

**ADDRESSES:** Comments may be mailed to John P. Dolan, Office of the General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** John P. Dolan at (202) 418-5220; FAX: (202) 418-5524; e-mail: [jdolan@cftc.gov](mailto:jdolan@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB

for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Practice by former members and employees of the Commission, OMB control number 3038-0025—Extension.

Commission Rule 140.735-6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994). The intervening years since the last extension have not indicated a change in the burden.

The Commission estimates the burden of this collection of information as follows:

**ESTIMATED ANNUAL REPORTING BURDEN**

| 17 CFR section         | Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|------------------------|------------------------------|-----------------------|------------------------|--------------------|-------------|
| 17 CFR 140.735-6 ..... | 3                            | 1.5                   | 4.5                    | .10                | 0.45        |

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of responses received over the last three years.

Dated: June 2, 2004.

**Jean A. Webb,**

*Secretary of the Commission.*

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**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION**

**The Governance of Self-Regulatory Organizations**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for comments.

**SUMMARY:** This Request for Comments continues the Commodity Futures Trading Commission's ("CFTC or Commission") ongoing review of self-regulatory organizations ("SROs"). The request discusses recent changes in the U.S. futures industry and the Commission's governance requirements prior to and after passage of the

Commodity Futures Modernization Act ("CFMA"). Based on this discussion, the request seeks answers from industry participants and other interested persons to a series of questions on SRO governance and self-regulation.

**DATES:** Responses must be received by July 26, 2004.

**ADDRESSES:** Written responses should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Responses may also be submitted via e-mail at [secretary@cftc.gov](mailto:secretary@cftc.gov). "SRO Governance" must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. This document is also available for comment at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen Braverman, Deputy Director, (202) 418-5487; Rachel Berdansk, Special Counsel, (202) 418-5429; or Sebastian Pujol Schott, Attorney-Advisor, (202) 418-5641. Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Commodity Exchange Act ("Act"),<sup>1</sup> among other things, seeks to enhance regulatory efficiency in the futures industry through self-regulation by exchanges, clearinghouses, and other organizations registered with or designated by the Commission.<sup>2</sup> Simultaneously, the Act recognizes the public interest inherent in transactions executed on U.S. futures exchanges and provides for oversight by the Commission.<sup>3</sup> As the primary industry regulator, the Commission strives for transparent, competitive, and financially sound futures markets that operate free from manipulation, and to protect market participants from fraud and other abusive practices.

Acknowledging both the importance of industry self-regulation and its own obligation to foster and maintain market integrity, CFTC Chairman James E.

<sup>1</sup> 7 U.S.C. 1, *et seq.* (2000).

<sup>2</sup> SROs include designated contract markets ("DCMs" or "exchanges"), derivatives transaction execution facilities, registered futures associations, and derivatives clearing organizations ("DCOs").

<sup>3</sup> 7 U.S.C. 5.

Newsome announced in May of 2003 that the Commission would review “the roles, responsibilities, and capabilities of SROs in the context of market changes”<sup>4</sup> To that end, Commission staff has undertaken a comprehensive study of self-regulation in the futures industry (“SRO Study”).

The Commission’s review of self-regulation has progressed against a backdrop of rapid transformation in the futures industry; both the competitive environment and the industry’s business models are evolving rapidly. For example, in November of 2000, the Chicago Mercantile Exchange became the first U.S.-based futures exchange to transform from a not-for profit mutual organization to a demutualized publicly traded for-profit entity. The New York Mercantile Exchange has also demutualized, although it is not publicly traded. Other exchanges are considering demutualization, or are simply entering the market as for-profit, non-mutualized entities. These structural changes have coincided with increased competition in futures trading; a dramatic rise in the volume of trading, both open outcry and electronic; the entrance of new participants; and expanding roles for others. Each of these developments may have implications for SROs in the performance of their regulatory functions.

Since the initiation of the SRO Study, Commission staff has interviewed more than 100 individuals representing futures commission merchants (“FCMs”), DCMs, DCOs and futures industry associations. Staff also has interviewed industry executives, academics, consultants, and individuals associated with securities-side entities. The interviews covered a broad range of issues relevant to self-regulation in the futures industry, and constituted an important component of the ongoing SRO Study.

Based on these interviews, the Commission identified two issues for immediate attention: (1) Ensuring the confidentiality of certain information obtained by SROs in the course of their self-regulatory activities; and (2) examining the cooperative regulatory agreement by which SROs coordinate compliance examinations of FCMs (“DSRO System”). Interim measures with respect to both issues were announced in a February 2004 press

release.<sup>5</sup> First, the Commission encouraged every SRO to reexamine its policies, procedures, and practices to confirm that it has adequate safeguards to prevent the inappropriate use of confidential information obtained during audits, investigations, and other self-regulatory activities. SROs also were encouraged to publicize their safeguards. Second, the Commission announced a review of the DSRO System, including its cooperative agreements and programs. As a part of that review, the Commission subsequently issued a Request for Comment on proposed amendments to the cooperative agreement by which various SROs allocate certain supervisory responsibilities among themselves so that each FCM has a single designated self-regulatory organization (“DSRO”).<sup>6</sup>

The February press release also reaffirmed that governance is a central focus of the SRO Study, noting that SRO governance can substantially impact key aspects of self-regulation and the increased national attention given to SRO governance issues. Accordingly, the Commission announced that it would issue this Request for Comments on the topic of SRO governance.

## II. Regulatory Background

On December 21, 2000, Congress adopted the CFMA, which, among other things, replaced “one-size-fits-all” regulations for futures markets with flexible core principles and granted the Commission explicit authority over DCOs.<sup>7</sup> Prior to the adoption of the CFMA, SRO governance was addressed primarily through Section 5a of the Act, as amended by the Futures Trading Practices Act of 1992 (“FTPA”). The FTPA required greater diversity of representation on SRO boards and disciplinary committees, imposed fitness standards for service on boards and disciplinary and oversight committees, and required SROs to adopt procedures to avoid conflicts of interest in deliberations by persons serving on such bodies. As directed by Congress, the Commission promulgated regulations to enact the FTPA’s governance provisions. First, Regulation 1.64 addressed composition requirements for SRO boards and

disciplinary committees.<sup>8</sup> Second, Regulation 1.69 established specific factors to be considered with respect to barring a person serving on a board, disciplinary or oversight committee from voting on a decision if the person had a potential financial or personal interest. Third, Regulation 1.63, which already established fitness standards for members of SRO boards and disciplinary committees, was amended to include individuals serving on SRO oversight panels.

The CFMA struck former Section 5a of the Act and adopted new statutory provisions with respect to exchange governance. The CFMA enumerates 18 core principles applicable to DCMs, three of which directly relate to exchange governance: Core Principle 14- Governance Fitness Standards; Core Principle 15- Conflicts of Interest; and Core Principle 16- Composition of Boards Mutually Owned Contract Markets.<sup>9</sup>

The Commission adopted Part 38 of its regulations to implement those core principles applicable to DCMs.<sup>10</sup> Appendix B to Part 38 provides “application guidance” for the 18 core

<sup>8</sup> Commission Regulation 1.64 required that each exchange establish meaningful representation for (1) FCMs; (2) floor traders; (3) floor brokers; (4) commercial interests; (5) participants in a variety of pits or principal groups of commodities traded on the exchange; and (6) other market users such as banks and pension funds. The regulation further required that at least ten percent of each exchange board consist of commercials and that at least 20 percent of the board include non-members. With respect to composition of disciplinary committees, each exchange was required to ensure that the composition of each major disciplinary committee included sufficient different membership interests. In this connection, the regulation required that a majority of each disciplinary committee and hearing panels of those committees include persons that represented membership interests other than that of the subject respondent. If a matter involved a member of the exchange governing board or a member of a disciplinary committee, or involved manipulation or conduct that caused direct financial harm to non-member, the exchange was required to include at least one non-member on the committee or panel considering the case.

<sup>9</sup> Core Principle 14 states that a “board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any persons affiliated with any of the persons in this paragraph).” Core Principle 15 states that a “board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest.” Core Principle 16 states, “in the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.” Sections 5(d)(14), (15), and (16) of the Act.

<sup>10</sup> Pursuant to section 38.2, DCMs are exempt from regulations 1.63, with the exception of 1.63(c); 1.64; and 1.69. See note 13 for an explanation guidance to demonstrate core principle compliance.

<sup>5</sup> See CFTC Progresses with Study of Self-Regulation, CFTC Press Release No. 4890-04 (Feb. 6, 2004), available at <http://www.cftc.gov/opa/press04/opa4890-04.htm>

<sup>6</sup> See CFTC Seeks Comment on How Self-Regulatory Exams of futures Firms Are Coordinated, CFTC Press Release no. 4910-04 (Apr. 7, 2004), available at <http://www.cftc.gov/opa/press04/opa4890-04.htm>

<sup>7</sup> Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (Dec. 21, 2000).

<sup>4</sup> See Address by Commission Chairman James E. Newsome at the Futures Industry Association Law and Compliance Luncheon (May 28, 2003), available at <http://www.cftc.gov/opa/speeches03/opanews-40.htm>.

principles.<sup>11</sup> The guidance for Core Principle 14 provides that a DCM should have appropriate fitness standards for various categories of individuals. With respect to members who have voting privileges and individuals who exercise governing or disciplinary authority, at a minimum, these fitness standards should include those bases for refusal to register a person that are enumerated under section 8a(2) of the Act.<sup>12</sup> The fitness standards also should require that individuals with governing authority not have a significant history of disciplinary violations, such as the disqualifications listed under Commission Regulation 1.63.<sup>13</sup>

The guidance for Core Principle 15 provides that a DCM should have procedures to identify and resolve conflicts of interest in decision-making. A DCM also should have appropriate limitations regarding the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members, and exchange employees or gained through an exchange ownership interest. Finally, the guidance for Core Principle 16 provides that the board composition of a mutually-owned DCM should fairly represent the diversity of interests of the DCM's market participants.<sup>14</sup>

### III. Questions

The Commission has formulated the following questions based on its research, the views expressed by

<sup>11</sup> A DCM may use the application guidance to demonstrate core principle compliance.

<sup>12</sup> Section 8a(2) permits the Commission to refuse to register any person under any of eight enumerated conditions. For example, the Commission may refuse to register persons (1) whose registration under suspension or has been revoked; (2) whose registration has been refused within the preceding five years due to violations of the Act or regulations thereunder; (3) who are permanently or temporarily enjoined from holding certain positions in the futures or securities industries; or (4) who have been convicted within the previous 10 years of certain felonies.

<sup>13</sup> Regulation 1.63(c) prohibits a person from serving on an SRO disciplinary committee, arbitration panel, oversight panel, or governing board if the person is subject to any one of six enumerated conditions. For example, a person may not serve on an exchange disciplinary committee if he or she was found within the prior three years by a final decision of an SRO, administrative law judge, court, or the Commission to have committed a "disciplinary offense." A disciplinary offense generally includes any violation of the rules of a SRO other than those rules relating to decorum or attire, financial requirements, or reporting or recordkeeping unless the reporting or recordkeeping violations resulted in fines totaling more than \$5,000 within any calendar year.

<sup>14</sup> Appendix B also lists "acceptable practices" for several of the core principles; however, the Commission has not adopted acceptable practices for Core Principles 14, 15, or 16.

interview participants, and industry developments. Responses from interested parties will advance the Commission's understanding of issues relevant to SRO governance. Each enumerated question should be addressed individually; parties also may address any other topics they believe are relevant to SRO governance.

Possible conflicts of interest, such as those that may exist between an SRO's regulatory functions and its business functions, or between an SRO's members, are central to many of the questions articulated below. Where appropriate, parties should identify the specific conflict addressed in their response, and how their proposal resolves that conflict.

#### A. Board Composition

1. What is the appropriate composition of SRO boards to best protect the public interest and serve SROs' needs? If you believe that SRO boards should consist of market participants, what participant communities should be represented and how should representation be allocated among those communities (e.g., quotas, volume-based)? Should the composition of SRO boards be different for the various types of SROs (e.g., DCM or DCO)?

2. How and by whom should SRO boards be nominated and elected? If directors should represent particular communities, should each community nominate and/or elect its representatives to the board? If the board consists of independent directors, what nomination and election procedures are necessary to ensure independence?

3. Should SRO boards include independent directors and, if so, what level of representation should they have? What are appropriate definitions of "independent director" and "public director"? Should all independent directors be public directors? Please address whether SRO members can be considered independent. Also, please address whether the New York Stock Exchange's definition of independent—the requirements include independence from the exchange's management, members, and member organizations—is an appropriate model for the futures industry.<sup>15</sup>

<sup>15</sup> Article IV, Section 2, of the New York Stock Exchange's Constitution states that: The directors elected by the members shall be independent of management of the Exchange, the members, and issuers of securities listed on the Exchange and shall include directors who will enable the Exchange to comply with the requirements of Section 6(b)(3) of the Act. Among other things, no director elected by the members shall be (a) a

#### B. Regulatory Structure

4. Are the governance standards applicable to listed companies sufficient for futures exchanges or their listed parent companies? Or, given that futures exchanges are not typical corporations in that they bear self-regulatory responsibilities, should they adopt higher governance standards, particularly with respect to self-regulatory activities? Please explain.

5. Should SRO's regulatory functions be overseen by a body that is internal to the SRO, but independent of management, members, and business functions? If so, what specific functions should fall within its purview (e.g., regulatory budget; personnel decisions; compensation of regulatory staff; compliance and disciplinary programs; other aspects of self-regulation)?

6. Please address whether any rule enforcement, disciplinary, or other functions currently performed by exchanges should be performed instead by an independent regulatory services provider.

#### C. Forms of Ownership

7. What impact do varying business models have on SRO's self-regulatory behavior? Consider for-profit/not-for-profit, member-owned/shareholder owned, and publicly traded/private held business models.

8. More specifically, is an SRO subject to new influences in the performance of its self-regulatory functions when it converts from a member-owned, not-for-profit organization to a publicly traded, for-profit company? Might a for-profit, publicly traded SRO attempt to attract volume or increase its profits through lax self-regulation? Or, is it more likely that the SRO will seek to protect its brand and add value through effective self-regulation?

#### D. Disciplinary Committees

9. How should SRO disciplinary committees be structured so as to ensure both expertise and impartiality?

10. Please address whether SRO disciplinary committees should have independent, non-SRO member chairs and/or committee membership. Should the level of representation for independent, non-SRO members vary

member, allied member, lessor member or approved person; (b) an officer of employee of the Exchange; (c) a person employed by an affiliated, directly or indirectly, with a member organization, or with a broker or dealer that engages in a business involving substantial direct contact with securities customers; or (d) an executive officer of an issuer of securities that are listed on the Exchange. In addition, no director shall qualify as independent unless the Board affirmatively determines that the director has no material relationship with the Exchange.

according to the type of disciplinary case?

11. How and by whom should SRO disciplinary committees be appointed? Should the terms of committee members be limited? Please explain.

#### *E. Other Issues*

12. What additional information, if any, should SROs make available to the public to increase transparency with respect to their governance and regulatory structures (e.g., board member affiliations; regulatory staffing and budget; disciplinary committee membership and affiliations, etc.)?

13. Would additional core principles for SROs help to clarify their responsibilities with respect to governance, or would regulatory guidance be more appropriate.

14. What steps should be taken to manage or eliminate conflicts of interest involving SRO board and disciplinary committee members?

15. Should registered futures associations that are functioning as SROs also be subject to governance standards?

Issued in Washington, DC, on June 2, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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**BILLING CODE 6351-01-M**

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## **CONSUMER PRODUCT SAFETY COMMISSION**

### **Proposed Collection of Information; Comment Request—Safety Standard for Bicycle Helmets**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of bicycle helmets. The collection of information is in regulations implementing the Safety Standard for Bicycle Helmets. 16 CFR part 1203. These regulations establish testing and recordkeeping requirements for manufacturers and importers of bicycle helmets subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

**DATES:** Written comments must be received by the Office of the Secretary not later than August 9, 2004.

**ADDRESSES:** Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland, 20814. Alternatively, comments may be filed by telefacsimile to (301) 504-0127 or by e-mail to [cpssc-os@cpssc.gov](mailto:cpssc-os@cpssc.gov). Comments should be captioned "Bicycle Helmets."

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1203, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-7671, or by e-mail to [lglatz@cpssc.gov](mailto:lglatz@cpssc.gov).

#### **SUPPLEMENTARY INFORMATION:**

In 1994, Congress passed the "Child Safety Protection Act," which, among other things, included the "Children's Bicycle Helmet Safety Act of 1994" Pub. L. 103-267, 108 Stat. 726. This law directed the Commission to issue a final standard applicable to bicycle helmets that would replace several existing voluntary standards with a single uniform standard that would include provisions to protect against the risk of helmets coming off the heads of bicycle riders, address the risk of injury to children, and cover other issues as appropriate. The Commission issued the final bicycle helmet standard in 1998. It is codified at 16 CFR part 1203.

The standard requires all bicycle helmets manufactured after March 10, 1999, to meet impact-attenuation and other requirements. The standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements. Certification regulations implementing the standard require manufacturers, importers, and private labelers of bicycle helmets subject to the standard to (1) perform tests to demonstrate that those products meet the requirements of the standard, (2) maintain records of those tests, and (3) affix permanent labels to the helmets stating that the helmet complies with the applicable standard. The certification regulations are codified at 16 CFR part 1203, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of bicycle helmets subject to the standard to help protect the public from risks of injury or death associated with head injury associated with bicycle

riding. More specifically, this information helps the Commission determine whether bicycle helmets subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if bicycle helmets fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations under control number 3041-0127. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

#### **Estimated Burden**

The Commission staff estimates that approximately 30 firms manufacture or import bicycle helmets subject to the standard. There are an estimated 200 different models of bicycle helmets currently marketed in the U.S. The Commission staff estimates that the time required to comply with the collection of information requirements is approximately 100 to 150 hours per model per year. The total amount of time estimated for compliance with these requirements will be 20,000 to 30,000 hours per year (200 models × 100-150 hours/model = 20,000-30,000 hours). The annualized cost to respondents for the hour burden for collection of information is \$489,600-\$734,400 based on 20,000-30,000 hours times \$24.48/hour (based on total compensation of all civilian workers in the U.S., September 2003, Bureau of Labor Statistics).

#### **Request for Comments**

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological