

March 23, 2001

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: File No. S7-03-01; Proposed Rule 19b-6

Dear Mr. Katz:

The process by which the Commission reviews and approves self-regulatory organization rule changes is broken: the process takes too long and creates too many competitive dislocations. To its credit, almost from the 1975 creation of the current statutory framework for reviewing SRO rules, the Commission has attempted to streamline this process. As in the current effort, the Commission has sought to limit the inherent inefficiencies in any system that requires the Commission to review the great majority of rule filings it receives and to determine whether such filings comply with the Exchange Act.

The current proposal is the Commission's latest attempt to fix the process. Unfortunately, while Rule 19b-6 may provide a number of small benefits to SROs, overall we find the proposal to be a step backwards. The rule review process should facilitate Commission review of SRO rule filings in a manner that provides SROs with the greatest amount of certainty and predictability as possible. However, Rule 19b-6 is likely to create greater uncertainty and lead to even greater delays in approving SRO rule filings. Thus, we do not support adoption of proposed Rule 19b-6.

We ask the Commission to retain the overall structure of Rule 19b-4 while taking two steps to enhance the rule-review process: First, the Commission should adopt a number of the more minor procedural enhancements proposed in Rule 19b-6. Second, and much more important, the Commission staff should revise its own internal procedures for processing SRO rule filings to focus more directly on any statutory issues that a filing may raise and to process the filings in a more timely manner.

Why the SRO Rule-Review Process is Broken

On paper, the SRO rule-filing system looks good. SROs file a rule change with the Commission, together with the *Federal Register* release, all on a computer disk in the format the Commission requires. The Commission staff double-checks the release and issues it for public comment. If the filing covers fees or certain other topics, the rule is effective on filing and the process then ends. If the filing requires express Commission approval, there is a 21-day comment period on the proposal, and the Commission must act on the proposal between 30 and 35 days after publication. If the Commission determines that the proposal complies with the Exchange Act's requirements, the Commission must approve the filing. If the Commission cannot make this finding, it must institute proceedings to determine whether to disapprove the filing.

The System Works Fine for Simple Rule Filings

The process works well in many cases, especially for: fees; truly non-controversial, minor changes; and other filings where time is of the essence. Fees automatically are effective on filing, and the Commission staff often will waive the five- and 10-day waiting periods for non-controversial rule changes. The Commission staff works closely with us to accelerate the approval process of a rule proposal that closely follows the rule of another SRO (and thus does not raise new policy issues) if we explain why it is critical that the rule must take effect in an expedited manner.

The System Breaks Down for More Complex Filings

The process often takes too long for rule changes that may have policy implications. Of course, these are the filings that are the most important to us. With these filings, we try to take every reasonable step to expedite the process. We work closely with the Commission staff, often discussing the proposals with the staff prior to going to our own Board. In addition, we often give the staff a draft of our filing to help ensure that we have addressed all the issues the staff believes are relevant. This "pre-filing" process allows us to address major staff concerns and to fine-tune the proposal prior to filing.

While the staff generally attempts to address rule filings within a reasonable time, the process can become difficult when an exchange attempts to adopt a policy, procedure or rule that is different from what has been done previously. As is often the case, the most difficult decisions are the most important, and it is vitally important that we resolve what are sometimes the most difficult issues as quickly as possible so that we can either implement a change or consider alternative approaches.

Delays in publication and ultimate approval of rule filings, whether they have policy implications or not, can be extremely damaging to an SROs ability to compete and, in some instances, their ability to effectively regulate their markets.

While no business can operate efficiently with these types of uncertainties and delays, this is especially problematic for securities markets that are attempting to compete in an ever-changing and extremely competitive environment.

We recognize that not all delays in the approval process are caused by the Commission staff. There are circumstances where we need time to respond to legitimate inquiries or comment letters. We also recognize that we sometimes make mistakes and are appreciative of the staff's input. However, such filings are atypical. More common are delays resulting from an inability or unwillingness to address and resolve new policy issues in the statutory-mandated timeframe.

Comment Letters Exacerbate the Problems with the Process

The approval process slows considerably when the Commission receives one or more comment letters regarding a proposal. Some comment letters raise legitimate issues or concerns that should be addressed by the SRO and considered carefully by the Commission. However, others raise issues that are nonsense, either due to an honest misunderstanding of the proposal or out of recognition that any comment will delay the approval of a rule, no matter how off-base. Currently, the Commission almost always asks an SRO to respond to comment letters received on a filing. This creates a frustrating iterative process in which the SRO must "explain away" arguments with no merit or restate what is already contained in the "purpose" section of the filing. Once the Commission receives a comment, it is almost impossible to have the rule change approved in the statutory time period of 35 days from publication.

The approval process should not be delayed by comments that are not relevant to the proposed rule change. Commentators increasingly use the comment process to achieve individual competitive or other benefits at the expense of sound public policy and the interests of all investors. The Commission and the staff should be able to address comment letters that have little merit quickly and efficiently in the statutory time frame, without the need for a response from the filing SRO.

The Commission Should Approve Filings that Meet Statutory Standards

While we understand that some rule filings take time for the staff to understand, discuss and evaluate, others simply do not raise policy or regulatory concerns that justify an extended approval process. When a filing is submitted and no issues are identified by the staff that need further discussion or clarification, the filing should be published quickly. Unfortunately, the Commission staff sometimes delays the publication in an effort to convince the SRO to adopt what the staff believes to be a "better" or "state-of-the art" rule.

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and the Commission should publish our proposal quickly and approve our rule within the statutory time period. If the Commission believes that it is preferable that all exchanges have a uniform rule in an area, it has available to it Section 19(c) of the Exchange Act to adopt such uniform rules.

Why Rule 19b-6 Won't Fix the SRO Rule-Review Process

While we seek certainty and predictability in the Commission's rule review process, it appears that Rule 19b-6 will provide neither. In fact, it may well provide less certainty and less predictability:

- *Pre-filing:* Rule 19b-4 currently requires an SRO to provide the staff with a draft of a "non-controversial" rule filing five days before formal filing. We have the certainty that if the staff concurs that the filing truly is non-controversial, the filing will be effective when formally submitted. In those cases where the staff disagrees that the filing is non-controversial, we can quickly amend the rule change for "regular way" review. As proposed, the Commission will delete this certainty of a five-day turnaround for initial review of non-controversial rule changes. In practice, we still will need to submit these filings for "pre-review" to avoid the possibility of abrogation. Yet Rule 19b-6 will provide no limit on the amount of time such review may take.
- *Filing:* The Commission staff has been relatively lenient in accepting filings that may have limited procedural infirmities. However, the staff has never mentioned this as a major problem. If this is a problem, it would seem reasonable that, either through a workshop, staff bulletin or the like, the staff should attempt to correct these deficiencies before establishing an ironclad procedure in Rule 19b-6 of rejecting every filing with an incorrect citation or other minor deficiency. Submitting a rule filing and waiting to see if it is rejected for procedural problems hardly advances the predictability and certainty we seek, and will only prolong the rule filing process.

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- *Publication:* One of the biggest problems in the rule-review process is the lack of certainty regarding the timing of publication of rule filings. Rule 19b-6 addresses this problem in the wrong way. Currently, the staff reviews each filing in detail prior to publication. This review covers not only procedural

issues, but also includes a substantive review of the proposal. The substantive review generally addresses both the requirements of the Exchange Act and any other policy objectives that the Commission and staff may have. In contrast, the Commission now proposes that the staff do little or no substantive review of a filing. Rather, the staff simply would publish what is submitted, and then begin the process of substantive review. While this will speed up the publication of rule proposals, it also likely will lead to an increased need for SROs to amend their proposals following publication. Amendments will lead to either republication of the filing (which would start anew the statutory clock governing the timing of the review) or a need for the SRO to seek accelerated approval of the proposal, likely delaying the ultimate approval of the proposal. In the next section of this letter, we discuss a preferable way to address the issue of providing more certainty and predictability in the publication process.

- *Approval:* The Holy Grail of the Section 19(b) process is for an SRO to have the Commission actually approve a proposed rule change. The statute clearly sets forth an approval timetable, with Commission action on a filing required between 30 and 35 days after publication in the *Federal Register*, absent an SRO's consent to a longer time period. It is likely that Rule 19b-6 may actually delay approval of rule filings that raise substantive issues. Rather than focusing on these issues prior to publication, the Commission first will rush to publish the filing, and then will focus on the issues. This likely will cause an extended review and amendment process during the comment period, often with the need to republish the filing. This could cause extensive delays before the Commission will approve a submission. Thus, the adoption of Rule 19b-6 may well lead to an elongation of the rule-review process, and less certainty and predictability regarding rule proposals.

At the same time, the proposal to provide for immediate effectiveness of certain system changes is unlikely to deliver any significant benefits. Currently, Rule 19b-4 permits us to achieve immediate effectiveness of non-controversial system changes with the five-day review process. Under Rule 19b-6, there would be no formal pre-review of these filings, and we would find out whether the Commission staff deemed a proposal properly filed under this section only after formal submission of the filing. At that point, the Commission could abrogate the filing or seek to have the SRO withdraw the proposal. In any event, no SRO would ever risk having to "turn off" a system change after implementing that change. Thus, SROs most likely will continue to follow the current procedures of either (i) having extensive discussions with the Commission staff prior to submitting an effective-on-filing proposal or (ii) filing the proposal for "regular way" approval to gain the needed certainty that the Commission will not require the SRO to turn off the system change. Thus, Rule 19b-6 provides no real benefits in this area.

Finally, we find the extensive list of potential rule changes that would be permitted to be filed for immediate effectiveness illusory. For example, given

our experience, it is unlikely that the staff would ever consider a change in execution priorities to be without market structure or policy issues, even when the change would not affect the execution priority of public customer orders. We do not believe that Rule 19b-6 will change the staff's critical review of this or many other areas listed in the rule, so that it will not, as a practical matter, result in any increase in the number of rule filings that are allowed to become effective on filing.

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The key to improving the rule-review process is not the adoption of radical new procedures. Indeed, the adoption of Rule 19b-5 and "Form PILOT," the last attempt to streamline SRO rule-processing, has produced few if any tangible benefits. We believe that the Commission should focus on better applying the procedures now in place. If anything, only minor changes to the governing rules are needed. Addressing the areas detailed above regarding the infirmities of proposed Rule 19b-6, we discuss how the Commission can achieve this:

- *Pre-filing:* The Commission staff should continue to review draft rule filings on an informal basis to provide SRO's with the staff's preliminary views on the filing. This process is invaluable in helping the SRO craft a proposal that can be published, and eventually approved, as quickly as possible. The Commission should retain the current five-day turnaround time for non-controversial filings and should adopt internal procedures to provide comments on all draft filings within this five-day period. Of course, as is the case now, the staff should retain the authority to waive or shorten this five-day waiting period in appropriate circumstances. We do agree with the proposal in Rule 19b-6 to eliminate the 30-day waiting period before an effective filing can be implemented. In practice, the Commission almost always waives this period. Thus, we believe that the Commission should provide that these rule changes could be implemented immediately on filing.
- *Filing:* The Commission should accept a filing in electronic format (via e-mail), without the need to mail nine copies. The Commission currently accepts "EDGAR" filings under the Securities Act of 1933 electronically and does not require parallel written submissions with manual signatures. We fail to understand why the Commission cannot adopt similar procedures for SRO rule filings. If a manual signature is required, the Commission should adopt a simple one-page manual certification form that the SRO would need to mail to the Commission within a week of the electronic filing. We also applaud the elimination of the separate rule filing and *Federal Register* notice. Requiring only one document will ease processing burdens. Additionally, we believe that the public and interested industry participants would benefit greatly by including the actual text of every proposed rule change in the *Federal Register* publication. There is no reason why a person should be required to physically visit the Commission's public reference room to find the original filing and discover what the rule language actually says in addition to what the

self-regulatory organization describes in the purpose section of the filing. To provide even public notice regarding the status of rule filings, we suggest that the Commission (i) publish a notice when an SRO withdraws a rule filing that has been published for comment and (ii) require SROs to post on their internet web sites all rule changes pending at the Commission.

- *Publication:* While we commend the Commission's goal of publishing filings within 10 days, as discussed above, a blind adherence to this procedure likely will delay the ultimate approval of a filing. Moreover, adopting a rule provision requiring publication in 10 days means little if the Commission does not take action on the filing within the statutory 35-day period following publication. We believe that the Commission staff should establish an internal policy that, within 10 days of filing, either: (i) the Commission will publish the filing for comment; or (ii) the staff will contact the SRO with a detailed list of infirmities in the filing, or policy issues that the staff believes should be addressed in the proposal, prior to publication. This will permit the SRO to make any amendments to the filing prior to the initial publication, thus avoiding the possible need to re-publish the filing or request accelerated approval of the filing following an amendment. If the SRO declines to make the changes the staff suggests, the Commission should move forward with the publication and address those issues during the formal comment and review process.
- *Approval:* As obvious as it sounds, the Commission should follow the statutory procedures and standards in approving rule filings. All filings should be approved (or disapproval proceedings initiated) within 35 days of publication unless there are substantial issues or comments that need to be addressed before the Commission can address the merits of the filing. In those cases, the Commission should request the SRO to grant a specified extension of the statutory approval process. While the Commission staff once did request these forms of extensions, that apparently is no longer the case. Following this procedure will provide SROs with greater certainty and predictability regarding the timing of the approval of their rule changes.

In considering a proposal, the Commission also should more closely adhere to the statutory requirement that the proposal only must be consistent with the requirements of the Exchange Act. As noted above, staff sometimes seeks to require SROs to adopt perceived "state-of-the-art" rules. While the staff may view one version of a rule to be superior to another version, that does not mean that the SRO's proposal is inconsistent with the Exchange Act's requirements. While we appreciate the staff noting to us rule provisions that we might have overlooked in our drafting, if we ultimately determine to adopt a rule as proposed, and if that rule complies with the Exchange Act, the Commission should approve the proposal as filed.

- *Disapproval:* This too might sound obvious. Instead of delaying rule proposals that the staff does not believe to be consistent with the Exchange Act, the staff should initiate disapproval proceedings. Again, we believe that

active dialog with the staff and good faith efforts to resolve issues is usually the best course of action. However, in those cases where the SRO and Commission staff cannot agree, the matter should proceed to consideration by the Commission. In the past, the staff and SROs have been reluctant to follow this procedure. We believe, however, that this reluctance is a major reason why the rule filing process takes so long. Commission staff and SROs should both be willing to argue their positions according to the requirements of the Exchange Act. While we recognize that this could lead to a somewhat more confrontational relationship between the SROs and the Commission staff, we are confident that all parties can show the necessary level of professionalism to make this work.

* * *

We urge that the Commission and the staff not focus their time on completely changing the procedures governing the SRO rule-review process. While it would be appropriate to adopt some form of electronic filing, together with eliminating the duplication of the actual filing and the *Federal Register* release, this can be achieved in minor amendments to Rule 19b-4. Aside from these procedural issues, we believe that Rule 19b-6 raises more issues and questions than it resolves. Thus, the Commission and the staff should focus on expediting the current rule-review process using the tools now available. Rule 19b-6 will radically change the process to require negotiations and rule amendments post-filing and post-publication. This will not serve the needs of the Commission, the SROs or the investing public.

If you have any questions on our comments, or if we can be of further help, please do not hesitate to call me at (212) 897-0230.

Yours very truly,

Michael J. Simon
Senior Vice President and General Counsel

cc: Annette Nazareth
Robert Colby
Elizabeth King

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* * *

We urge that the Commission and the staff not focus their time on completely changing the procedures governing the SRO rule-review process. While it would be appropriate to adopt some form of electronic filing, together with eliminating the duplication of the actual filing and the *Federal Register* release, this can be achieved in minor amendments to Rule 19b-4. Aside from these procedural issues, we believe that Rule 19b-6 raises more issues and questions than it resolves. Thus, the Commission and the staff should focus on expediting the current rule-review process using the tools now available. Rule 19b-6 will radically change the process to require negotiations and rule amendments post-filing and post-publication. This will not serve the needs of the Commission, the SROs or the investing public.

If you have any questions on our comments, or if we can be of further help, please do not hesitate to call me at (212) 897-0230.

Yours very truly,

Michael J. Simon
Senior Vice President and General Counsel

cc: Annette Nazareth
Robert Colby
Elizabeth King

March 23, 2001

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: File No. S7-03-01; Proposed Rule 19b-6

Dear Mr. Katz:

The process by which the Commission reviews and approves self-regulatory organization rule changes is broken: the process takes too long and creates too many competitive dislocations. To its credit, almost from the 1975 creation of the current statutory framework for reviewing SRO rules, the Commission has attempted to streamline this process. As in the current effort, the Commission has sought to limit the inherent inefficiencies in any system that requires the Commission to review the great majority of rule filings it receives and to determine whether such filings comply with the Exchange Act.

The current proposal is the Commission's latest attempt to fix the process. Unfortunately, while Rule 19b-6 may provide a number of small benefits to SROs, overall we find the proposal to be a step backwards. The rule review process should facilitate Commission review of SRO rule filings in a manner that provides SROs with the greatest amount of certainty and predictability as possible. However, Rule 19b-6 is likely to create greater uncertainty and lead to even greater delays in approving SRO rule filings. Thus, we do not support adoption of proposed Rule 19b-6.

We ask the Commission to retain the overall structure of Rule 19b-4 while taking two steps to enhance the rule-review process: First, the Commission should adopt a number of the more minor procedural enhancements proposed in Rule 19b-6. Second, and much more important, the Commission staff should revise its own internal procedures for processing SRO rule filings to focus more directly on any statutory issues that a filing may raise and to process the filings in a more timely manner.

Why the SRO Rule-Review Process is Broken

On paper, the SRO rule-filing system looks good. SROs file a rule change with the Commission, together with the *Federal Register* release, all on a computer disk in the format the Commission requires. The Commission staff double-checks the release and issues it for public comment. If the filing covers fees or certain other topics, the rule is effective on filing and the process then ends. If the filing requires express Commission approval, there is a 21-day comment period on the proposal, and the Commission must act on the proposal between 30 and 35 days after publication. If the Commission determines that the proposal complies with the Exchange Act's requirements, the Commission must approve the filing. If the Commission cannot make this finding, it must institute proceedings to determine whether to disapprove the filing.

The System Works Fine for Simple Rule Filings

The process works well in many cases, especially for: fees; truly non-controversial, minor changes; and other filings where time is of the essence. Fees automatically are effective on filing, and the Commission staff often will waive the five- and 10-day waiting periods for non-controversial rule changes. The Commission staff works closely with us to accelerate the approval process of a rule proposal that closely follows the rule of another SRO (and thus does not raise new policy issues) if we explain why it is critical that the rule must take effect in an expedited manner.

The System Breaks Down for More Complex Filings

The process often takes too long for rule changes that may have policy implications. Of course, these are the filings that are the most important to us. With these filings, we try to take every reasonable step to expedite the process. We work closely with the Commission staff, often discussing the proposals with the staff prior to going to our own Board. In addition, we often give the staff a draft of our filing to help ensure that we have addressed all the issues the staff believes are relevant. This "pre-filing" process allows us to address major staff concerns and to fine-tune the proposal prior to filing.

While the staff generally attempts to address rule filings within a reasonable time, the process can become difficult when an exchange attempts to adopt a policy, procedure or rule that is different from what has been done previously. As is often the case, the most difficult decisions are the most important, and it is vitally important that we resolve what are sometimes the most difficult issues as quickly as possible so that we can either implement a change or consider alternative approaches.

Delays in publication and ultimate approval of rule filings, whether they have policy implications or not, can be extremely damaging to an SROs ability to compete and, in some instances, their ability to effectively regulate their markets.

While no business can operate efficiently with these types of uncertainties and delays, this is especially problematic for securities markets that are attempting to compete in an ever-changing and extremely competitive environment.

We recognize that not all delays in the approval process are caused by the Commission staff. There are circumstances where we need time to respond to legitimate inquires or comment letters. We also recognize that we sometimes make mistakes and are appreciative of the staff's input. However, such filings are atypical. More common are delays resulting from an inability or unwillingness to address and resolve new policy issues in the statutory-mandated timeframe.

Comment Letters Exacerbate the Problems with the Process

The approval process slows considerably when the Commission receives one or more comment letters regarding a proposal. Some comment letters raise legitimate issues or concerns that should be addressed by the SRO and considered carefully by the Commission. However, others raise issues that are nonsense, either due to an honest misunderstanding of the proposal or out of recognition that any comment will delay the approval of a rule, no matter how off-base. Currently, the Commission almost always asks an SRO to respond to comment letters received on a filing. This creates a frustrating iterative process in which the SRO must "explain away" arguments with no merit or restate what is already contained in the "purpose" section of the filing. Once the Commission receives a comment, it is almost impossible to have the rule change approved in the statutory time period of 35 days from publication.

The approval process should not be delayed by comments that are not relevant to the proposed rule change. Commentators increasingly use the comment process to achieve individual competitive or other benefits at the expense of sound public policy and the interests of all investors. The Commission and the staff should be able to address comment letters that have little merit quickly and efficiently in the statutory time frame, without the need for a response from the filing SRO.

The Commission Should Approve Filings that Meet Statutory Standards

While we understand that some rule filings take time for the staff to understand, discuss and evaluate, others simply do not raise policy or regulatory concerns that justify an extended approval process. When a filing is submitted and no issues are identified by the staff that need further discussion or clarification, the filing should be published quickly. Unfortunately, the Commission staff sometimes delays the publication in an effort to convince the SRO to adopt what the staff believes to be a "better" or "state-of-the art" rule.

We appreciate the staff drawing our attention to other SRO rules we may want to consider as models for our own rules. However, if we ultimately choose to submit a rule that complies with the applicable statutory standards, the staff

and the Commission should publish our proposal quickly and approve our rule within the statutory time period. If the Commission believes that it is preferable that all exchanges have a uniform rule in an area, it has available to it Section 19(c) of the Exchange Act to adopt such uniform rules.

Why Rule 19b-6 Won't Fix the SRO Rule-Review Process

While we seek certainty and predictability in the Commission's rule review process, it appears that Rule 19b-6 will provide neither. In fact, it may well provide less certainty and less predictability:

- *Pre-filing:* Rule 19b-4 currently requires an SRO to provide the staff with a draft of a "non-controversial" rule filing five days before formal filing. We have the certainty that if the staff concurs that the filing truly is non-controversial, the filing will be effective when formally submitted. In those cases where the staff disagrees that the filing is non-controversial, we can quickly amend the rule change for "regular way" review. As proposed, the Commission will delete this certainty of a five-day turnaround for initial review of non-controversial rule changes. In practice, we still will need to submit these filings for "pre-review" to avoid the possibility of abrogation. Yet Rule 19b-6 will provide no limit on the amount of time such review may take.
- *Filing:* The Commission staff has been relatively lenient in accepting filings that may have limited procedural infirmities. However, the staff has never mentioned this as a major problem. If this is a problem, it would seem reasonable that, either through a workshop, staff bulletin or the like, the staff should attempt to correct these deficiencies before establishing an ironclad procedure in Rule 19b-6 of rejecting every filing with an incorrect citation or other minor deficiency. Submitting a rule filing and waiting to see if it is rejected for procedural problems hardly advances the predictability and certainty we seek, and will only prolong the rule filing process.

Rule 19b-6's filing mechanics also are a step backwards from Rule 19b-4. While electronic filings would be greatly beneficial, any benefit from such a filing is negated by the need to file nine copies by mail. Similarly, while combining the *Federal Register* notice with the actual filing is useful, requiring the 14-point certification seems to be duplicative of signing the filing itself. A particularly troubling aspect of the certification is the requirement that the SRO confirm that it is prepared to "cease applying [a] proposed trading rule" upon abrogation. As discussed below, it is hard to imagine any SRO implementing a trading rule or system change of any significance if there is a serious risk that it will need to revert back to an old rule or system.

- *Publication:* One of the biggest problems in the rule-review process is the lack of certainty regarding the timing of publication of rule filings. Rule 19b-6 addresses this problem in the wrong way. Currently, the staff reviews each filing in detail prior to publication. This review covers not only procedural

issues, but also includes a substantive review of the proposal. The substantive review generally addresses both the requirements of the Exchange Act and any other policy objectives that the Commission and staff may have. In contrast, the Commission now proposes that the staff do little or no substantive review of a filing. Rather, the staff simply would publish what is submitted, and then begin the process of substantive review. While this will speed up the publication of rule proposals, it also likely will lead to an increased need for SROs to amend their proposals following publication. Amendments will lead to either republication of the filing (which would start anew the statutory clock governing the timing of the review) or a need for the SRO to seek accelerated approval of the proposal, likely delaying the ultimate approval of the proposal. In the next section of this letter, we discuss a preferable way to address the issue of providing more certainty and predictability in the publication process.

- *Approval:* The Holy Grail of the Section 19(b) process is for an SRO to have the Commission actually approve a proposed rule change. The statute clearly sets forth an approval timetable, with Commission action on a filing required between 30 and 35 days after publication in the *Federal Register*, absent an SRO's consent to a longer time period. It is likely that Rule 19b-6 may actually delay approval of rule filings that raise substantive issues. Rather than focusing on these issues prior to publication, the Commission first will rush to publish the filing, and then will focus on the issues. This likely will cause an extended review and amendment process during the comment period, often with the need to republish the filing. This could cause extensive delays before the Commission will approve a submission. Thus, the adoption of Rule 19b-6 may well lead to an elongation of the rule-review process, and less certainty and predictability regarding rule proposals.

At the same time, the proposal to provide for immediate effectiveness of certain system changes is unlikely to deliver any significant benefits. Currently, Rule 19b-4 permits us to achieve immediate effectiveness of non-controversial system changes with the five-day review process. Under Rule 19b-6, there would be no formal pre-review of these filings, and we would find out whether the Commission staff deemed a proposal properly filed under this section only after formal submission of the filing. At that point, the Commission could abrogate the filing or seek to have the SRO withdraw the proposal. In any event, no SRO would ever risk having to "turn off" a system change after implementing that change. Thus, SROs most likely will continue to follow the current procedures of either (i) having extensive discussions with the Commission staff prior to submitting an effective-on-filing proposal or (ii) filing the proposal for "regular way" approval to gain the needed certainty that the Commission will not require the SRO to turn off the system change. Thus, Rule 19b-6 provides no real benefits in this area.

Finally, we find the extensive list of potential rule changes that would be permitted to be filed for immediate effectiveness illusory. For example, given

our experience, it is unlikely that the staff would ever consider a change in execution priorities to be without market structure or policy issues, even when the change would not affect the execution priority of public customer orders. We do not believe that Rule 19b-6 will change the staff's critical review of this or many other areas listed in the rule, so that it will not, as a practical matter, result in any increase in the number of rule filings that are allowed to become effective on filing.

How to Fix the SRO Rule-Review Process

The key to improving the rule-review process is not the adoption of radical new procedures. Indeed, the adoption of Rule 19b-5 and "Form PILOT," the last attempt to streamline SRO rule-processing, has produced few if any tangible benefits. We believe that the Commission should focus on better applying the procedures now in place. If anything, only minor changes to the governing rules are needed. Addressing the areas detailed above regarding the infirmities of proposed Rule 19b-6, we discuss how the Commission can achieve this:

- *Pre-filing:* The Commission staff should continue to review draft rule filings on an informal basis to provide SRO's with the staff's preliminary views on the filing. This process is invaluable in helping the SRO craft a proposal that can be published, and eventually approved, as quickly as possible. The Commission should retain the current five-day turnaround time for non-controversial filings and should adopt internal procedures to provide comments on all draft filings within this five-day period. Of course, as is the case now, the staff should retain the authority to waive or shorten this five-day waiting period in appropriate circumstances. We do agree with the proposal in Rule 19b-6 to eliminate the 30-day waiting period before an effective filing can be implemented. In practice, the Commission almost always waives this period. Thus, we believe that the Commission should provide that these rule changes could be implemented immediately on filing.
- *Filing:* The Commission should accept a filing in electronic format (via e-mail), without the need to mail nine copies. The Commission currently accepts "EDGAR" filings under the Securities Act of 1933 electronically and does not require parallel written submissions with manual signatures. We fail to understand why the Commission cannot adopt similar procedures for SRO rule filings. If a manual signature is required, the Commission should adopt a simple one-page manual certification form that the SRO would need to mail to the Commission within a week of the electronic filing. We also applaud the elimination of the separate rule filing and *Federal Register* notice. Requiring only one document will ease processing burdens. Additionally, we believe that the public and interested industry participants would benefit greatly by including the actual text of every proposed rule change in the *Federal Register* publication. There is no reason why a person should be required to physically visit the Commission's public reference room to find the original filing and discover what the rule language actually says in addition to what the

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Yours very truly,

Michael J. Simon
Senior Vice President and General Counsel

cc: Annette Nazareth
Robert Colby
Elizabeth King