

§ 240.19a3-1

17 CFR Ch. II (4-1-01 Edition)

records, and you must be able to immediately produce or reproduce them. You must furnish promptly to a representative of the Commission such legible, true, and complete copies of those records, as may be requested.

(h) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of this section;

(2) The term *customer* includes an issuer, transfer agent, or other person for which you provide transfer agent services;

(3) The term *registered non-bank transfer agent* means a transfer agent, whose appropriate regulatory agency is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and

(4) The term *master securityholder file* has the same definition as defined in § 240.17Ad-9(b).

(i) This temporary section will expire on July 1, 2001.

[64 FR 42029, Aug. 3, 1999]

SUSPENSION AND EXPULSION OF EXCHANGE MEMBERS

§ 240.19a3-1 [Reserved]

§ 240.19b-3 [Reserved]

§ 240.19b-4 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b-4.

(b) The term *stated policy, practice, or interpretation* means:

(1) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(2) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-reg-

ulatory organization (“specified persons”), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to:

(i) The rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons; or

(ii) The meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

(e) For the purposes of this paragraph, *new derivative securities product* means any type of option, warrant, hybrid securities product or any other security whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

(1) The listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.

(2) Recordkeeping and reporting:

(i) Self-regulatory organizations shall retain at their principal place of

business a file, available to Commission staff for inspection, of all relevant records and information pertaining to each new derivative securities product traded pursuant to this paragraph (e) for a period of not less than five years, the first two years in an easily accessible place, as prescribed in § 240.17a-1.

(ii) When relying on this paragraph (e), a self-regulatory organization shall submit Form 19b-4(e) (17 CFR 249.820) to the Commission within five business days after commencement of trading a new derivative securities product.

(f) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), if properly designated by the self-regulatory organization as:

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

(2) Establishing or changing a due, fee, or other charge;

(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, or such shorter time as designated by the Commission.

(g) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(h) Notice of orders issued pursuant to section 19(b) of the Act will be given by prompt publication thereof, together with a statement of written reasons therefor.

(i) Self-regulatory organizations shall retain at their principal place of business a file, available to interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

[45 FR 73914, Nov. 7, 1980, as amended at 59 FR 66701, Dec. 28, 1994; 63 FR 70967, Dec. 22, 1998]

§ 240.19b-5 Temporary exemption from the filing requirements of Section 19(b) of the Act.

PRELIMINARY NOTES

1. The following section provides for a temporary exemption from the rule filing requirement for self-regulatory organizations that file proposed rule changes concerning the operation of a pilot trading system pursuant to section 19(b) of the Act (15 U.S.C. 78s(b), as amended). All other requirements