AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2704	12/23/10	LDA PRM RWY 6R (Sim. Close Parallel), Amdt 1B.
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2707	12/23/10	ILS PRM RWY 6L (Sim. Close Parallel), Orig-C.
10–Feb–11 ...	OH	Cleveland	Cleveland-Hopkins Intl	0/2708	12/23/10	LDA PRM RWY 24L (Sim. Close Parallel), Orig-B.
10–Feb–11 ...	MI	Detroit	Detroit Metropolitan Wayne County.	0/2710	12/23/10	ILS PRM RWY 22L (Sim. Close Parallel), Orig.
10–Feb–11 ...	MI	Detroit	Detroit Metropolitan Wayne County.	0/2711	12/23/10	ILS PRM RWY 21L (Sim. Close Parallel), Orig.
10–Feb–11 ...	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	0/2714	12/23/10	VOR OR TACAN RWY 31, Amdt 26.
10–Feb–11 ...	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	0/2715	12/23/10	ILS OR LOC RWY 13, Amdt 1F.
10–Feb–11 ...	PA	Philadelphia	Philadelphia Intl	0/3257	12/28/10	ILS PRM RWY 27L (Sim. Close Parallel), Amdt 3.
10–Feb–11 ...	PA	Philadelphia	Philadelphia Intl	0/3258	12/28/10	ILS PRM RWY 26 (Sim. Close Parallel), Amdt 3.
10–Feb–11 ...	TX	Pampa	Perry Lefors Field	0/4249	12/6/10	GPS RWY 17, Orig-A.
10–Feb–11 ...	IL	Champaign/Urbana	University of Illinois-Willard ...	0/7104	12/20/10	LOC/DME BC RWY 14L, Amdt 8.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9701	12/13/10	RADAR–1, Amdt 5A.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9702	12/13/10	LOC BC RWY 33, Amdt 19A.
10–Feb–11 ...	LA	Lake Charles	Lake Charles Rgnl	0/9703	12/13/10	RNAV (GPS) RWY 33, Amdt 1B.

[FR Doc. 2011–816 Filed 1–21–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 202 and 240

[Release No. 34–63723]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") [1] amended Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"),[2] which governs the handling of proposed rule changes submitted by self-regulatory organizations ("SROs"). Among other things, the Dodd-Frank Act's amendments to Section 19 of the Exchange Act require the Securities and Exchange Commission ("Commission") to promulgate rules setting forth the procedural requirements of proceedings to determine whether a proposed rule change should be disapproved. In satisfaction of this requirement, the Commission is adopting new Rules of Practice to formalize the process it will use when conducting proceedings to determine whether an SRO's proposed rule change should be disapproved under Section 19(b)(2) of the Exchange Act. The new rules are intended to add transparency to the Commission's conduct of those proceedings and address the process the Commission will follow to institute proceedings and provide notice of the grounds for disapproval under consideration as well as provide interested parties with an opportunity to submit written materials to the Commission. In addition, the Commission is making conforming changes to Rule 19b–4 under the Exchange Act in recognition of the new Rules of Practice. Further, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), the provisions of paragraphs (1) through (3) of Section 19(b) of the Exchange Act govern the proposed rules of the Public Company Accounting Oversight Board ("PCAOB").[3] The Commission is amending Regulation P to add a rule providing that these new Rules of Practice also formalize the process the Commission will use when conducting proceedings to determine whether a PCAOB proposed rule should be disapproved.

DATES: *Effective Date:* January 24, 2011.

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, or Jeffrey S. Cohan, Senior Special Counsel, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adding to its Rules of Practice [4] to establish procedures for instituting proceedings to determine whether an SRO's proposed rule change should be disapproved under Section 19(b) of the Exchange Act (§ 201.700 *et seq.*) and is making corresponding changes to Rule 19b–4 under the Exchange Act (15 U.S.C. 78f(b)(4)). The Commission is also adding Rule 170 to Regulation P [5] to provide that § 201.700 *et seq.* establishes procedures for instituting proceedings to determine whether a PCAOB proposed rule should be disapproved.

I. Discussion of Rule Amendments

A. Background

Section 916 of the Dodd-Frank Act amended Section 19(b) of the Exchange Act, which governs the Commission's handling of proposed rule changes submitted by SROs, including national securities exchanges, the Financial Industry Regulatory Authority ("FINRA"), and registered clearing agencies.[6] Notably, the amendments to Section 19(b) in Section 916 of the Dodd-Frank Act established new statutory deadlines applicable to the Commission's publication and review of proposed SRO rule changes.[7]

[1] Public Law 111–203 (July 21, 2010).

[2] 15 U.S.C. 78s(b)(2).

[3] *See* 15 U.S.C. 7217.

[4] 17 CFR 201 *et seq.*

[5] 17 CFR 202.100 *et seq.*

[6] Pursuant to Section 107 of the Sarbanes-Oxley Act, the provisions of paragraphs (1) through (3) of Section 19(b) of the Exchange Act also govern proposed rules of the PCAOB.

[7] Pursuant to Rule 30–3(a) (17 CFR 200.30–3(a)), the Commission has delegated authority to the Division of Trading and Markets for certain functions related to the handling of proposed rule changes filed by SROs under Section 19 of the Exchange Act.

Among other things, amended Section 19(b) imposes a requirement that an SRO's proposed rule change be sent by the Commission to the **Federal Register** for publication within 15 days of the date on which the SRO posted its proposed rule change on its Web site.[8] Further, Section 916(a) of the Dodd-Frank Act amended Section 19(b)(2) of the Exchange Act to require the Commission, within 45 days of the "publication date" of notice of a proposed rule change, to either approve a proposed rule change, disapprove a proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[9] With the exception of the ability to disapprove a proposed rule change without first instituting proceedings, the authority to either approve a proposed rule change or institute proceedings to determine whether a proposed rule change should be disapproved is not new.

In addition, the Dodd-Frank Act removed the concept of "abrogation" of a filing that an SRO designated to be effective immediately upon filing with the Commission. Prior to the Dodd-Frank Act, the Commission had the authority, within 60 days of the date of filing, to summarily abrogate a proposed rule change filed for immediate effectiveness under former Section 19(b)(3)(A) of the Exchange Act[10] if the Commission determined that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[11] Abrogation suspended the effectiveness of an immediately effective proposal and obligated the SRO, if it desired to proceed with its proposed rule change, to refile the proposal for notice, comment, and Commission consideration under Section 19(b)(2) of the Exchange Act. Section 916(c) of the Dodd-Frank Act amended Section 19(b)(3)(C) of the Exchange Act and replaced abrogation with a process in which the Commission may "temporarily suspend" a proposed rule change (if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act) and then must institute proceedings under Section 19(b)(2)(B) to determine whether to approve or disapprove the SRO rule change.[12]

Prior to the Dodd-Frank Act's amendments to Section 19, proceedings to determine whether to disapprove a proposed rule change were rarely begun and even more rarely concluded.[13] Rather, an SRO typically modified or withdrew a proposal when it understood the Commission or its staff had concerns that could lead it to institute such proceedings. The Dodd-Frank Act's amendments to Section 19 may increase the number of proceedings that the Commission determines to institute because, among other things, the new authority to "temporarily suspend" an immediately effective filing obligates the Commission to institute proceedings to determine whether to disapprove the SRO rule change with the imposition of the suspension. That provision, together with the new statutory deadlines applicable to Commission review and publication of an SRO's proposed rule change, will further increase the Commission's workload. Consequent constraints on Commission resources would be compounded to the extent that the Commission continues to receive an increasing number of proposed rule changes from an increasing number of SROs.

B. Rule Amendments

As required by Section 19(b)(2)(F) of the Exchange Act (added by Section 916(a) of the Dodd-Frank Act), the Commission is promulgating new Rules of Practice setting forth the procedural requirements for proceedings to determine whether to disapprove an SRO's proposed rule change.[14] Specifically, the Commission is adopting rules to outline the procedures that it will follow when exercising its authority under Section 19(b)(2)(A)(i)(II) of the Exchange Act, pursuant to which the Commission either (1) may institute proceedings to determine whether a proposed rule change filed under Section 19(b)(2) should be disapproved or (2) shall institute such proceedings to determine whether to disapprove an immediately effective proposed rule change filed under Section 19(b)(3)(A) that the Commission determined to temporarily suspend.

The procedural rules that the Commission now is adopting are intended to implement the mandate imposed by the Dodd-Frank Act.[15] The rules also are intended to bring transparency to the conduct of proceedings to disapprove a proposed rule change under Section 19(b) of the Exchange Act and reflect the process that the Commission generally has followed when it has had occasion to conduct such proceedings.[16] Among other things, the new rules outline the process that the Commission will follow to provide to the SRO notice of the grounds for disapproval under consideration.[17]

While the new rules are not within the scope of the existing Rules of Practice, they do incorporate three existing Rules of Practice by reference: Rule 103 (Construction of Rules), 104 (Business Hours), and 160 (Time Computation). Rule 103, among other things, specifies that the Rules of Practice "shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding."[18] It also states that counsel

[8] *See* Section 19(b)(2)(E) of the Exchange Act (15 U.S.C. 78s(b)(2)(E)), as added by Section 916(a) of the Dodd-Frank Act. The 15-day period commences when the SRO, "after filing a proposed rule change with the Commission," posts its proposal on a publicly available Web site. *See id.* Separately, Rule 19b–4(l) under the Exchange Act requires the SRO to post a proposal on its Web site within two business days after filing the proposal with the Commission. *See* 17 CFR 240.19b–4(l). If the Commission fails to send the notice to the **Federal Register** by the applicable deadline, then the "publication date" would be deemed to be the date on which the SRO Web site publication was made. *See* 15 U.S.C. 78s(b)(2)(E).

[9] *See* Exchange Act Section 19(b)(2)(A)(i). The initial 45-day period may be extended by either the Commission or the SRO for up to an additional 45 days to a maximum of 90 days total. *See* 15 U.S.C. 78s(b)(2)(A)(ii). If the Commission subsequently fails to act within the applicable time frame, then the proposed rule change will be "deemed to have been approved." *See* 15 U.S.C. 78s(b)(2)(D).

[10] *See* 15 U.S.C. 78s(b)(3)(A).

[11] *See* former Section 19(b)(3)(C); former 15 U.S.C. 78s(b)(3)(C).

[12] *See* 15 U.S.C. 78s(b)(3)(C). Section 19(b)(3)(C) further provides that a temporary suspension is not reviewable under Exchange Act Section 25 nor is it deemed to be "final agency action."

[13] *See, e.g., infra* note 16 (citing to a 1984 disapproval proceeding order).

[14] *See* 15 U.S.C. 78s(b)(2)(F). Section 19(b)(2)(F) also requires the Commission, as part of its effort to promulgate rules setting forth the procedural requirements for proceedings to determine whether to disapprove an SRO's proposed rule change, to have "consult[ed] with other regulatory agencies." *Id.* In satisfaction of this requirement, Commission staff has consulted with staff from the Commodity Futures Trading Commission, the Federal Reserve Board, and the Office of the Comptroller of the Currency.

[15] Rules 700 and 701 are not affected by the other Rules of Practice contained in part 201, except as specifically provided for in Rule 700. *See* amendment to Rule of Practice 100 ("Scope of the Rules of Practice") adding new subparagraph (b)(3).

[16] *See, e.g.,* Securities Exchange Act Release No. 21439 (October 31, 1984), 49 FR 44577 (November 7, 1984) (File Nos. SR–CBOE–84–15 and SR–CBOE–84–16) (Order Instituting Proceedings to Determine Whether to Disapprove Rule Changes).

[17] Though in a proceeding to determine whether to disapprove a proposed rule change the Commission is required to publish notice of its grounds for disapproval under consideration, the Commission could ultimately either disapprove or approve the proposal following conclusion of the proceedings. *See* Exchange Act Section 19(b)(2)(C); 15 U.S.C. 78s(b)(2)(C) (setting forth the standards applicable to Commission approval or disapproval of a proposed rule change). *See also infra* note 27.

[18] *See* 17 CFR 201.103(a).

for a party may take any action required or permitted to be taken by such party.[19] Rule 104 sets forth the business hours of the Commission, which will be applicable to the filing of papers with the Commission.[20] Rule 160 governs the computation of time periods, which will be applicable when the Commission establishes, for example, deadlines by which comments must be received.[21]

Consistent with Exchange Act Section 19(b)(2)(B), when instituting proceedings to determine whether to disapprove an SRO's proposed rule change, the new rules state that the Commission shall provide notice to the SRO and to the public of the grounds for disapproval under consideration. This notice shall include a brief statement of the matters of fact and law that the Commission is considering in determining whether to disapprove the rule filing.[22] In addition to publication of such notice in the **Federal Register,** the rules provide that the Commission also will serve a copy of the notice to the SRO that filed the proposed rule change.[23]

As reflected in new Rule 700(b)(1), such notice of the grounds for disapproval under consideration may be provided either simultaneously with the initial publication by the Commission of the notice of the SRO's proposed rule change in the **Federal Register,** or it may be published separately in the **Federal Register** subsequent to the initial publication by the Commission of the notice of the SRO's proposed rule change in the **Federal Register.** Providing for publication of the grounds for disapproval under consideration *simultaneous with* the initial publication of the proposed rule change in the **Federal Register** recognizes that a proposed rule change may initially raise questions as to whether the Commission would be able to approve the proposal as consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO. Simultaneous publication will allow the Commission to highlight prominently for public comment issues on which it seeks comment in an efficient manner when the proposal is first noticed for public comment. In addition, it will allow the Commission to proceed without additional delay to act on a proposed rule change in a more efficient manner. Alternatively, providing for publication of the grounds for disapproval under consideration *subsequent to* the initial publication of the proposed rule change in the **Federal Register** recognizes that commenters or the Commission may identify an issue with a proposal after a proposal was published for comment that warrants the institution of proceedings to determine whether to disapprove the proposal. Further, as a consequence of the short timeframe for noticing a proposal that is established in revised Section 19(b) of the Exchange Act, the Commission may be compelled to publish filings that are later found to raise concerns under the Exchange Act, in which case the Commission may decide to institute proceedings subsequent to the initial publication of the proposed rule change in the **Federal Register.**[24]

When instituting proceedings, Section 19(b)(2)(B)(i)(II) of the Exchange Act requires the Commission to provide the SRO with an opportunity for a hearing. Accordingly, new Rule 700(c) outlines the conduct of the proceedings and establishes the opportunity for the SRO that filed the proposed rule change, as well as any other interested parties, to be heard on the matter. Specifically, Rule 700(c) states that all parties, including the SRO, will be given a specified amount of time (as indicated in the notice of the grounds for disapproval) to submit supporting or opposing materials, in writing, for the Commission's consideration in determining whether to approve or disapprove a proposed rule change.[25] In particular, the SRO that submitted the proposed rule change could 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 SRO.[26] The statement could include a response to each of the grounds for disapproval under consideration as well as any specific representations or undertakings (*e.g.,* representations or undertakings concerning the SRO's plans for surveillance or enforcement of a proposed new trading rule).

At the conclusion of the initial opportunity to submit written materials, the rules provide an opportunity for the SRO whose proposed rule change is under consideration to respond to any comments received on its proposal (*i.e.,* a "rebuttal period").[27] The rules state that any failure by the SRO to respond to comments received on the proposal may result in the Commission not having a sufficient basis to make an affirmative finding as to whether the SRO's proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO.[28]

Further, the new rules state that the Commission may consider any failure by the SRO to provide all of the information required by Form 19b–4 in the manner required by the Form, as well as any failure to explain how the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulation thereunder or any failure by the SRO to provide a complete response to the Commission's grounds for disapproval under consideration, in determining whether to approve or disapprove the

[19] *See* 17 CFR 201.103(c)(3).

[20] *See* 17 CFR 201.104.

[21] *See* 17 CFR 201.160. Among other things, Rule 160 addresses compliance with deadlines that fall on a Saturday, Sunday, or Federal holiday.

[22] As stated in Rule 700(e), the Commission is not required to amend its notice of the grounds for disapproval under consideration to consider additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

[23] Specifically, in addition to **Federal Register** publication, notice will be served to the contact person listed on the cover page of the Form 19b–4 filing filed with the Commission. *See* Rule 700(b)(1)(iii).

[24] As required by Section 19(b)(2)(E) of the Exchange Act (added by Section 916(a) of the Dodd-Frank Act), the Commission must send notice of an SRO's proposed rule change to the **Federal Register** for publication within 15 calendar days of the date on which the SRO posts its proposed rule change on its Web site. Failure to meet the 15 calendar day statutory timeframe results in the "publication date" being deemed to be the day on which the SRO posted its proposal on its Web site. Because the 45-day statutory deadline for Commission action is keyed off of the "publication date," and because failure to act by that deadline results in a proposal being "deemed approved," failure to notice a proposal within 15 calendar days can effectively reduce the time that the Commission and commenters have to fully consider a proposal.

[25] A request for an opportunity for an oral presentation of views should be submitted as a written request to the Secretary of the Commission and should include a reference to the proposed rule change's file number. *See* Exchange Act Rule 19b–4(g). 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. *See* Rule 700(c)(2).

[26] Notably, the instructions to Form 19b–4 require an SRO to present, in a clear and comprehensible manner, how every proposed rule change it files with the Commission is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO. These standards are reflected in Rule 700(b)(3).

[27] The Commission will indicate in the notice of the grounds for disapproval the specified amount of time for the rebuttal period. *See* Rule 700(c)(3).

[28] The standard for approval of a proposed rule change is that the Commission "shall approve a proposed 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 under [the Exchange Act] that are applicable to [the SRO]." 15 U.S.C. 78s(b)(2)(C)(i). The standard for disapproval is that the Commission "shall disapprove a proposed rule change of [an SRO] if it does not make [such finding]." 15 U.S.C. 78s(b)(2)(C)(ii).

proposed rule change.[29] In particular, such failure may result in the Commission not having a sufficient basis to make an affirmative finding that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO.

After conclusion of the initial comment period and the rebuttal period, the opportunity for interested parties to comment on the proposed rule change would close. Thereafter, the Commission would issue a written order either approving or disapproving the SRO's proposed rule change that sets out the reasons for the Commission's determination.[30]

The new rules also specify the record that the Commission will consider in the context of a proceeding to determine whether to disapprove an SRO's proposed rule change. Specifically, Rule 700(d)(3) states that the Commission will determine the matter on the basis of the record, which shall include the SRO's proposed rule change filed on Form 19b–4, any written materials received from any party on the proposed rule change, and any written materials that reflect communications between the Commission and any interested parties.[31] Further, the rules reflect that written materials shall be filed with the Secretary of the Commission and that all materials received will generally be made publicly available.

Further, the Commission is making conforming edits to Rule 19b–4 in light of new Rules of Practice 700 and 701. In particular, the Commission is removing existing paragraph (g) of that rule, which references the opportunity for interested persons to be heard in the context of a proceeding to determine whether to disapprove a proposed rule change, and is replacing it with a cross reference to new Rules of Practice 700–701.[32] In addition, the Commission is amending paragraph (*l*) of Rule 19b–4 concerning the obligation of an SRO to post and maintain a copy of each proposed rule change on its Web site to provide specific guidance to the SRO as to when to remove a proposed rule change that is disapproved by the Commission. Currently, Rule 19b–4(*l*) does not specifically reference a Commission disapproval order as one of the potential final actions on a proposal.

Finally, the Commission is adding Rule 170 to Regulation P[33] to provide that § 201.700 *et seq.* establishes the procedures for instituting proceedings to determine whether a PCAOB proposed rule should be disapproved. Specifically, and consistent with Section 107 of the Sarbanes-Oxley Act, new Rule 170 clarifies that § 201.700 *et seq* applies to proposed rules of the PCAOB as fully as if it were a proposed rule change of a "registered securities association". Rule 170, like Section 107(b)(4)(A) of the Sarbanes-Oxley Act, substitutes the approval criteria to be "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors * * *." Further, given that the PCAOB is not explicitly subject to Rule 19b–4, Rule 170 also clarifies the requirement for the PCAOB to demonstrate that a proposed rule is "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors."[34]

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with the Administrative Procedure Act ("APA"),[35] that the new rules and rule amendments relate solely to agency organization, procedures or practices. Accordingly, these new rules and rule amendments are not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act,[36] therefore, does not apply. Similarly, because these rules relate to "agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties," analysis of major status under the Small Business Regulatory Enforcement Fairness Act is not required.[37] The new rules and rule amendments do not contain any new collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[38] Rather, the new rules and rule amendments govern a process that the Commission will be able to institute when an SRO's proposed rule change submitted on Form 19b–4 failed to provide the Commission with a sufficient basis to make a finding whether the proposed rule change was or was not consistent with the Exchange Act and the rules and regulations thereunder applicable to the SRO. The required scope of information that an SRO must submit to the Commission to explain each proposed rule change and demonstrate that each proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder is established in existing Form 19b–4, and the rules and rule amendments do not contain any additional collection of information requirements beyond what SROs are already required to provide to the Commission.

III. Consideration of the Costs and Benefits of the Rule Amendments and Burden on Competition

The Commission is sensitive to the costs and benefits imposed by its rules and has identified certain costs and benefits of these rules. The rules and rule amendments that the Commission is adopting are intended to implement the mandate imposed by the Dodd-Frank Act. The benefits of the new rules and rule amendments also include increased transparency of the Commission's conduct of proceedings to determine whether to disapprove an SRO's proposed rule change. New Rules 201.700 and 701 and new Rule 170 under Regulation P establish procedures for the Commission to follow when instituting and conducting proceedings to determine whether to disapprove a proposed rule filing. The new rules and rule amendments provide procedures for the Commission, SROs, the PCAOB, and the public concerning the administration of certain of the Commission's responsibilities under Section 19 of the Exchange Act and

[29] In addition, a filing that does not comply with all applicable requirements, including the requirements of Form 19b–4, may be rejected as not properly filed under the circumstances outlined in Section 19(b)(10) of the Exchange Act. *See* Section 19(b)(10) of the Exchange Act, 15 U.S.C. 78s(b)(10) (setting forth the rule of construction relating to the filing date of proposed rule changes and the ability of the Commission to reject incomplete filings). Specifically, as stated in the general instructions to Form 19b–4, any filing that does not comply with the requirements of Form 19b–4 may be returned to the SRO and any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Exchange Act, 17 CFR 254.0–3 ("[t]he date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with * * *").

[30] *See* Rule 701; *see also* Exchange Act Section 19(b)(2)(C); 15 U.S.C. 78s(b)(2)(C).

[31] In the event that an oral presentation of supporting or opposing views is ordered by the Commission, the written transcript of the remarks would become part of the record.

[32] Rule 19b–4(g) is consistent with the process outlined in new Rules of Practice 700 and 701. However, to avoid any confusion or overlap, the Commission is amending the Rule 19b–4(g) to cross reference the new Rules of Practice.

[33] 17 CFR 202.100 *et seq.*

[34] 15 U.S.C. 7217(b)(4)(A).

[35] 5 U.S.C. 553(b)(3)(A).

[36] 5 U.S.C. 601 *et seq.*

[37] 5 U.S.C. 804(3)(C).

[38] 44 U.S.C. 3501 *et seq.*

Section 107 of the Sarbanes-Oxley Act, and reflect a process that is intended to help ensure that only those proposed rule changes that are consistent with the Exchange Act and title I of the Sarbanes-Oxley Act, respectively, are permitted.

There also are potential costs of the new rules. An SRO or the PCAOB may incur costs as a result of the new rules, for example, when submitting written material in support of its proposed rule change or providing a response to any adverse comments received. However, the Commission believes that such costs typically are already incurred by the SROs when filing proposed rule changes on Form 19b–4, particularly since Form 19b–4 contains comprehensive and rigorous requirements that an SRO must follow when presenting, explaining, and offering a thorough legal analysis of each proposed rule change. Further, SROs already typically submit responses to adverse substantive comments received during the rule filing process. Similarly, the PCAOB has incurred costs by presenting, explaining, and offering similarly rigorous legal analysis of each of its proposed rules.

Further, because the new rules and rule amendments relate to agency organization, procedures or practice, the Commission believes that they will have no adverse impact on capital formation, nor are they expected to have any potential adverse impact on efficiency. In particular, the new rules and rule amendments are intended to add transparency to the Commission's institution and conduct of proceedings to determine whether to disapprove a proposed rule change. To the extent that interested parties identify issues and present information that informs the Commission's decision-making with respect to a particular proposed rule change that itself may affect capital formation or price efficiency, then the Commission's new rules and rule amendments could, in turn, promote capital formation and efficiency.

Section 23(a) of the Exchange Act [39] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The new rules and rule amendments implement the Dodd-Frank Act statutory changes to the rule change process and are intended to enhance transparency with respect to the Commission's conduct of proceedings under the Exchange Act to determine whether to disapprove an SRO's proposed rule change or a proposed rule of the PCAOB. The new rules, which set forth the administrative procedures concerning the Commission's conduct of such proceedings, apply equally to all SROs, including all national securities exchanges, FINRA, and clearing agencies that are required to submit proposed rule filing changes with the Commission. We note that many of the substantive requirements of the new rules come directly from the amendments to Exchange Act Section 19(b) by the Dodd-Frank Act. In addition, these rules are intended to codify and reflect the typical process that the Commission has followed when conducting proceedings to determine whether to disapprove an SRO's proposed rule change. Therefore, the Commission does not expect the rules to have an anti-competitive effect. To the contrary, the new rules provide all interested parties with an opportunity to express their views to the Commission concerning an SRO's proposed rule change or a proposed rule of the PCAOB that the Commission is considering potentially disapproving. To that extent, the new rules are expected to promote competition and help ensure that SRO rules are consistent with the Exchange Act and the rules and regulations thereunder and PCAOB rules and standards are consistent with the Sarbanes-Oxley Act and the rules and regulations thereunder.

[39] 15 U.S.C. 78w(a).

IV. Statutory Basis and Text of Rules

The Commission is amending its Rules of Practice and Rule 19b–4 pursuant to authority set forth in the Exchange Act, including Sections 19(b) and 23(a). The Commission is amending Regulation P pursuant to authority set forth in the Sarbanes-Oxley Act, including Sections 3(b) and 107 and the Exchange Act, including Sections 19(b) and 23(a).

List of Subjects in 17 CFR Parts 201, 202 and 240

Administrative practice and procedures.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201 is amended by adding authority citations for §§ 201.700 to 201.702 to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a–37, and 80b–11; 5 U.S.C. 504(c)(1).

Sections 201.700 to 201.702 are also issued under sec. 916, Pub. L. 111–203, 124 Stat. 1376.

■ 2. Section 201.100 is amended by adding new paragraph (b)(3) to read as follows:

§ 201.100 Scope of the rules of practice.

* * * * *

(b) * * *

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

* * * * *

■ 3. Add §§ 201.700 and 201.701 to read as follows:

§ 201.700 Initiation of proceedings for SRO proposed rule changes.

(a) *Rules of Practice.* For purposes of these Rules of Practice contained at 17 CFR 201.700 through 201.701, 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 should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change, 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 in the **Federal Register**, then the Commission shall publish notice of the proposed rule change 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 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. Notice shall be made by delivering a copy of the order to such contact person either by any method specified in 17 CFR 201.141(a) or by electronic means including e-mail.

(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. 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.* 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.

(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 under consideration and whether the Commission should approve or disapprove the proposed rule change. 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.

(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.* 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.

(4) *Non-response.* 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.

(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, 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, the Commission shall inform interested parties of the methods by which they may view all written communications relating to the proposed rule change 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. 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 (1), 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.

§ 201.701 Issuance of order.

At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(b)(4), 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.

PART 202—INFORMAL AND OTHER PROCEDURES

■ 4. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, and 7201 *et seq.,* unless otherwise noted.

■ 5. Add § 202.170 to read as follows:

§ 202.170 Initiation of disapproval proceedings for PCAOB proposed rules.

Initiation of disapproval proceedings for proposed rules of the Public Company Accounting Oversight Board as defined by section 107 of the Sarbanes-Oxley Act of 2002 are subject to the provisions of §§ 201.700 and 201.701 of this chapter as fully as if it were a *registered securities association,* except that:

(a) *Demonstration of Consistency with the Sarbanes-Oxley Act of 2002.* For purposes of proposed rules of the Public Company Accounting Oversight Board, apply this paragraph in lieu of paragraph (b)(3) of § 201.700 of this chapter. The burden to demonstrate that a proposed rule is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors, is on the Public Company Accounting Oversight Board. In its filing the Public Company Accounting Oversight Board must explain in a clear and comprehensible manner why the proposed rule change is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002 and the rules and regulations thereunder, or as necessary or appropriate in the public interest or for the protection of investors. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. Instead, the description of the proposed rule, 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 by the Public Company Accounting Oversight Board in its proposed rule filing with the Commission may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors.

(b) For each reference to "the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization" apply "title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors."

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

■ 7. Section 240.19b–4 is amended by revising paragraphs (g), (l)(1) and (l)(4) to read as follows:

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

* * * * *

(g) Proceedings to determine whether a proposed rule change should be disapproved will be conducted pursuant to 17 CFR 201.700–701 (Initiation of Proceedings for SRO Proposed Rule Changes).

* * * * *

(l) * * *

(1) In the case of a proposed rule change filed under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the Commission approves or disapproves the proposed rule change or the self-regulatory organization withdraws the proposed rule change, or any amendments, or is notified that the proposed rule change is not properly filed; or

* * * * *

(4) In the case of a proposed rule change, or any amendment thereto, that has been disapproved, withdrawn or not properly filed, the self-regulatory organization shall remove the proposed rule change, or any amendment, from its Web site within two business days of notification of disapproval, improper filing, or withdrawal by the SRO of the proposed rule change.

* * * * *

By the Commission.

Dated: January 14, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1199 Filed 1–21–11; 8:45 am]

BILLING CODE 8011–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2010–6]

Registration of Claims of Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim rule.

SUMMARY: The Copyright Office is adopting interim regulations governing the electronic submission of applications for registration of automated databases that predominantly consist of photographs, and applications for group registration of published photographs. This interim rule establishes a testing period and pilot program during which the Copyright Office will assess the desirability and feasibility of permanently allowing such applications to be submitted through the Copyright Office's electronic filing system ("eCO"). Persons wishing to submit electronic applications to register copyrights of such photographic databases or of groups of published photographs should contact the Visual Arts Division for permission and guidance on electronic registration. Notwithstanding the ordinary deposit requirements for group registration of automated databases, an electronic application for group registration of an automated database that consists predominantly of photographic authorship must include the image of each claimed photograph in the database. The interim regulations also allow applicants to use forms other than Form TX, as appropriate, when submitting paper applications to register group automated databases.

DATES: *Effective Date:* January 24, 2011.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Catherine Rowland, Attorney Advisor, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024.