

MEMO# 24969

February 17, 2011

SEC Amends Rules of Practice for SRO Rule Filings

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TO: SEC RULES MEMBERS No. 34-11
EQUITY MARKETS ADVISORY COMMITTEE No. 15-11
CLOSED-END INVESTMENT COMPANY MEMBERS No. 23-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 7-11
ETF ADVISORY COMMITTEE No. 17-11 RE: SEC AMENDS RULES OF PRACTICE FOR SRO RULE FILINGS

The Securities and Exchange Commission has adopted new Rules of Practice, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which formalize the process the SEC will use when conducting proceedings to determine whether a proposed rule change submitted by a self-regulatory organization (“SRO”) should be disapproved. [\[1\]](#) The new rules are briefly summarized below.

Background

Section 916 of the Dodd-Frank Act amended Section 19(b) of the Securities Exchange Act of 1934, which governs the SEC’s review of proposed rule changes submitted by SROs, to require the SEC to adopt rules setting forth the procedural requirements of proceedings to determine whether a proposed SRO rule change should be disapproved. [\[2\]](#) Among other things, the amendments establish statutory deadlines for the SEC’s publication and review of SRO rule changes. Specifically, the SEC must:

- Send an SRO’s proposed rule change to the Federal Register for publication within 15 days of the date on which the SRO posted its proposed rule change on its website. [\[3\]](#)
- Within 45 days of the “publication date” of notice of a proposed rule change, either approve the proposed rule change, disapprove it, or institute proceedings to determine whether the proposed rule change should be disapproved. [\[4\]](#)

The Dodd-Frank Act also amended provisions relating to rule filings that an SRO designates as immediately effective to remove the SEC’s authority to abrogate, or suspend the effectiveness, of such filings under certain circumstances. Instead, the SEC must comply with a process in which it “temporarily suspends” a proposed rule change and institutes proceedings to determine whether to approve or disapprove the rule change. [\[5\]](#)

Rule Amendments

The new Rules of Practice implement these provisions of the Dodd-Frank Act and reflect the procedures the SEC will follow to institute proceedings to determine whether an SRO proposed rule change should be disapproved, or proceedings to determine whether to disapprove an immediately effective SRO proposed rule change that the SEC determined to temporarily suspend. The rules include the following key requirements:

- When instituting proceedings to determine whether to disapprove an SRO's proposed rule change, the SEC must provide notice to the SRO and to the public of the grounds for disapproval under consideration. [\[6\]](#)
- The rules set out the procedures that must be followed at a disapproval proceeding, and provide an opportunity for the SRO that filed the proposed rule change, as well as any other interested parties, to be heard on the matter. [\[7\]](#)
- After interested parties have had a chance to comment on the proposed rule change and the SRO has had an opportunity to respond to any comments received, the SEC will issue a written order approving or disapproving the SRO's proposed rule change that states the reasons for the SEC's determination. [\[8\]](#)

Sarah A. Bessin
Senior Counsel

endnotes

[\[1\]](#) See Securities Exchange Act Rel. No. 63723 (Jan. 14, 2011).

[\[2\]](#) Section 19(b) applies to rule changes submitted by SROs, including national securities exchanges, the Financial Industry Regulatory Authority ("FINRA"), and registered clearing agencies.

[\[3\]](#) If the SEC 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 website publication was made. See Section 19(b)(2)(E) of the Exchange Act.

[\[4\]](#) With the exception of the authority to disapprove a rule change without first instituting proceedings, the SEC had this authority prior to the Dodd-Frank amendments.

[\[5\]](#) See Section 19(b)(3)(C) of the Exchange Act.

[\[6\]](#) See Rule 700 of the SEC's Rules of Practice.

[\[7\]](#) Id.

[\[8\]](#) See Rule 701 of the SEC's Rules of Practice.