generally will make available publicly all written comments it receives without change. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change or a NMS plan filing, the Commission shall inform interested parties of the methods by which they may view all written communications relating to the proposed rule change or a NMS plan filing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552.

(3) *Record before the Commission.* The Commission shall determine each matter on the basis of the record.

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

(ii) The record shall consist of the NMS plan filing filed by the plan participants, including all attachments and exhibits thereto, and all written materials received from any interested parties on such NMS plan filing, including the plan participants, through the means identified by the Commission as provided in paragraph (d)(1) of this section, as well as any written materials that reflect communications between the Commission and any interested parties.

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

Reg. § 201.701 Issuance of order.

(a) At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(c)(3)(i), the Commission may issue an order approving or disapproving the self-regulatory organization's proposed rule change together with a written statement of the reasons therefor.

(b) At any time following conclusion of the rebuttal period specified in 17 CFR

201.700(c)(3)(ii), the Commission may issue an order approving or disapproving the proposed national market system plan or proposed amendment to an effective national market system plan together with a written statement of the reasons therefor.