

PAPERWORK REDUCTION ACT SUBMISSION

SEC Rule 31 and Form R31

Supporting Statement

A. Justification

1. Necessity of Information Collection

Pursuant to Section 31 of the Securities Exchange Act of 1934 ("Exchange Act"),¹ the Securities and Exchange Commission ("SEC") is required to collect fees and assessments from national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") based on the volume of their securities transactions. To collect the proper amounts, the SEC has adopted Rule 31 and Form R31 under the Exchange Act whereby the SROs must report to the SEC the volume of their securities transactions and the SEC, based on that data, calculates the amount of fees and assessments that the SROs owe pursuant to Section 31. Rule 31 and Form R31 require the SROs to provide this data on a monthly basis.

2. Purpose of, and Consequences of Not Requiring, the Information Collection

Rule 31 implements the requirements of Section 31 of the Act by requiring SROs to provide trade data that, in turn, enables the SEC to calculate accurately the amount of fees and assessments owed by SROs pursuant to Section 31. Without this rule, the SEC would not be able to satisfy its obligations under Section 31.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

Much of the information required on Form R31 consists of data that is already compiled by respondents in electronic form. Therefore, the SEC believes that there is only limited scope for information technology to reduce the respondents' burden.

4. Efforts to Identify Duplication

The SEC does not believe that Rule 31 and Form R31 will require any duplicative filing requirements.

5. Effects on Small Entities

Rule 31 and Form R31 will have no effect on any small entity. Rule 31 and Form R31 will impose duties on 14 national securities exchanges, one national securities association, and two registered clearing agencies (which are required to provide certain data in their possession needed by the SROs to complete Form R31). None of these 17 respondents is a small entity. Of

¹ 15 U.S.C. 78ee.

these 17 respondents, only 15 are required to complete Form R31 (the two registered clearing agencies are not required to complete Form R31).

6. Consequences of Less Frequent Collection

Obtaining monthly data on all sales of securities and transactions in security futures that are subject to Section 31 enables the SEC to calculate and book on its financial statement a monthly receivable for Section 31 fees and assessments. The SEC believes that it is appropriate to recognize and record on its financial statement accounts receivable for Section 31 fees and assessments on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred. Thus, any less frequent collection could render the SEC unable to fulfill its obligations under the Accountability of Tax Dollars of 2002 ("Accountability Act").

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

5 CFR 1320.5(d)(2) states that, unless an agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information that has any one of eight characteristics. Rule 31 has two of these characteristics. Nevertheless, the SEC believes that these characteristics are justified by "statutory requirements or other substantial need." The eight characteristics are set forth below:

(i) requiring respondents to report information to the agency more often than quarterly;

Under Rule 31, respondents are required to submit a completed Form R31 on a monthly basis. This will permit the SEC to calculate the fees and assessments owed by each SRO every month, even though they are due only twice per year (on or before March 15 and September 30 of each year). The Accountability Act now requires the SEC to produce audited financial statements. The SEC believes that it is appropriate to recognize and record on its financial statement accounts receivable on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred.

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Rule 31 requires respondents to submit a completed Form R31 in fewer than 30 days after receiving the data that would have to be reported on the form. However, the SEC believes that this requirement is justified by statutory requirements or other substantial need.

The first billing cycle established under Section 31(e) of the Exchange Act² is from January 1 to August 31; the due date for fees and assessments incurred in that period is September 30. Thus, the first billing cycle allows only 30 days between the close of the billing period (August 31) and the date on which the SROs must pay fees and assessments based on securities transactions occurring in that period (September 30). For the SEC to bill an SRO the correct amount, issue the bill before the September 30 due date, and give the SRO reasonable time to pay the bill, the SEC must obtain the data on the SRO's securities transactions in fewer than 30 days after August 31.

In addition, requiring respondents to submit a completed Form R31 in fewer than 30 days after receiving the data to be reported would allow the SEC to better carry out its responsibilities under Section 31(j)(2) of the Exchange Act.³ Section 31(j)(2) requires the SEC to adjust the rate at which it levies fees on sales of securities if the SEC makes certain findings relating to the estimated volume of securities transactions in the fiscal year by every March 1. The SEC believes that obtaining data on these transactions in less than 30 days after the respondents receive such data will help the SEC to make determinations regarding fee rate adjustments within the time frame stipulated in Section 31(j)(2) of the Exchange Act.

(iii) requiring respondents to submit more than an original and two copies of any document;

Not applicable

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Not applicable

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

² 15 U.S.C. 78ee(e).

³ 15 U.S.C. 78ee(j)(2).

Not applicable

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Not applicable

8. Consultations Outside the Agency

The duty to pay fees and assessments under Section 31 of the Exchange Act already exists; this rulemaking merely changed the way such fees and assessments are calculated and collected. In administering the existing program, the SEC has regular and frequent contact with the SROs. These contacts have offered SEC staff insights into developing Rule 31 and Form R31.

9. Payment or Gifts to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable. The information to be collected on Form R31 will not be confidential.

11. Sensitive Questions

Not applicable. No issues of a sensitive nature are involved.

12. Estimate of Reporting Burden

In its previous request, the SEC estimated that the annual compliance burden of Rule 31 on all, at the time, 14 respondents collectively would be 252 staff hours, or 21.0 hours per month. This estimate was derived as follows:

- The SEC estimated that NASD would incur compliance burdens of 2 staff hours per month.
- The SEC estimated that NSCC would incur compliance burdens of 4 staff hours per month and OCC 3 staff hours per month to provide data to the exchanges for which they serve as the designated clearing agency. The SEC also estimated that NSCC would incur operating costs of \$1,000 per month (\$12,000 per year) for ongoing compliance.
- The SEC took the view that an exchange's compliance burden would depend on whether the exchange trades NSCC-settled products (*i.e.*, equities), OCC-settled products (*i.e.*, options or security futures), or both. The SEC

estimated that 3 OCC-only exchanges would require 0.5 hours per month, 4 NSCC-only exchanges would require 1.0 hour per month, and 4 dual exchanges would require 1.5 hours per month. Thus, the SEC estimated that the 11 exchanges would incur ongoing monthly burdens of 12.0 hours collectively – (3 OCC-only exchanges x 0.5 hour/exchange = 1.5 hours) + (3 NSCC-only exchanges x 1.0 hour/exchange = 3.0 hours) + (5 dual exchanges x 1.5 hours/exchange = 7.5 hours).

The SEC is raising this estimate to 288 staff hours, or 24.0 hours per month. This 36-hour annual increase results from the following changes:

- The Nasdaq Stock Market LLC is now a registered exchange that trades equities. *Net difference: +12 hours per year.*
- The International Securities Exchange, LLC will have a heavier ongoing burden due to the fact that it now trades equities. *Net difference: +12 hours per year.*
- The Chicago Mercantile Exchange and OneChicago, LLC each are now registered exchanges conducting security futures transactions. *Net difference: +12 hours per year.*

As reflected on the Form 83I, the SEC estimates that Rule 31 and Form R31 will cause the 17 respondents to incur a burden of 288 staff hours.

13. Estimate of Total Annualized Cost Burden

Not applicable. The SEC does not believe that the 17 respondents will have to incur any capital or start-up costs, or any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements imposed by Rule 31 and Form R31.

14. Estimate of Cost to the Federal Government

The SEC estimates that its operational cost to review each Form R31 submission is \$16.53, representing 17 minutes of staff time. These figures were derived as follows:

5 minutes of clerical work at \$25.67 an hour;⁴
 12 minutes of work by economists at \$71.93 an hour;⁵
 for a total of 17 minutes with a weighted average of \$58.34 an hour.

The SEC estimates that processing each Form R31 will result in annual staff burdens of 51.0 hours (180 filings per year x 17 minutes/filing divided by 60 minutes/hour) and \$2,975 (51.0 hours x \$58.34/hour).

⁴ Based on a secretary at SK-7/4.

⁵ Based on an economist at SK-14/14.

15. Explanation of Changes in Burden

Not applicable. There are no changes to the estimated annual cost burden.

16. Information Collected Planned for Statistical Purposes

Not applicable. This information is not published for statistical use.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable. The SEC will display the expiration date on Form R31.

18. Exceptions to Certification

The SEC is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Method

Not applicable. The collection of information will not employ a statistical method.