

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[Release No. 34-63049]

Delegation of Authority to the Director of the Division of Trading and Markets

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its rules to delegate authority to the Director of the Division of Trading and Markets (“Division”) to disapprove a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”); to temporarily suspend a proposed rule change of a self-regulatory organization (“SRO”); to notify an SRO that a proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change; and to determine that a proposed rule change is unusually lengthy and complex or raises novel regulatory issues and to inform the SRO of such determination. In addition, the Commission is amending its rules to delegate authority to the Director of the Division (“Director”) to determine the appropriateness of extending the time periods specified in Section 19(b) and publish the reasons for such determination as well as to effect any such extension; to update the references to proceedings to determine whether to disapprove a proposal and to provide to the SRO notice of the grounds for disapproval under consideration; to find good cause to approve a proposal on an accelerated basis and to publish the reasons for such determination; and to extend the period for consideration of a national market system plan or an amendment to such plan. This delegation is

intended to conserve Commission resources and to increase the effectiveness and efficiency of the Commission's SRO rule filing process.

EFFECTIVE DATE: October 12, 2010

FOR FURTHER INFORMATION CONTACT: Richard Holley III, Assistant Director, at (202) 551-5614, Kristie Diemer, Special Counsel, at (202) 551-5613, and Arisa Tinaves, Special Counsel, at (202) 551-5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

The Dodd-Frank Wall Street Reform and Consumer Protection Act¹ amended Section 19 of the Exchange Act, 15 U.S.C. 78s(b)(2), so that there are new deadlines by which the Commission must publish and act upon proposed rule changes submitted by SROs. In recognition of the amendments to Section 19, the Commission is amending its rules governing delegations of authority to the Director of the Division. The amendments to Rule 30-3 (17 CFR 200.30-3) authorize the Director of the Division: (1) to disapprove an SRO proposed rule change pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), provided that, with respect to a particular proposed rule change, if two (2) or more Commissioners object in writing to the Director within five (5) business days of being notified by the Director that the Division intends to exercise its authority to disapprove that particular proposed rule change, then the delegation of authority to approve or disapprove that proposal is withdrawn and the Director shall either present a recommendation to the Commission or institute pursuant to delegated authority proceedings to determine whether the proposed rule change should be disapproved;² (2)

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C), provides the standards for Commission approval and disapproval of a proposed rule change. Under this paragraph, the Commission shall approve a proposed

pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to institute proceedings to determine whether a proposed rule change of a SRO should be disapproved and to provide to the SRO notice of the grounds for disapproval under consideration, and, in addition, if the Commission has not taken action on a proposal for which delegated authority has been withdrawn under subparagraph (12) prior to the expiration of the applicable time period specified in Section 19(b)(2), 15 U.S.C. 78s(b)(2), to require the Director to institute proceedings to determine whether the proposed rule change should be disapproved;

(3) pursuant to new Section 19(b)(10) of the Exchange Act, 15 U.S.C. 78s(b)(10), to (a) notify an SRO that a proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, and (b) determine that a proposed rule change is unusually lengthy and complex or raises novel regulatory issues and to inform the SRO of such determination;

(4) pursuant to Section 19(b)(2)(A) of the Exchange Act, 15 U.S.C. 78s(b)(2)(A), to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change the period during which the Commission must by order disapprove the proposed rule change;

(5) pursuant to Section 19(b)(2)(A) of the Exchange Act, 15 U.S.C. 78s(b)(2)(A), to determine the appropriateness of extending the period during which the Commission must by order approve or disapprove a proposed rule change or institute proceedings to determine whether to disapprove the proposal and publish the reasons for such determination;

(6) pursuant to Section 19(b)(2)(B) of the Exchange Act, 15 U.S.C. 78s(b)(2)(B), to extend for a period not exceeding 240 days from the date of publication of notice of the filing

rule change if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization, and the Commission shall disapprove a proposal if it does not make such finding. Additionally, this paragraph provides that the Commission may not approve a proposed rule change earlier than 30 days after the date of publication unless the Commission finds good cause for so doing and publishes the reason for the finding.

of a proposed rule change the period during which the Commission must conclude proceedings to determine whether to disapprove the proposal and to determine whether such longer period is appropriate and publish the reasons for such determination; (7) to temporarily suspend an SRO's proposed rule change pursuant to Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C.

78s(b)(3)(C); (8) to update the references to proceedings to determine whether to disapprove a proposal and to provide to the SRO notice of the grounds for disapproval under consideration;³ and (9) to find good cause to approve a proposal on an accelerated basis and to publish the reasons for such determination. In addition, the Commission is amending Rule 30-3(a)(42) to authorize the Director, pursuant to rule 608(b), 17 CFR 242.608(b), to extend for a period not exceeding 180 days from the date of publication of notice of the filing of a proposed national market system plan or an amendment to an effective national market system plan the time for Commission consideration of such plan or amendment.

Finally, the Commission is amending Rule 30-3(a)(12) to remove obsolete references to a former compliance deadline that is now inconsistent with the amendments to Section 19 of the Exchange Act since the former provision included a 15 business day deadline that is incompatible with the new 15 calendar day deadline to send the notice to the Federal Register for publication from the date on which the SRO publishes the notice of the filing contained in revised Section 19(b)(2)(E).

This delegation is intended to conserve Commission resources and increase the effectiveness and efficiency of the Commission's process for handling proposed rule changes submitted by SROs. The Commission anticipates that the delegation of authority will help

³ Section 19(b)(3)(C) provides that if the Commission temporarily suspends the change in the rules of a SRO, it shall "institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved." The Commission is amending Rule 30-3(a)(57), which presently delegates authority to the Director of the Division to institute such proceedings, to clarify its applicability to all references to such proceedings contained in amended Sections 19(b)(2) and 19(b)(3) of the Exchange Act.

facilitate timely compliance with the amendments to Section 19 of the Exchange Act and the new statutory deadlines prescribed therein. Nevertheless, the Division may submit matters to the Commission for its consideration, as it deems appropriate.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that these amendments relate solely to agency organization, procedures, or practices, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendments prior to their effective date are unnecessary and these changes are effective on October 12, 2010.

LIST OF SUBJECTS IN 17 CFR PART 200

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

TEXT OF AMENDMENT

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

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

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

* * * * *

2. Section 200.30-3 is amended by:
 - a. Revising paragraphs (a)(12) and (a)(31);

b. In paragraph (a)(42), at the end remove “.” and in its place add “, and pursuant to 17 CFR 242.608(b) to extend for a period not exceeding 180 days from the date of publication of notice of filing of a national market system plan or an amendment to an effective national market system plan the time for Commission consideration of the national market system plan or the amendment to an effective national market system plan and to determine whether such longer period is appropriate and publish the reasons for such determination.”; and

c. Revising paragraphs (a)(57) and (a)(58).

The revisions read as follows:

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

* * * * *

(a) * * * * *

(12) Pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b), and Rule 19b-4 (§240.19b-4) of this chapter, to publish notices of proposed rule changes filed by self-regulatory organizations and to approve such proposed rule changes, and to find good cause to approve a proposed rule change earlier than 30 days after the date of publication of such proposed rule change and to publish the reasons for such finding. Pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b), and Rule 19b-4 (§240.19b-4) of this chapter, to disapprove a proposed rule change, provided that, with respect to a particular proposed rule change, if two (2) or more Commissioners object in writing to the Director within five (5) business days of being notified by the Director that the Division intends to exercise its authority to

disapprove that particular proposed rule change, then the delegation of authority to approve or disapprove that proposal is withdrawn, and the Director shall either present a recommendation to the Commission or institute pursuant to delegated authority proceedings to determine whether the proposed rule change should be disapproved. In addition, pursuant to Section 19(b)(10) of the Act, 15 U.S.C. 78s(b)(10), (a) to notify a self-regulatory organization that a proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change, and (b) to determine that a proposed rule change is unusually lengthy and complex or raises novel regulatory issues and to inform the self-regulatory organization of such determination.

* * * * *

(31) Pursuant to Section 19(b)(2)(A) of the Act, 15 U.S.C. 78s(b)(2)(A), to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must by order approve or disapprove the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved and to determine whether such longer period is appropriate and publish the reasons for such determination.

* * * * *

(57) Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to institute proceedings to determine whether a proposed rule change of a self-regulatory organization should be

disapproved and to provide to the self-regulatory organization notice of the grounds for disapproval under consideration. If the Commission has not taken action on a proposed rule change for which delegated authority has been withdrawn under subsection (12) of this paragraph prior to the expiration of the applicable time period specified in Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), then the Director shall institute pursuant to delegated authority proceedings to determine whether the proposed rule change should be disapproved. In addition, pursuant to Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to extend for a period not exceeding 240 days from the date of publication of notice of the filing of a proposed rule change pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must issue an order approving or disapproving the proposed rule change and to determine whether such longer period is appropriate and publish the reasons for such determination.

(58) Pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to temporarily suspend a change in the rules of a self-regulatory organization.

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By the Commission.

Elizabeth M. Murphy
Secretary

Date: October 6, 2010