

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 19b-4(e) and Form 19b-4(e)**

**Proposed Revision**  
**(OMB Control No. 3235-0504)**

**A. JUSTIFICATION**

**1. Information Collection Necessity**

The Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup> sets forth a scheme of self-regulation under which national securities exchanges, national securities associations and registered clearing agencies have primary responsibility for regulating their members or participants. Under this scheme, the Commission's role is primarily one of oversight; the Act charges the Commission with the responsibility for assuring that each of these organizations (“self-regulatory organizations” or “SROs”) complies with and advances the policies of the Act. As part of its oversight responsibilities, the Commission is required to review changes in the rules of the various self-regulatory organizations.

Section 19(b) of the Act, as amended by the Securities Act Amendments of 1975, requires each SRO to file with the Commission copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO (collectively, “proposed rule change”). The Commission is required to publish notice of the proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the Act.

Rule 19b-4 implements the requirements of Section 19(b) of the Act by requiring SROs to file their proposed rule changes on Form 19b-4 and by clarifying which actions by SROs must be filed pursuant to Section 19(b). Rule 19b-4 was adopted in 1975 pursuant to Sections 2, 3, 6, 11A, 15A, 15B, 17, 19 and 23 of the Act.

The Commission has exercised its rulemaking authority<sup>2</sup> by promulgating paragraphs (b), (c) and (d) of Rule 19b-4 under the Act, which interpret the terms “stated

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<sup>1</sup> 15 U.S.C. 78a et seq.

<sup>2</sup> Sections 3(a)(26), 3(a)(27), 3(a)(28) and 3(b) of the Act provide that the Commission may promulgate rules regarding, among other things, “stated policies, practices and interpretations” of SROs. Section 19(b) authorizes the Commission to promulgate rules regarding “proposed rule changes” of SROs. Section 23(a) of the Act provides that the Commission shall have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of the Act for which it is responsible or for the execution of the functions vested in it by the Act, and may for such purposes classify persons, securities, transactions, statements, applications, reports and other matters within its jurisdiction, and prescribe greater, lesser or different requirements for different classes thereof. (See e.g., Securities Exchange Act Release No. 35123 (Dec. 20, 1994) 59 FR 66692 (Dec. 28, 1994)). In addition, in 1996, Congress granted the Commission the authority, under Section 36(a), to exempt, among other things, any class of person,

policy, practice or interpretation” and “proposed rule change.” Paragraph (c) of Rule 19b-4 provides that certain stated policies, practices and interpretations of SROs do not constitute proposed rule changes. Specifically, a “stated policy, practice or interpretation” of an SRO is not a proposed rule change if it, among other things, is reasonably and fairly implied by an existing SRO rule. The Commission then amended Rule 19b-4 by adding paragraph (e) to state that the listing and trading of new derivative securities products by an SRO would not be deemed a proposed rule change if the Commission has approved the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.

The Commission believes that, when the Commission has approved, pursuant to Section 19(b) of the Act, an SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product, the listing and trading of the new derivative securities product is reasonably and fairly implied by the SRO’s existing trading rules, procedures and listing standards. The Commission therefore deemed the listing and trading of new derivative securities products to not be proposed rule changes pursuant to Rule 19b-4(c)(1) under certain conditions.

Certain provisions of Rule 19b-4(e) contain “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995<sup>3</sup> through the use of Form 19b-4(e) under the Act. The collection of information requires an SRO to submit a completed one-page sheet of nine questions within five days of beginning to trade a new derivative securities product through its facilities. Form 19b-4(e) asks factual information regarding the characteristics of the subject new derivative securities product and the securities underlying it. Such questions do not require any analysis or exhibits.

#### **a) 2023 Proposed Amendment to Rule 19b-4(e)**

The Commission has proposed to amend Rule 19b-4(e) to rescind paper Form 19b-4(e) and instead require an SRO to publicly report the same information currently required on Form 19b-4(e) on its internet website by using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission’s website to post the information required under Rule 19b-4(e) for each new derivative securities product within five days of beginning to trade a new derivative securities product through its facilities. The information required under proposed Rule 19b-4(e) would remain the factual information regarding the characteristics of the subject new derivative securities product and the securities underlying it and would not require any analysis or exhibits.

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security or transaction from any provision of the Act. Pub. L. No. 104-290, 110 Stat. 3416 (1996).

<sup>3</sup> 44 U.S.C. 3501 et seq.

## **2. Information Collection Purpose and Use**

Rule 19b-4(e) permits an SRO to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets the criteria of Rule 19b-4(e) under the Act. However, in order for the Commission to maintain accurate information regarding these new derivative securities products while ensuring that information remains publicly available, proposed Rule 19b-4(e) requires an SRO to post the information required under Rule 19b-4(e) when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Such information should be posted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, proposed Rule 19b-4(e) requires an SRO to maintain, on-site, such information for a prescribed period of time.

This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e). The Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs.

## **3. Consideration Given to Information Technology**

The collection of information under the proposed amendment to Rule 19b-4(e) requires the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

## **4. Duplication**

Not applicable. The Commission believes that no duplication of the requirements of Rule 19b-4(e) exists.

## **5. Effect on Small Entities**

Not applicable. The SROs that are required to respond to the collection of information are not small businesses.

## **6. Consequences of Not Conducting Collection**

If the Commission did not collect this information or collected it less frequently, it would not be able to maintain accurate information regarding new derivative securities products traded on the SROs that are not deemed to be proposed rule changes while ensuring that information remains publicly available consistent with its statutory oversight obligations.

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

Rule 19b-4(e) permits an SRO to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets the criteria of Rule 19b-4(e) under the Act. However, in order for the Commission to maintain accurate information regarding these new derivative securities products while ensuring that information remains publicly available, proposed Rule 19b-4(e) would require an SRO to post the information required under Rule 19b-4(e) when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Such information should be posted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, proposed Rule 19b-4(e) would continue to require an SRO to maintain, on-site, that information for a period of not less than 5 years.

This collection of information is designed to allow the Commission to maintain accurate and timely information regarding new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b-4(e). The Commission reviews SRO compliance with Rule 19b-4(e) through its routine inspections of the SROs. Additionally, the Commission notes that Rule 19b-4(e) has not imposed new recordkeeping burdens on the SROs. Paragraph (2)(i) of Rule 19b-4(e) reiterates the SROs' existing recordkeeping burdens under Rule 17a-1 of the Act.

Proposed Rule 19b-4(e) would require an SRO to publicly report the information required under Rule 19b-4(e) on its internet website using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website to post the information required under Rule 19b-4(e) for each new derivative securities product.

## **8. Consultations Outside the Agency**

The Commission requested comment on the collection of information requirements in the proposing release.<sup>4</sup>

## **9. Payment or Gift**

Not applicable. No payments or gifts are required to be made or are made to respondents.

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<sup>4</sup> See Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report; SEC Release Nos. 33-11176, 34-97182, IC-34864 (Mar. 22, 2023); 88 FR 23920 (Apr. 18, 2023) (File No. S7-08-23).

## 10. Confidentiality

Not applicable. Any collection of information pursuant to the proposed amendment to Rule 19b-4(e) under the Act would not be held confidential.

## 11. Sensitive Questions

The information collection collects basic personally identifiable information that may include name and job title. However, the agency has determined that the information collection does not constitute a system of records for purposes of the Privacy Act, because information is not retrieved by a personal identifier.

## 12. Information Collection Burden

As of April 8, 2022, there were 24 SROs subject to the reporting requirements of Rule 19b-4(e). The Commission's experience since the adoption of Rule 19b-4(e) and Form 19b-4(e) indicates that the total time required to complete each filing is approximately one hour. Based on the number of new derivative securities products that were reported to the Commission in years 2019, 2020 and 2021, the estimated expected number of filings per year is 2,331, or approximately 97.12 hours per respondent.<sup>5</sup>

### Proposed Rule 19b-4(e) Initial Response

Under its proposal, the Commission estimates that although the time required to post the information for each response is 1 hour, the additional time required to post the information for the initial response is 0.5 hours. The Commission estimates, therefore, that the **total additional initial hour burden would be 12 hours** (0.5 additional burden hours per initial response x 24 respondents). At an average hourly cost of \$72, the aggregated additional related internal cost of compliance for the initial response under proposed Rule 19b-4(e) is approximately \$1,296 (12 burden hours multiplied by \$72 per hour).

### Proposed Rule 19b-4(e)

Under its proposal, the Commission estimates that the time required to post the information for each response other than the initial response would remain one hour. Based on the number of new derivative securities products that were reported to the Commission in years 2019, 2020 and 2021, the estimated expected number of filings per year would be 2,331, or approximately 97.12 hours per respondent. The Commission estimates, therefore, that **the total annual hour burden associated with proposed Rule**

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<sup>5</sup> 2,331 is based on the average annual number of new derivative securities products accounted for on previously used Forms 19b-4(e) received by the Commission in years 2019, 2020 and 2021. The Commission notes that some SROs did, on certain occasions, file a single Form 19b-4(e) that provided notice of the trading of multiple new derivative securities products.

**19b-4(e) is approximately 2,331 hours per year** (2,331 responses x 1 hour per response). At an average hourly cost of \$72, the aggregate related internal cost of compliance for Rule 19b-4(e) is approximately \$167,832 (2,331 burden hours multiplied by \$72/hour).

Summary of Hour Burdens

Rule	Burden Type	Ongoing or Initial Burden	Number of Respondents	Number of Annual Responses Per Respondent	Hour Burden Per Response (Hours)	Annual Burden per Entity	Total Burden Per Burden Type (Hours)
<b>Rule 19b-4(e)—Initial Response</b>	Reporting	Initial	24	1	1.5	0.5	12
<b>Rule 19b-4(e)</b>	Reporting	Ongoing	24	97.12	1		2,331
<b>Total Aggregate Burden</b>							<b>2,343</b>

### 13. Costs to Respondents

Not applicable. It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information.

Additionally, the Commission notes that proposed Rule 19b-4(e) has not imposed new recordkeeping burdens on the SROs. Paragraph (2)(i) of Rule 19b-4(e) reiterates the SROs' existing recordkeeping burdens under Rule 17a-1 of the Act.

### 14. Costs to Federal Government

None. Review of information posted by respondents pursuant to proposed Rule 19b-4(e) would be done by existing Commission staff as part of their regular duties.

### 15. Changes in Burden

The Commission has increased the burden of this collection of information as a result of the new proposal. The Commission has added an estimated initial burden of 0.5 burden hours. The Commission estimates that the ongoing burden would be unchanged. Thus, the estimated total additional initial burden would be 12 hours.

<b>Name of Information Collection</b>	<b>Annual Industry Burden</b>	<b>Annual Industry Burden Previously Reviewed</b>	<b>Change in Burden</b>	<b>Reason for Change</b>
Rule 19b-4(e)—first structured data response	0.5	0	0.5	Proposed rule amendment that would impose a new initial structuring of data requirement
Rule 19b-4(e)	1	1	0	N/A

**16. Information Collection Planned for Statistical Purposes**

Not applicable. The information is not used for statistical purposes.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.