

PAPERWORK REDUCTION ACT SUBMISSION

CTA Plan and the Nasdaq UTP Plan; Post-Trade Transparency for ATs

Supporting Statement

A. Justification

(1) Necessity for Information Collection

Section 11A(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”), adopted by the Securities Acts Amendments of 1975,¹ directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system (“NMS”) for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act. Among those findings and objectives is “the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.”²

Using this authority, the Commission has required the self-regulatory organizations (“SROs”) to act jointly pursuant to various NMS plans in disseminating consolidated market information.³ Under this regulatory framework, the SROs have developed and funded, and presently operate, systems that disseminate a real-time stream of consolidated market information throughout the United States and the world.

The joint-industry plans that provide for the dissemination of last sale information for equity securities are the Consolidated Tape Association Plan (“CTA Plan”) and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“Nasdaq UTP Plan”) (collectively “the Plans”). The Plans govern the arrangements for disseminating consolidated trade information. Among other things, the Plans require the individual SROs to provide trade information (including information identifying the exchange where the trade was executed) for an NMS stock to a securities information processor (“SIP”), which then consolidates the information into a single stream for dissemination to the public.

¹ Pub. L. 94-29, 89 Stat. 97 (1975).

² Section 11A(a)(1)(C)(iii) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C)(iii).

³ See, e.g., 17 CFR 242.601. This rule requires exchanges to file a transaction reporting plan concerning transactions in listed equity securities executed through their facilities and imposes a parallel requirement on associations for transactions effected otherwise than on a national securities exchange.

Rule 601(b) of Regulation NMS under the Exchange Act, which governs the dissemination of transaction reports and last sale information in NMS securities, requires SRO members to transmit the information required by the Plans to the SRO.⁴ Over-the-counter (“OTC”) trades, including trades executed by Alternative Trading Systems (“ATs”),⁵ are reported to the consolidated trade streams through one of the trade reporting facilities (“TRFs”) operated by the Financial Industry Regulatory Authority, Inc. (“FINRA”) on behalf of exchanges, or through FINRA’s Alternative Display Facility (“ADF”). The published trade reports identify the trades as OTC trades; they do not identify the particular ATS or other broker-dealer that reported the trade.

As part of its effort to address the inadequacy of the current level of post-trade transparency of ATs, the Commission proposed to amend the Plans⁶ to require the disclosure of the identity of individual ATs on trade reports in the public data stream, the same way exchange trades are identified.⁷ The Commission preliminarily believes that requiring the public disclosure of the individual ATS that executed a trade should enable market participants to better assess in real-time where executions in particular securities are occurring among various ATs in the OTC market. In addition, the proposal should allow more reliable trading volume statistics to be calculated for individual ATs.

The Commission has not previously analyzed the burden hours and costs that may be associated with the Plans. The Commission believes that the proposed amendments to

⁴ See 17 CFR 242.601(b).

⁵ Rules applicable to ATs are set forth in Regulation ATS. See 17 CFR 242.300 et seq. ATs can choose whether to register as national securities exchanges or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume. ATs that register as broker-dealers are required to be SRO members. Because ATs effect transactions in the OTC market, they must be members of FINRA. See Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78o(b)(8).

⁶ See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009). Amendments submitted by SROs to the Plans are subject to Commission review under Rule 608 of Regulation NMS. The Commission may itself amend the Plans, pursuant to Rule 608(b)(2) of Regulation NMS. See 17 CFR 242.608(b)(2).

⁷ The Commission is not proposing to require the identification of ATs on trade reports in the public data stream for large size trades under the assumption that the exception for large size trades strikes the appropriate balance between the need of investors executing large size trades to minimize significant information leakage and the benefits to the investing public of having this identifying post-trade information.

the Plans would result in a “collection of information” with respect to ATSS, FINRA and the SIPs. First, the proposed Plan amendments would require the disclosure of the identity of those ATSS subject to Regulation ATS on trade reports in the public data stream. Specifically, the proposed Plan amendments, by redefining terms in the Plans, indirectly would require ATSS to include a unique identifier when transmitting last sale price data to FINRA.⁸ Second, the proposed Plan amendments would require FINRA to transmit to the SIPs a unique identifier from each ATS subject to Regulation ATS, unless the trade is a large size trade (a trade with a market value of at least \$200,000).⁹ Third, the proposed Plan amendments would require the SIPs for the Plans to disseminate information provided to them by FINRA.¹⁰

(2) Purposes of and Consequences of Not Requiring the Information Collection

The information required by the proposed Plan amendments would bring the trade reporting requirements for ATSS into line with the trade reporting requirements for exchanges, both of which operate systems that bring together orders of multiple buyers and sellers on an agency basis. Requiring the public disclosure of the individual ATS that executed a trade should enable market participants to better assess in real-time where executions in particular securities are occurring among various ATSS in the OTC market. In addition, the proposal should allow more reliable trading volume statistics to be calculated for individual ATSS. The Commission preliminarily believes this should enhance the ability of broker-dealers and their customers to more effectively find

⁸ There are approximately 73 ATSS that are subject to Regulation ATS. Of these, approximately 30 are dark pool ATSS. The Commission understands that some of these ATSS disseminate market data using the identifier of their sponsoring broker-dealer while others already use a unique identifier for their trades. The ATSS using a unique identifier would not be affected for PRA purposes by the proposed Plan amendments, because they currently use a unique identifier.

⁹ Currently, FINRA receives the Market Participant Identifier (“MPID”) information from the ATSS as required by FINRA rules. FINRA, however, currently removes the MPID from the trade reports before submitting them to the SIPs. Under the proposed Plan amendments, FINRA would need to re-program its systems to transmit the MPIDs for ATS trades to the SIPs, except for large size trades with a market value of at least \$200,000.

¹⁰ Under the proposed Plan amendments, the SIPs would need to re-program their systems to enable them to accept as well as transmit trade reports with the additional data element, the MPID, for those ATS transactions that have a market value of less than \$200,000.

liquidity and achieve best execution in the OTC market. Without these requirements, it would not be possible to achieve the above-stated goals.

(3) Role of Improved Information Technology and Obstacles to Reducing Burden

Since the inception of the Plans, there have been advancements in technology and information systems that allow market participants and investors to easily obtain information through electronic means. The proposed amendments to the CTA Plan and the Nasdaq UTP Plan would require that all last sale prices collected by FINRA from each ATS subject to Regulation ATS be accompanied by an MPID unique to the ATS and be transmitted to the SIP, unless the trade is a large size trade with a market value of at least \$200,000. This will further increase the speed and availability of this information in the marketplace.

(4) Efforts to Identify Duplication

The information required is not duplicative of any information otherwise being provided by FINRA, the SIPs and ATSs.

(5) Effect on Small Entities

Rule 608 of Regulation NMS, adopted by the Commission under Section 11A, establishes procedures for proposing amendments to national market system plans such as the CTA Plan and the Nasdaq UTP Plan.¹¹ Paragraph (b)(2) states that the Commission may propose amendments to an effective national market system plan by publishing the text of the amendment together with a statement of purpose of the amendments.

The CTA Plan and the Nasdaq UTP Plan amendments apply to the Plan participants, none of which is a small entity. The requirement for trade reports to now include a unique identifier for ATS transactions, which would be included on the trade reports in the public data stream, would require FINRA, for trades effected by ATSs subject to Regulation ATS, to include an additional data element in the trade report that is submitted to the SIPs. FINRA, a national securities association, and the SIPs are not small entities.

The Commission's definition of small entity as it relates to broker-dealers applies to ATSs.¹² The Commission preliminarily believes that there would be no significant economic impact on any of the 73 ATSs that are currently subject to Regulation ATS that meet the definition of small entity. The CTA Plan and the Nasdaq UTP Plan amendments would require that each ATS use a unique identifier to report its transactions

¹¹ 17 CFR 242.608.

¹² See 17 CFR 240.0-10(c).

to FINRA, rather than report its transactions using the identifier of its sponsoring broker-dealer. The ATs that do not already use a unique identifier would need to replace the MPID for their sponsoring broker-dealer with a unique identifier at no significant economic cost to the ATs. Therefore, the Commission certifies that the proposed amendments to the Plans, if adopted, would not have a significant economic impact on a substantial number of small entities.

(6) Consequences of Less Frequent Collection

The information is collected on a trade by trade basis and therefore there is no way to require less frequent collection without undermining the purposes of the proposed rule.

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

The requirements of the Rule are not inconsistent with the Guidelines of 5 CFR 1320.5(d)(2)

(8) Consultation Outside the Agency

Commission staff consults with ATs, FINRA, and SIPs on an ongoing basis. Commission staff regularly attends CTA and UTP meetings and meets with representatives of various organizations from major segments of the securities industry. For purposes of the PRA, Commission staff based burden hours and cost estimates on discussions with FINRA and the SIPs. The Commission has also published for public review and comment the proposed Plan amendments.

(9) Payment of Gift to Respondents

Not Applicable.

(10) Assurances of Confidentiality

No assurances of confidentiality have been provided.

(11) Sensitive Questions

Not Applicable.

(12) Estimate of Respondent Reporting Burden

a. ATs

The Commission understands that all ATs currently report their transactions to FINRA pursuant to FINRA's rules using an MPID, with some ATs reporting their transactions using an MPID of their sponsoring broker-dealer, while other ATs use a

unique MPID. The proposed Plan amendments would require that each ATS have a unique MPID. Therefore, some ATSs would have to acquire a unique MPID from FINRA. The Commission preliminarily believes that ATSs that already use a unique MPID would not incur additional collection of information burdens related to the transmission of unique MPIDs. Those ATSs that currently use an MPID of their sponsoring broker-dealer may incur a de minimis cost in re-programming their systems to substitute the new MPID for the one currently used in transmitting their transactions to FINRA.

The Commission preliminarily believes that this collection of information would not involve any substantive or material change in the burden that already exists as part of the ATSs' ordinary and customary activities in providing MPID information to FINRA in the normal course of business, pursuant to FINRA's rules.

b. FINRA

Currently, when FINRA reports transactions to the SIPs, the MPID is dropped from every transaction report and an identifier is appended indicating the trade was executed OTC. Under the proposed amendments, each ATS trade report would carry a unique ATS indicator, in addition to the OTC indicator, unless the trade is a large size trade. FINRA, upon the receipt of an ATS trade report with a unique indicator would retransmit the trade report to the SIP, after excluding the ATS identifier from trade reports for large size trades. Under the proposed Plan amendments, FINRA would have to re-program its systems to allow for the trade report message to carry the unique identifier for each ATS and to exclude the identifier for large size trades from the transmission to the SIPs.

The Commission preliminarily estimates that the one-time, initial annualized burden for FINRA development, including re-programming and testing of the systems to comply with the proposed amendments to the Plans, would be approximately 100 burden hours.¹³

The Commission preliminarily believes that the ongoing annualized expense for FINRA would not result in a burden for purposes of the PRA, as FINRA currently transmits trade report messages to the SIPs in the normal course of business.¹⁴

¹³ This figure is based on discussions between Commission and FINRA staff. This figure includes FINRA development and testing. The Commission derived the total estimated one-time burden from the following: [(Programmer Analyst at 25 hours) x 2 + (Computer Operator at 25 hours) x 2] = 100 burden hours.

¹⁴ For purposes of submitting this request to OMB, the Commission has amortized the one-time burden for FINRA over a three year period. Amortizing this one-time burden over a three year period results in an annual burden of 34 hours per year: (100 hours (total one-time annual burden)) / 3 (number of years) = 33.33 hours (rounded to 34 hours).

c. SIPs

Currently, the SIPs do not receive an MPID from FINRA for the ATS trades. FINRA removes the MPID and an identifier is appended indicating the trade was executed OTC. Under the proposed Plan amendments, the SIPs would receive from FINRA a trade report identifying the specific ATS on which a trade was executed, unless the trade is a large size trade. The SIPs would need to re-program their systems to allow for the trade report message that carries the unique identifier for each ATS to be received by the SIPs and then later allow for the transmission of the information to the vendors.

The Commission preliminarily estimates that the one-time, initial annualized burden for the Securities Industry Automation Corporation (“SIAC”), which serves as a SIP for the CTA Plan, to comply with the proposed Plan amendments would be approximately 320 burden hours.¹⁵ This figure is based on the estimated number of hours for SIAC to provide planning, development, implementation, testing, and quality assurance.

The Commission further preliminarily estimates that the one-time, initial annualized burden for the Nasdaq SIP, which serves as a SIP for the UTP Plan, to comply with the proposed Plan amendments would be approximately 800 burden hours.¹⁶ This figure is based on the estimated number of hours for the Nasdaq SIP to develop and test the software and work with the UTP participants and vendors regarding the enhancement.

The Commission preliminarily believes that the ongoing annualized expense for the SIPs would not result in a burden for purposes of the PRA, as SIPs currently transmit trade report messages in the normal course of business.¹⁷

d. Estimated Total

The estimated one-time, initial annualized burden for the proposed Plan amendments is 1,220 hours: [100 hours (total estimated burden for FINRA) + 320 hours (total estimated burden for SIAC) + 800 hours (total estimated burden for the Nasdaq SIP) = 1,220 hours].¹⁸

¹⁵ This figure is based on discussions between Commission and SIAC staff.

¹⁶ This figure is based on discussions between Commission and Nasdaq SIP staff.

¹⁷ For purposes of submitting this request to OMB, the Commission has amortized the one-time burden for the SIPs (SIAC and the Nasdaq SIP) over a three year period. Amortizing this one-time burden over a three year period results in a total annual burden for both SIPs of 374 hours per year: (1,120 hours (total one-time annual burden)) / 3 (number of years) = 373.33 hours (rounded to 374 hours). Accordingly, the time per response is estimated as 187 hours: (374 hours (total annual burden)) / 2 (total responses per year) = 187 hours per response.

(13) Estimate of Total Annualized Cost Burden

a. ATSS

The Commission believes that ATSS would not incur significant costs in connection with the proposed Plan amendments in addition to those already created by the requirements of Rule 601 of the Exchange Act. Currently FINRA rules require each trade to include an MPID. The Commission understands that some ATSS report their transactions using an MPID of their sponsoring broker-dealer, while other ATSS use a unique MPID. The proposed Plan amendments would require that each ATSS have a unique MPID, necessitating some ATSS to acquire a unique MPID from FINRA. ATSS can obtain an additional MPID from FINRA at no cost. Those ATSS that currently use an MPID of their sponsoring broker-dealer may incur a de minimis cost in re-programming their systems to substitute the new MPID for the one currently used in transmitting their transactions to FINRA.

b. FINRA

FINRA, upon receipt of the unique identifier would retransmit the trade report to the SIPs, after excluding the ATSS identifier from trade reports for large size trades. For purposes of the PRA, the Commission preliminarily estimated that the initial annualized expense for the TRFs and the ADF would be approximately \$1,175,000.¹⁹ In addition, the Commission preliminarily estimated that the initial annualized expense for FINRA internal start-up costs for the development and testing would be approximately \$13,400.²⁰ Therefore, the grand total of the one-time, initial annualized expense for FINRA's development, re-programming, and testing of the systems to comply with the proposed Plan amendments would be approximately \$1,188,400.²¹ The Commission preliminarily

¹⁸ For purposes of submitting this request to OMB, the Commission has amortized the one-time burden for FINRA, SIAC, and the Nasdaq SIP over a three year period. Amortizing this one-time burden over a three year period results in an annual burden of 408 hours per year: (34 hours (estimated annual burden for FINRA) + 374 hours (estimated annual burden for SIPs) = 408 hours.

¹⁹ This figure is the total initial, one-time annualized expense to add unique ATSS identifiers to trade report messages transmitted to SIPs. This figure includes the capital and start-up expenses for FINRA/NASDAQ TRF, FINRA/NYSE TRF, and ADF, to which ATSS trades are reported. The figure is based on discussions between Commission and FINRA staff.

²⁰ This figure is based on discussions between Commission and FINRA staff. The Commission derived the total estimated one-time burdens from the following: [(Programmer Analyst at 25 hours) x 2 at \$193 per hour] + [(Computer Operator at 25 hours) x 2 at \$75 per hour] = \$13,400.

²¹ For purposes of submitting this request to OMB, the Commission has amortized the one-time costs for FINRA over a three year period to determine an

believes that the ongoing annualized expense for FINRA would be de minimis, as FINRA currently transmits trade report messages to the SIPs in the normal course of business.

c. SIPs

The SIPs (SIAC and Nasdaq SIP) would need to modify their trade report message to carry the unique identifier for each ATS. Currently, when transactions are reported to the SIP by FINRA, the MPID is dropped and an identifier is appended indicating the trade was executed OTC. Under the proposed Plan amendments, each ATS trade report would carry an ATS indicator, in addition to the OTC indicator, unless the trade is a large size trade. The Commission preliminarily estimated that the combined initial annualized expense for both SIAC and Nasdaq SIP would be approximately \$175,000.²² The Commission preliminarily believes that the ongoing annualized expense for the SIPs would be de minimis, as the SIPs currently transmit trade report messages in the normal course of business. The Commission notes that the proposed Plan amendments could affect order routing as investors may choose to change their routing strategies based on the additional disclosure under the proposed Plan amendments.

c. Total Costs

Under the proposed amendments to the Plans, the total annual aggregate cost for all respondents would be \$454,466.68.²³

(14) Estimate of Cost to the Federal Government

There is no estimated operation cost associated with this rule.

annual cost associated with this information collection. Amortizing this one-time cost over a three year period results in an annual cost of approximately \$396,133.34: $(\$1,188,400 \text{ (total one-time, initial annualized cost)}) / 3 \text{ (number of years)} = \$396,133.33 \text{ (rounded to } \$396,133.34)$.

²² This figure is the total initial, one-time annualized capital and start-up expense for both of the SIPs and is based on discussions between Commission staff and the SIAC and Nasdaq SIP staff. For purposes of submitting this request to OMB, the Commission has amortized the one-time costs for the SIPs (SIAC and Nasdaq SIP) over a three year period to determine an annual cost associated with this information collection. Amortizing this one-time cost over a three year period results in a total annual cost for both SIPs of approximately \$58,333.34: $(\$175,000 \text{ (total one-time, initial annualized cost)}) / 3 \text{ (number of years)} = \$58,333.33 \text{ (rounded to } \$58,333.34)$. Accordingly, the cost per SIP is estimated as \$29,166.67: $(\$58,333.34 \text{ (total annual cost)}) / 2 \text{ (total number of SIPs)} = \$29,166.67$.

²³ The annual aggregate cost of the information collection is approximately: \$454,466.68: $\$396,133.34 \text{ (estimated amortized additional annual cost for FINRA)} + \$58,333.34 \text{ (estimated amortized additional annual cost for SIAC and Nasdaq SIP)} = \$454,466.68$

(15) Explanation of Changes in Burden

Not applicable.

(16) Information Collection Planned for Statistical Purposes

Not applicable.

(17) Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable.

(18) Exceptions to Certification

Not applicable.

B. Collections of Information Using Statistical Methods

No statistical methods are employed in connection with the collections of information.