SUPPORTING STATEMENT

AMENDMENTS TO RULE 200(g) OF REGULATION SHO

This submission pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 *et seq*., consists of this supporting statement.

A. Justification

1. Necessity of Information Collection

i. Policies and Procedures Requirement under Rule 201

The information collected under Rule 201's written policies and procedure requirement will help ensure that trading centers do not execute or display any impermissibly priced short sale orders, unless an order is marked "short exempt," in accordance with the Rule's requirements. The information collected also will aid the Commission and self-regulatory organizations ("SROs") that regulate trading centers in monitoring compliance with the Rule's requirements. In addition, it will aid trading centers and broker-dealers in complying with the Rule's requirements.

ii. Policies and Procedures Requirements under Broker-Dealer and Riskless Principal Provisions

The information collected under the written policies and procedures requirement of the broker-dealer provision of Rule 201(c) is designed to help prevent the incorrect identification of orders for purposes of the broker-dealer provision. The information collected under the written policies and procedures requirement of the riskless principal provision of Rule 201(d)(6) will help to ensure that broker-dealers comply with the requirements of the riskless principal provision. The information collected will also enable the Commission and SROs to examine for compliance with the requirements of these provisions.

iii. Marking Requirements

The information collected pursuant to the new "short exempt" marking requirement of Rule 200(g) will enable the Commission and SROs to monitor whether a person entering a sell order covered by Rule 201 is acting in accordance with one of the provisions contained in paragraph (c) or paragraph (d) of Rule 201. In particular, the "short exempt" marking requirement will provide a record that will aid in surveillance for compliance with the provisions of Rule 201. It will also provide an indication to a trading center when it must execute or display a short sale order without regard to whether the short sale order is at a price that is less than or equal to the national best bid. In addition, it will help a trading center determine whether its policies and procedures are reasonable and whether its surveillance is effective.

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

Rule 201 is a short sale-related circuit breaker rule that, if triggered, will impose a restriction on the prices at which securities may be sold short. Specifically, the Rule requires that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. In addition, the Rule requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose this short sale price test restriction for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

In addition, we are amending Rule 200(g) to provide that a broker-dealer may mark certain qualifying sell orders "short exempt." In particular, if the broker-dealer chooses to rely on its own determination that it is submitting the short sale order to the trading center at a price that is above the current national best bid at the time of submission or to rely on an exception specified in the Rule, it must mark the order as "short exempt."

As stated above, the information collected under Rule 201's written policies and procedure requirement applicable to trading centers, the written policies and procedures requirement of the broker-dealer provision of Rule 201(c), the written policies and procedures requirement of the riskless principal provision of Rule 201(d)(6), and the new "short exempt" marking requirement of Rule 200(g) will enable the Commission and SROs to examine and monitor for compliance with the requirements of Rule 201 and Rule 200(g).

In addition, the information collected under Rule 201's written policies and procedure requirement applicable to trading centers will help ensure that trading centers do not execute or display any impermissibly priced short sale orders, unless an order is marked "short exempt," in accordance with the Rule's requirements. Similarly, the information collected under the written policies and procedures requirement of the broker-dealer provision of Rule 201(c) and the riskless principal provision of Rule 201(d)(6) will help to ensure that broker-dealers comply with the requirements of these provisions. The information collected pursuant to the new "short exempt" marking requirement of Rule 200(g) will also provide an indication to a trading center when it must execute or display a short sale order without regard to whether the short sale order is at a price that is less than or equal to the current national best bid.

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

Since Rules 201 and 200(g) do not specify a particular format, respondents may use automation, or other forms of information technology, to the extent they find it helpful.

4. Efforts to Identify Duplication

We are not aware of duplication of this information.

5. Effects on Small Entities

The collection of information necessary to ensure compliance with the requirements of Rules 201 and 200(g) should not be unduly burdensome on smaller entities. Much of the requisite information is otherwise collected and maintained by industry members in connection with existing Commission or SRO rules. Moreover, the information is generally that which a broker-dealer or participant of a registered clearing agency would maintain in the ordinary course of its business.

6. Consequences of Less Frequent Collection

In order to ensure compliance with Rules 201 and 200(g), trading centers and broker-dealers subject to the policies and procedures requirements of Rule 201, including the broker-dealer provision of Rule 201(c) and the riskless principal provision of Rule 201(d)(6) must collect the required information on a daily basis. Broker-dealers subject to the "short exempt" marking requirements under Rule 200(g) must collect the information on an hourly basis. Less frequent or less individualized collection would impede the ability to verify compliance with the amendments.

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

The information collection is not conducted in a matter that is inconsistent with 5 CFR § 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission has been coordinating extensively with other financial regulators to address the current threats to fair and orderly securities markets. In addition, the Commission published a notice in the Federal Register of the proposed collection of information and solicited public comment regarding the collection and the estimated burden.[1]

i. Policies and Procedures Requirement under Rule 201

In the Proposal, we provided estimates of the reporting and recordkeeping burdens for trading centers under the proposed short sale price test restrictions, both on a permanent, market-wide basis and in conjunction with a circuit breaker.[2] We also requested comment, in the Proposal and the Re-Opening Release, as to whether the proposed burden estimates were appropriate or whether such estimates should be increased or reduced, and if so, for which entities and by how much.[3]

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1 *See* Exchange Act Release No. 59748 (Apr. 10, 2009), 74 FR 18042, 18086, n.334 (Apr. 20, 2009) (the "Proposal"); *see also* Exchange Act Release No. 60509 (Aug. 17, 2009), 74 FR 42033 (Aug. 20, 2009) (the "Re-Opening Release").

2 *See* Proposal, 74 FR at 18087.

3 *See* Proposal, 74 FR at 18088; Re-Opening Release, 74 FR at 42036.

One commenter provided a cost estimate, including costs for "development man-hours" of $500,000 per firm for implementation of a new short sale price test restriction by trading centers, either on a permanent, market-wide basis, or in conjunction with a circuit breaker.[4] One commenter stated that a new short sale price test restriction would involve "significant implementation costs" and "the generation and retention of voluminous compliance reports" but did not provide a specific estimate of the cost or hours that would be involved.[5] Several commenters expressed general concerns regarding the time and cost that would be imposed for implementation and on-going monitoring and surveillance of a new short sale price test restriction, including a policies and procedures requirement, but did not provide specific estimates of such time and cost.[6]

We considered these comments in reviewing the burden estimates for trading centers that we proposed with respect to the collection of information requirements in Rule 201. We believe that the cost and time required for implementation of Rule 201 will be lower than some commenters' stated estimates[7] because we believe that the implementation and on-going monitoring and surveillance costs of the alternative uptick rule will be lower than the implementation and on-going monitoring and surveillance costs that would be associated with adoption of the proposed modified uptick rule or the proposed uptick rule. Unlike the proposed modified uptick rule and the proposed uptick rule, which would have required sequencing of the national best bid or last sale price (*i.e.*, whether the current national best bid or last sale price is above or below the previous national best bid or last sale price), the alternative uptick rule references only the current national best bid.

A number of commenters stated that because the alternative uptick rule would not require monitoring of the sequence of bids or last sale prices, implementing the alternative uptick rule would be less costly[8] or easier than implementing the proposed modified uptick rule or the

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4 Letter from Megan A. Flaherty, Chief Legal Counsel, Wolverine Trading, LLC, dated June 19, 2009 ("Wolverine"). Wolverine provided an estimate of $500,000 per firm for implementation costs, which it applied to both non-SRO trading centers and other registered broker-dealers.

5 Letter from Peter Kovac, Chief Operating Officer and Financial and Operations Principal, EWT, LLC, dated Sept. 21, 2009 ("EWT (Sept. 2009)").

6 *See, e.g.*, letter from Richard T. Chase, Managing Director and General Counsel, RBC Capital Markets Corporation, dated June 19, 2009 ("RBC (June 2009)"); letter from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., dated June 18, 2009 ("STANY (June 2009)"); letter from James S. Chanos, Chairman, Coalition of Private Investment Companies, dated June 19, 2009 ("CPIC (June 2009)"); letter from EWT (Sept. 2009); letter from Richard T. Chase, Managing Director and General Counsel, RBC Capital Markets Corporation, dated Sept. 21, 2009 ("RBC (Sept. 2009)"). We received time estimates only with respect to the Commission's proposed implementation time and did not receive comments regarding estimated PRA burden hours.

7 We received comments expressing concerns about the implementation and on-going monitoring and compliance costs of a short sale price test restriction that were not specific to the alternative uptick rule. *See, e.g.*, letter from RBC (June 2009); letter from STANY (June 2009); letter from CPIC (June 2009); letter from Wolverine.

8 *See, e.g.*, letter from Eric Swanson, SVP and General Counsel, BATS Exchange, Inc., dated May 14, 2009 ("BATS (May 2009)"); letter from Michael L. Crowl, Managing Director, Global General Counsel,

proposed uptick rule.[9] In addition, several commenters stated that the alternative uptick rule would be easier to program into trading and surveillance systems than the proposed modified uptick rule or the proposed uptick rule.[10] Another commenter stated, with respect to the alternative uptick rule, that "actual implementation costs in terms of time and capital expenditure would be negligible when compared to those involved in implementing either the uptick rule or modified uptick rule."[11]

Several commenters indicated that implementation of the alternative uptick rule would not be easier or less costly than implementation of the proposed modified uptick rule or the proposed uptick rule.[12] However, we note that some of these commenters presented concerns that were not directly related to the alternative uptick rule[13] or to implementation costs or

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Barclays Global Investors, dated Sept. 21, 2009; letter from Eric Swanson, SVP and General Counsel, BATS Exchange, Inc., dated Sept. 21, 2009 ("BATS (Sept. 2009)"); letter from John McCarthy, General Counsel, Global Electronic Trading Company, dated Sept. 21, 2009; letter from Karrie McMillan, General Counsel, Investment Company Institute, dated Sept. 21, 2009 ("ICI (Sept. 2009)"); letter from Glen Shipway, dated Sept. 21, 2009 ("Glen Shipway (Sept. 2009)"); letter from Peter J. Driscoll, Chairman, John C. Giesea, President and CEO, Security Traders Association, dated Sept. 21, 2009. In addition, several commenters acknowledged that implementation of the alternative uptick rule will likely be less costly, without referencing the sequencing issue. *See, e.g.,* letter from William E. McDonnell, Jr., Chief Compliance Officer, Atherton Lane Advisers, LLC, dated Sept. 9, 2009; letter from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., dated Sept. 21, 2009.

9 *See, e.g.,* letter from Daniel Mathisson, Managing Director, Credit Suisse Securities (USA), LLC, dated June 16, 2009 ("Credit Suisse (June 2009)"); letter from Paul M. Russo, Managing Director and Head of U.S. Equity Trading, Goldman, Sachs & Co., dated June 19, 2009 ("Goldman Sachs (June 2009)"); letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, dated June 19, 2009 ("SIFMA (June 2009)"); letter from Glen Shipway (Sept. 2009); letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, dated Sept. 21, 2009 ("SIFMA (Sept. 2009)"). In addition, one commenter acknowledged that implementation of the alternative uptick rule will likely be easier, without referencing the sequencing issue. *See* letter from William Connell, President and CEO, Allston Trading, LLC, dated Sept. 21, 2009.

10 *See, e.g.,* letter from BATS (May 2009); letter from Goldman Sachs (June 2009); letter from Glen Shipway (Sept. 2009); letter from ICI (Sept. 2009); *see also* letter from National Stock Exchange, NYSE Euronext, Nasdaq OMX Group, and BATS, dated Mar. 24, 2009.

11 Letter from BATS (Sept. 2009).

12 *See, e.g.,* letter from Vincent Florack and Steve Crutchfield, Matlock Capital LLC, dated Sept. 18, 2009 ("Matlock Capital (Sept. 2009)"); letter from Janet M. Kissane, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, dated Sept. 21, 2009 ("NYSE Euronext (Sept. 2009)"); letter from RBC (Sept. 2009); letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated Sept. 22, 2009 ("Knight Capital (Sept. 2009)").

13 *See, e.g.,* letter from NYSE Euronext (Sept. 2009) (stating that implementation of the alternative uptick rule would be more difficult on the basis that the alternative uptick rule would be paired with a circuit breaker and attributing implementation difficulties to the circuit breaker approach, not the alternative uptick rule); letter from RBC (Sept. 2009) (expressing concern about the implementation cost of any short sale price test restriction in general).

difficulties.[14] Additionally, one commenter did not provide the reasoning for its belief that the alternative uptick rule would not be easier or less costly to implement.[15]

Several commenters indicated that their belief that other commenters' estimates regarding the difficulty or costs of implementing and monitoring the proposed modified uptick rule and the proposed uptick rule were exaggerated.[16] We recognize that some commenters' estimates of the costs of the proposed modified uptick rule or the proposed uptick rule may have been conservative. We also believe that because the alternative uptick rule does not include a sequencing requirement, the implementation and on-going monitoring and surveillance costs of the alternative uptick rule will be less than such costs would be with respect to the other proposed short sale price test restrictions.

In addition, as noted in the Proposal, while we have based our burden estimates, in part, on the burden estimates provided in connection with the adoption of Regulation NMS,[17] we believe that these estimates may be on the high end because trading centers have already had to establish policies and procedures in connection with that Regulation's Order Protection Rule, which could help form the basis for the policies and procedures for Rule 201. Several commenters agreed, stating that previous experience with the policies and procedures required under Regulation NMS might reduce the implementation and on-going monitoring and compliance burdens on trading centers.[18] In contrast, some commenters indicated that the Commission overstated the benefit of such previous experience,[19] because, for example, "systems re-written and architected for Reg NMS … did not include any short sale restrictions,"[20] or because such systems will require modifications in order to be used in the context of a short sale price test restriction.[21] However, we considered these issues when considering the impact of previous experience with the policies and procedures requirement of

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14 *See, e.g.*, letter from Knight Capital (Sept. 2009) (characterizing a potential increase in friction, confusion, or inefficiency in the market as an implementation difficulty that may arise from the alternative uptick rule).

15 *See* letter from Matlock Capital (Sept. 2009).

16 *See, e.g.*, letter from Matlock Capital (Sept. 2009); letter from Michael J. Simon, Secretary, International Securities Exchange LLC, dated Sept. 21, 2009; letter from Michael R. Trocchio, Esq. on behalf of Bingham McCutchen, LLP, dated Sept. 30, 2009.

17 *See* Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37503 (June 29, 2005) ("Regulation NMS Adopting Release"); *see also* Proposal, 74 FR at 18087.

18 *See, e.g.*, letter from EWT (Sept. 2009); letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, dated Oct. 1, 2009 ("MFA (Oct. 2009)").

19 *See, e.g.*, letter from Manisha Kimmel, Executive Director, Financial Information Forum, dated June 19, 2009 ("FIF (June 2009)"); letter from Joan Hinchman, Executive Director, President and CEO, National Society of Compliance Professionals Inc., dated June 19, 2009 ("NSCP"); letter from RBC (June 2009).

20 Letter from FIF (June 2009); *see also* letter from RBC (June 2009).

21 *See* letter from NSCP; letter from RBC (June 2009).

Regulation NMS's Order Protection Rule. We continue to believe that because most trading centers already have in place systems and written policies and procedures to comply with Regulation NMS's Order Protection Rule, most trading centers will already be familiar with establishing, maintaining, and enforcing trading-related policies and procedures, which will mitigate the burden of implementation of the policies and procedures requirement under Rule 201. We realize, however, that the exact nature and extent of the policies and procedures that a trading center is required to establish likely will vary depending upon the type, size, and nature of the trading center. Thus, our estimates take into account different types of trading centers and we realize that these estimates may be on the low-end for some trading centers while they may be on the high-end for other trading centers.

We considered whether our estimates of the burdens associated with the collection of information requirements for trading centers with respect to the proposed modified uptick rule included in the Proposal[22] would change under the circuit breaker approach of Rule 201, but, as discussed below, concluded that these estimates continue to represent reasonable estimates under the circuit breaker approach in combination with the alternative uptick rule.

Despite some commenters' concerns regarding the implementation costs of a circuit breaker rule,[23] we believe that the circuit breaker approach will result in largely the same implementation costs as we estimated would be incurred if we adopted a permanent, market-wide short sale price test restriction.[24] As one commenter stated "[o]nce the price test is in place, there is minimal incremental effort required to add a Circuit Breaker that controls the application of the price test."[25] Similarly, another commenter stated that "[t]he additional coding required to implement a circuit breaker is minimal…"[26] We believe that there will be only minimal, if any, implementation costs for a circuit breaker approach in addition to the costs we estimated previously for the implementation of a permanent, market-wide short sale price test rule because trading centers would need to establish written policies and procedures to implement the short sale price test restriction regardless of whether the short sale price test restriction is adopted on a permanent, market-wide basis or, in the case of Rule 201, adopted in conjunction with a circuit breaker.

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22 *See* Proposal, 74 FR at 18087.

23 *See, e.g.*, letter from Michael Gitlin, Head of Global Trading, David Oestreicher, Chief Legal Counsel, Christopher P. Hayes, Sr. Legal Counsel, T. Rowe Price Associates, Inc., dated June 18, 2009; letter from Glen Shipway, dated June 19, 2009 ("Glen Shipway (June 2009)"); *see also* letter from STANY (June 2009) (stating that costs savings of a circuit breaker approach would be reduced if the circuit breaker triggered a short sale price test restriction); letter from NYSE Euronext (Sept. 2009) (stating that "a circuit breaker approach raises significant implementation complexities"); letter from SIFMA (June 2009) (including a survey reflecting implementation costs of a circuit breaker triggering a short sale price test based on the national best bid). We note that one commenter indicated that adoption of a circuit breaker approach would add approximately four to six weeks to the implementation time of the alternative uptick rule. *See* letter from Eric W. Hess, General Counsel, Direct Edge Holdings LLC, dated Sept. 21, 2009.

24 *See* Proposal, 74 FR at 18087.

25 Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, The Nasdaq OMX Group, Inc., dated Oct. 7, 2009 ("Nasdaq OMX Group (Oct. 2009)").

26 Letter from Daniel Mathisson, Managing Director, Credit Suisse Securities (USA), LLC, dated Sept. 21, 2009 ("Credit Suisse (Sept. 2009)").

Several other commenters agreed, stating that the costs of the circuit breaker approach would be similar to, or only incrementally higher than, the costs of a permanent, market-wide approach.[27]

In addition, with respect to on-going monitoring and surveillance costs of the circuit breaker approach, we recognize, as noted by one commenter,[28] that trading centers will need to continuously monitor whether a security is subject to the provisions of Rule 201 and that there will be costs associated with such monitoring. However, we believe that these costs will be offset because, under the circuit breaker approach, the alternative uptick rule is time limited and will only apply on a stock by stock basis, which will reduce our previously estimated costs for on-going monitoring and surveillance. This is because trading centers only need to monitor and surveil for compliance with the alternative uptick rule during the limited period of time that the circuit breaker is in effect with respect to a specific security. As such, the circuit breaker approach will allow regulatory, supervisory and compliance resources to focus on, and to address, those situations where a specific security is experiencing significant downward price pressure. As noted by one commenter, a circuit breaker "is particularly efficient in stable and rising markets because it avoids imposing continuous monitoring and compliance costs where there is little or no corresponding risk of abusive short selling."[29]

Further, although, under the circuit breaker approach, market participants will need to monitor whether a stock is subject to Rule 201, we believe that familiarity with a circuit breaker approach may help mitigate such compliance costs. As discussed in the Proposal, currently, all stock exchanges and FINRA have rules or policies to implement coordinated circuit breaker halts.[30] Moreover, SROs have rules or policies in place to coordinate individual security trading halts corresponding to significant news events.[31]

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27 *See, e.g.*, letter from Peter J. Driscoll, Chairman, John C. Giesea, President and CEO, Security Traders Association, dated June 19, 2009 ("STA (June 2009)").

28 *See* letter from Glen Shipway (June 2009).

29 Letter from Nasdaq OMX Group (Oct. 2009); *see also* letter from SIFMA (Sept. 2009).

30 *See* Proposal, 74 FR at 18065-18066. To protect investors and the markets, the Commission has approved proposals to restrict or halt trading if key market indexes fall by specified amounts. Currently, all stock exchanges and FINRA have rules or policies to implement coordinated circuit breaker halts. *See* Exchange Act Release No. 39846 (Apr. 9, 1998), 63 FR 18477 (Apr. 15, 1998); *see also* NYSE Rule 80B. The circuit breaker procedures call for cross-market trading halts when the Dow Jones Industrial Average declines by 10%, 20%, and 30% from the previous day's closing value. *See, e.g.*, BATS Exchange Rule 11.18. The options markets also have rules applying circuit breakers. *See* Amex Rule 950 (applying Amex Rule 117, Trading Halts Due to Extraordinary Market Volatility, to options transactions); CBOE Rule 6.3B; ISE Rule 703; NYSE Arca Options Rule 7.5; and Phlx Rule 133. The futures exchanges that trade index futures contracts have adopted circuit breaker halt procedures in conjunction with their price limit rules for index products. *See, e.g.*, CME Rule 35102.I. The CME will implement a trading halt on S&P 500 Index futures contracts if a NYSE Rule 80B trading halt is imposed in the primary securities market. Trading of S&P 500 Index futures contracts will resume upon lifting of the NYSE Rule 80B trading halt. Finally, security futures products are required to have cross-market circuit breaker regulatory halt procedures in place. *See* Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

31 *See, e.g.*, FINRA Rule 6120; *see also* Proposal, 74 FR at 18065-18066 (discussing the background on circuit breakers).

On balance, we believe that the estimates of the burdens associated with the collection of information requirements for trading centers included in the Proposal[32] are appropriate with respect to Rule 201.

ii. Policies and Procedures Requirements under the Broker-Dealer and Riskless Principal Provisions

In the Proposal, we provided estimates of the reporting and recordkeeping burdens for broker-dealers to implement, monitor and surveil on an on-going basis the policies and procedures required to rely on the broker-dealer provision of Rule 201(c) or the riskless principal provision under Rule 201(d)(6).[33] We also requested comment, in the Proposal and the Re-Opening Release, as to whether the proposed burden estimates were appropriate or whether such estimates should be increased or reduced, and if so, for which entities and by how much.[34] The following discussion of comments on the proposed burden estimates for broker-dealers includes comments that were discussed above with respect to the burden estimates for trading centers[35] because, in some cases, commenters provided comments and estimates on the costs of establishing and monitoring policies and procedures under the proposed short sale price tests without distinguishing between costs that would be applicable to trading centers as opposed to broker-dealers.

One commenter provided a cost estimate, including costs for "development man-hours" of $500,000 per firm for implementation of Rule 201 by broker-dealers.[36] One commenter stated that a new short sale price test restriction would involve "significant implementation costs" and "the generation and retention of voluminous compliance reports" but did not provide a specific estimate of the cost or hours that would be involved.[37] Several commenters expressed general concerns regarding the time and cost that would be imposed on market participants for implementation and on-going monitoring and surveillance of a new short sale price test restriction, including a policies and procedures requirement but did not provide specific estimates of such time and cost.[38]

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32 *See* Proposal, 74 FR at 18087.

33 *See* Proposal, 74 FR at 18088-18089.

34 *See* Proposal, 74 FR at 18089; Re-Opening Release, 74 FR at 42036.

35 *See supra* Section A.8.i. (discussing comments on the reporting and recordkeeping burdens for trading centers).

36 Letter from Wolverine. Wolverine provided an estimate of $500,000 per firm for implementation costs, which it applied to both non-SRO trading centers and other registered broker-dealers.

37 Letter from EWT (Sept. 2009). EWT also did not specify whether this comment on our estimated annual reporting and recordkeeping burdens with respect to provisions of the proposed rules that would require a new "collection of information" was specific to the provisions applicable to trading centers or to the provisions applicable to broker-dealers.

38 *See, e.g.*, letter from RBC (June 2009); letter from STANY (June 2009); letter from CPIC (June 2009); letter from EWT (Sept. 2009); letter from RBC (Sept. 2009). We received time estimates only with respect to the Commission's proposed implementation time and did not receive comments regarding estimated PRA

In addition, several commenters noted that implementation and on-going monitoring and surveillance of the requirements of the broker-dealer provision would impose significant costs on broker-dealers, but did not provide an estimate of such costs.[39] Several commenters stated that the costs of the broker-dealer provision could be particularly burdensome for smaller broker-dealers, but did not provide a time or cost estimate of such burdens.[40]

We considered these comments in reviewing the burden estimates for broker-dealers that we proposed with respect to the collection of information requirements in Rule 201. We believe that the cost and time required for implementation and on-going monitoring and surveillance of the policies and procedures required to rely on the broker-dealer provision of Rule 201(c) will be lower than some commenters' stated estimates[41] because the alternative uptick rule references only the current national best bid, unlike the proposed modified uptick rule and the proposed uptick rule, which would have required sequencing of the national best bid or last sale price.[42] Because the alternative uptick rule does not require sequencing of the national best bid, we believe that the policies and procedures required in order to rely on the broker-dealer provision under the alternative uptick rule, which are similar to those required for non-SRO trading centers in complying with paragraph (b) of Rule 201, will be easier and less costly to implement and monitor than would be the case under the proposed modified uptick rule or the proposed uptick rule.[43] We note that one of the commenters that expressed concerns about the implementation

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burden hours. These commenters' concerns regarding implementation costs either were expressed with respect to market participants generally or included references to obligations that would be imposed on, or changes that would have to be made by, broker-dealers.

39 *See, e.g.*, letter from Credit Suisse (June 2009); letter from FIF (June 2009); letter from Jeffrey S. Wecker, CEO, Lime Brokerage LLC, dated June 19, 2009 ("Lime Brokerage (June 2009)"); letter from NSCP; letter from STANY (June 2009); letter from EWT (Sept. 2009).

40 *See, e.g.*, letter from Credit Suisse (June 2009); letter from NSCP; letter from Rory O'Kane, President, TD Professional Execution, Inc, dated June 19, 2009 ("T.D. Pro Ex"). We received time estimates on the Commission's proposed implementation time, but did not receive comments with respect to the estimated PRA burden hours.

41 We received comments expressing concerns about the implementation and on-going monitoring and compliance costs to broker-dealers of a short sale price test restriction that were not specific to the alternative uptick rule. *See, e.g.*, letter from Credit Suisse (June 2009); letter from RBC (June 2009); letter from STANY (June 2009); letter from CPIC (June 2009); letter from Wolverine; letter from T.D. Pro Ex; letter from FIF (June 2009); letter from Lime Brokerage (June 2009); letter from NSCP.

42 We also note that it is possible that some smaller broker-dealers that determine to rely on the broker-dealer provision may determine that it is cost-effective for them to outsource certain functions necessary to comply with Rule 201(c) to larger broker-dealers, rather than performing such functions in house, to remain competitive in the market. This may help mitigate costs associated with implementing and complying with Rule 201(c). Additionally, they may decide to purchase order management software from technology firms. Order management software providers may integrate changes imposed by Rules 201 and 200(g) into their products, thereby providing another cost-effective way for smaller broker-dealers to comply with the requirement of Rule 201(c).

43 *See supra* notes Error: Reference source not found to Error: Reference source not found and accompanying text (discussing comments on the impact of the alternative uptick rule on implementation and on-going monitoring and compliance costs).

cost of the broker-dealer provision also acknowledged that a rule "that would not require data centralization and sequencing would be significantly less complex and faster to implement."[44]

We disagree with several commenters who stated that, although implementation and on-going monitoring and surveillance of the alternative uptick rule might be easier and/or less costly for trading centers, this would not hold true for broker-dealers.[45] One of these commenters stated that "in order to avoid rejection of short sale orders under an alternative uptick rule, programming would need to be implemented to anticipate changes in the national best bid between the time a short sale order is entered and the time it reaches the relevant market center."[46] However, the broker-dealer provision of Rule 201(c) is designed specifically to help avoid this result. Under the broker-dealer provision, a broker-dealer may, in accordance with the policies and procedures required by the provision, identify the order as being at a price that is above the current national best bid at the time the order is submitted to the trading center and mark the order "short exempt." Trading centers are required to have written policies and procedures in place to permit the execution or display of a short sale order of a covered security marked "short exempt" without regard to whether the order is at a price that is less than or equal to the current national best bid.[47]

In addition, as noted in the Proposal, while we have based our burden estimates on the burden estimates provided in connection with the adoption of Regulation NMS with respect to non-SRO trading centers (which includes broker-dealers),[48] we note that these estimates may be on the high end for those broker-dealers that have already had to establish policies and procedures in connection with that Regulation's Order Protection Rule, which could help form the basis for the policies and procedures for the broker-dealer provision of Rule 201(c), or the riskless principal provision under Rule 201(d)(6). Several commenters agreed, indicating that broker-dealers' previous experience with the policies and procedures required under Regulation NMS might reduce the implementation and on-going monitoring and compliance burdens on broker-dealers.[49] Some commenters stated that the Commission overstated the benefit of such previous experience[50] because, for example, "systems re-written and architected for Reg NMS … did not include any short sale restrictions,"[51] or because such systems will require modifications

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44 Letter from Credit Suisse (June 2009).

45 *See, e.g.,* letter from John Nagel, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., John Liftin, Managing Director and General Counsel, The D.E. Shaw Group, Mark Silber, Executive Vice President, Renaissance Technologies, dated Sept. 21, 2009 ("Citadel *et al*. (Sept. 2009)"); letter from EWT (Sept. 2009); letter from Jeffrey S. Wecker, CEO, Lime Brokerage LLC, dated Sept. 21, 2009.

46 Letter from Citadel *et al*. (Sept. 2009).

47 *See* Rule 201(b)(1)(iii).

48 *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* Proposal, 74 FR at 18087.

49 *See, e.g.,* letter from EWT (Sept. 2009); letter from MFA (Oct. 2009).

50 *See, e.g.,* letter from FIF (June 2009); letter from NSCP; letter from RBC (June 2009).

in order to be used in the context of a short sale price test restriction.[52] However, we considered these issues when considering the impact of previous experience with the policies and procedures requirement of Regulation NMS's Order Protection Rule. We continue to believe that because broker-dealers may already have in place systems and written policies and procedures in connection with Regulation NMS's Order Protection Rule, those broker-dealers will already be familiar with establishing, maintaining, and enforcing trading-related policies and procedures, which will mitigate the burden of implementation of the policies and procedures requirement under the broker-dealer provision of Rule 201(c), or the riskless principal provision under Rule 201(d)(6). We realize, however, that the exact nature and extent of the policies and procedures that a broker-dealer must establish likely will vary depending upon the type, size, and nature of the broker-dealer. Thus, our estimates take into account different types of broker-dealers and we realize that these estimates may be on the low-end for some broker-dealers while they may be on the high-end for other broker-dealers.

We considered whether our estimates of the burdens associated with the collection of information requirements for broker-dealers with respect to the proposed modified uptick rule included in the Proposal[53] would change under the circuit breaker approach of Rule 201, but concluded, as discussed below, that these estimates continue to represent reasonable estimates under the circuit breaker approach.

As discussed previously,[54] despite some commenters' concerns regarding the implementation costs of a circuit breaker rule, we believe that the circuit breaker approach will result in largely the same implementation costs as we estimated would be incurred if we adopted a permanent, market-wide short sale price test restriction.[55] We believe that that there will be only minimal, if any, implementation costs for a circuit breaker approach in addition to the costs we estimated previously for the implementation of a permanent, market-wide short sale price test rule because broker-dealers relying on Rule 201(c) or Rule 201(d)(6) must establish written policies and procedures required to comply with those provisions regardless of whether the short sale price test restriction is adopted on a permanent, market-wide basis or, in the case of Rule 201, adopted in conjunction with a circuit breaker. Several other commenters agreed, stating that the costs of the circuit breaker approach would be similar to, or only incrementally higher than, the costs of a permanent, market-wide approach.[56]

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51 Letter from FIF (June 2009); *see also* letter from RBC (June 2009).

52 *See* letter from NSCP; letter from RBC (June 2009).

53 *See* Proposal, 74 FR at 18088-18089.

54 *See supra* Section A.8.i. (discussing comments on the estimated burdens of the collection of information requirements applicable to trading centers under Rule 201).

55 *See* Proposal, 74 FR at 18088.

56 *See, e.g.*, letter from Nasdaq OMX Group (Oct. 2009); letter from Credit Suisse (Sept. 2009); letter from STA (June 2009).

In addition, with respect to on-going monitoring and surveillance costs of the circuit breaker approach, we recognize, as noted by one commenter,[57] that broker-dealers relying on Rule 201(c) or Rule 201(d)(6) must continuously monitor whether a security is subject to the provisions of Rule 201 and that there will be costs associated with such monitoring. However, we believe that these costs will be offset because, under the circuit breaker approach, the alternative uptick rule is time limited and will only apply on a stock by stock basis, which will reduce our previously estimated costs for on-going monitoring and surveillance. This is because broker-dealers relying on Rule 201(c) will only need to monitor and surveil for compliance with the alternative uptick rule, and broker-dealers relying on Rule 201(d)(6) will only need to monitor for compliance with the requirements of that provision, during the limited period of time that the circuit breaker is in effect with respect to a specific security. As such, the circuit breaker approach will allow regulatory, supervisory and compliance resources to focus on, and to address, those situations where a specific security is experiencing significant downward price pressure.[58]

On balance, we believe that the estimates of the burdens associated with the collection of information requirements for broker-dealers included in the Proposal[59] are appropriate with respect to Rule 201.

iii. Marking Requirements

In the Proposal, we provided estimates of the reporting and recordkeeping burdens for the "short exempt" marking requirement. We also requested comment, in the Proposal and Re-Opening Release, on the accuracy of such estimates.[60]

Several commenters noted that the "short exempt" marking requirement would impose significant implementation costs, but did not provide a specific estimate of such costs.[61] One commenter stated that costs of the "short exempt" marking requirement would be worth the benefits gained.[62] We considered these comments in reviewing the burden estimates of the "short exempt" marking requirement of Rule 200(g).

We also considered whether our estimates of the burdens associated with the collection of information requirements for broker-dealers with respect to the amendments to Rule 200(g) in conjunction with the proposed modified uptick rule included in the Proposal[63] would change

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57 *See* letter from Glen Shipway (June 2009).

58 *See, e.g.,* letter from Nasdaq OMX Group (Oct. 2009); letter from SIFMA (Sept. 2009).

59 *See* Proposal, 74 FR at 18088-18089.

60 *See* Proposal, 74 FR at 18089; Re-Opening Release, 74 FR at 42036.

61 *See, e.g.,* letter from FIF (June 2009); letter from NSCP; letter from RBC (June 2009).

62 *See* letter from STA (June 2009).

63 *See* Proposal, 74 FR at 18089.

under the circuit breaker approach of Rule 201, but concluded, as discussed below, that these estimates continue to represent reasonable estimates under the circuit breaker approach.

We believe that the "short exempt" marking requirements of Rule 200(g), in conjunction with a circuit breaker approach, will result in largely the same implementation costs as would be incurred if the "short exempt" marking requirements were combined with a market-wide short sale price test restriction. This is because broker-dealers relying on the provisions of Rule 201(c) or Rule 201(d) would need to make systems changes to implement the "short exempt" marking requirements regardless of whether the short sale price test restriction is adopted on a permanent, market-wide basis or, in the case of Rule 201, adopted in conjunction with a circuit breaker.

In addition, with respect to on-going monitoring and surveillance costs of the "short exempt" marking requirements in conjunction with a circuit breaker approach, we recognize, as noted by one commenter,[64] that market participants will need to continuously monitor whether a security is subject to the provisions of Rule 201 and that there will be costs associated with such monitoring. However, we believe that these costs will be offset because, under the circuit breaker approach, use of the "short exempt" provisions of Rule 201(c) and Rule 201(d) and the related marking requirements are time limited and will only apply on a stock by stock basis, which will reduce our previously estimated costs for on-going monitoring and surveillance. This is because broker-dealers who choose to rely on Rule 201(c) or Rule 201(d) will only need to monitor and surveil for compliance with the requirements of those provisions and will only need to mark qualifying orders "short exempt" during the limited period of time that the circuit breaker is in effect with respect to a specific security. As such, the circuit breaker approach will allow regulatory, supervisory and compliance resources to focus on, and to address, those situations where a specific security is experiencing significant downward price pressure.[65]

On balance, we believe our proposed estimates of the burdens associated with the collection of information requirements of the "short exempt" marking requirement[66] are appropriate with respect to Rule 200(g) as adopted.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

No assurances of confidentiality are provided in the statute or the Rules.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required under the Rules.

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64 *See* letter from Glen Shipway (June 2009).

65 *See, e.g.,* letter from Nasdaq OMX Group (Oct. 2009); letter from SIFMA (Sept. 2009).

66 *See* Proposal, 74 FR at 18089.

12. Estimate of Respondent Reporting Burden

i. Policies and Procedures Requirement under Rule 201

Rule 201 requires each trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid during the period when the circuit breaker is in effect. Thus, trading centers must develop written policies and procedures reasonably designed to permit the trading center to be able to obtain information from the single plan processor regarding whether a covered security is subject to the short sale price test restriction of Rule 201; if the covered security is subject to the short sale price test restriction of Rule 201, to determine whether or not the short sale order is priced in accordance with the provisions of Rule 201(b); and to recognize when an order is marked "short exempt" such that the trading center's policies and procedures do not prevent the execution or display of such orders at a price that is less than or equal to the current national best bid, even if the covered security is subject to the short sale price test restriction of Rule 201.

A "trading center" is defined, under Rule 201(a)(9), as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." Because Rule 201 applies to any trading center that executes or displays a short sale order in a covered security, the Rule applies to 10 registered national securities exchanges that trade covered securities (or "SRO trading centers"),[67] and approximately 407 broker-dealers (including alternative trading systems ("ATSs")) registered with the Commission (or "non-SRO trading centers").[68]

Our estimates of the burdens associated with the collection of information requirements for trading centers have not changed from the Proposal, except to the extent that total burden estimates have changed because we have updated the estimated number of trading centers.[69]

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67 Currently, there are 10 national securities exchanges (BX, BATS, CBOE, CHX, ISE, NASDAQ, NSX, NYSE, NYSE Amex, and NYSE Arca) that operate an SRO trading facility for covered securities and thus will be subject to the Rule. We previously indicated that one national securities association (FINRA) would also be subject to the Rule. *See* Proposal, 74 FR at 18086, n.334. However, FINRA operates an SRO display-only facility for covered securities, rather than an SRO trading facility, and thus is not subject to the Rule.

68 This number includes the approximately 357 firms that were registered equity market makers or specialists at year-end 2008 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as the 50 ATSs that operate trading systems that trade covered securities. The Commission believes it is reasonable to estimate that in general, firms that are block positioners - *i.e.*, firms that are in the business of executing orders internally - are the same firms that are registered market makers (for instance, they may be registered as a market maker in one or more Nasdaq stocks and carry on a block positioner business in exchange-listed stocks), especially given the amount of capital necessary to carry on such a business.

69 The Proposal indicated that there were approximately 372 non-SRO trading centers, including approximately 325 firms that were registered equity market makers or specialists at year-end 2007 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as 47 ATSs that operate trading systems that trade NMS stocks. *See* Proposal, 74 FR at 18086. We now estimate that there are approximately 407 non-SRO trading centers, including approximately 357 firms that were registered

Although the exact nature and extent of the policies and procedures that a trading center must establish likely will vary depending upon the nature of the trading center (*e.g.*, SRO vs. non-SRO, full service broker-dealer vs. market maker), we estimate that it initially will, on average, take an SRO trading center approximately 220 hours[70] of legal, compliance, information technology and business operations personnel time,[71] and a non-SRO trading center approximately 160 hours[72] of legal, compliance, information technology and business operations personnel time,[73] to develop the required policies and procedures. Based on these figures, we estimate that it will require a total of 2,200 hours[74] for SRO trading centers to establish the required written policies and procedures, and a total of 65,120 hours[75] for non-SRO trading centers to establish the required written policies and procedures. Thus, we estimate a total of 67,320 burden hours for all trading centers to establish the required written policies and procedures.

Although the exact nature and extent of the policies and procedures that a trading center must establish likely will vary depending upon the nature of the trading center (*e.g.*, SRO vs. non-SRO, full service broker-dealer vs. market maker), we estimate that, on average, it will take

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equity market makers or specialists at year-end 2008 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as 50 ATSs that operate trading systems that trade covered securities. *See supra* note Error: Reference source not found. We also note that the number of SRO trading centers has changed from 11 in the Proposal to 10. *See supra* note Error: Reference source not found.

70 We are basing our estimates on the burden hour estimates provided in connection with the adoption of Regulation NMS because the policies and procedures developed in connection with that Regulation's Order Protection Rule are in many ways similar to what a trading center will need to do to comply with Rule 201. *See* Regulation NMS Adopting Release 70 FR 37496; *see also* Proposal, 74 FR at 18087. We note, however, that these estimates may be on the high end because trading centers have already had to establish similar policies and procedures to comply with Regulation NMS.

71 Based on experience and estimates provided in connection with Regulation NMS, we anticipate that of the 220 hours we estimate will be spent to establish the required policies and procedures, 70 hours will be spent by legal personnel, 105 hours will be spent by compliance personnel, 20 hours will be spent by information technology personnel and 25 hours will be spent by business operations personnel of the SRO trading center.

72 We are basing our estimates on the burden hour estimates provided in connection with the adoption of Regulation NMS because the policies and procedures developed in connection with that Regulation's Order Protection Rule are in many ways similar to what a trading center will need to do to comply with the Rule 201. *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* Proposal, 74 FR at 18087. We note, however, that these estimates may be on the high end because trading centers have already had to establish similar policies and procedures to comply with Regulation NMS.

73 Based on experience and the estimates provided in connection with Regulation NMS, we anticipate that of the 160 hours we estimate will be spent to establish policies and procedures, 37 hours will be spent by legal personnel, 77 hours will be spent by compliance personnel, 23 hours will be spent by information technology personnel and 23 hours will be spent by business operations personnel of the non-SRO trading center.

74 The estimated 2,200 burden hours necessary for SRO trading centers to establish policies and procedures are calculated by multiplying 10 times 220 hours (10 x 220 hours = 2,200 hours).

75 The estimated 65,120 burden hours necessary for non-SRO trading centers to establish policies and procedures are calculated by multiplying 407 times 160 hours (407 x 160 hours = 65,120 hours).

an SRO and non-SRO trading center each approximately two hours per month of on-going internal legal time and three hours of on-going internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with the amendments to Rule 201, or a total of 60 hours annually per respondent.[76] In addition, we estimate that, on average, it will take an SRO and non-SRO trading center each approximately 16 hours per month of on-going compliance time, 8 hours per month of on-going information technology time, and 4 hours per month of on-going legal time associated with on-going monitoring and surveillance for and enforcement of trading in compliance with Rule 201, or a total of 336 hours annually per respondent.[77] Thus, we estimate a total of 165,132 annual burden hours for all trading centers to ensure that their written policies and procedures are up-to-date and remain in compliance with the amendments to Rule 201 and for on-going monitoring and surveillance for and enforcement of trading in compliance with Rule 201.[78]

ii. Policies and Procedures Requirements under the Broker-Dealer and Riskless Principal Provisions

To rely on the broker-dealer provision of Rule 201(c), a broker-dealer marking a short sale order in a covered security "short exempt" under Rule 201(c) must identify the order as being at a price above the current national best bid at the time of submission to the trading center and must establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the incorrect identification of orders as being submitted to the trading center at a permissible price. At a minimum, the broker-dealer's policies and procedures must be reasonably designed to enable a broker-dealer to monitor, on a real-time basis, the national best bid so as to determine the price at which the broker-dealer may submit a short sale order to a trading center in compliance with the requirements of Rule 201(c). In addition, a broker-dealer must take such steps as necessary to enable it to enforce its policies and procedures effectively.

To rely on the riskless principal provision under Rule 201(d)(6), a broker-dealer must have written policies and procedures in place to assure that, at a minimum: (i) the customer order was received prior to the offsetting transaction; (ii) the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and (iii) that it has supervisory systems in place to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which the broker-dealer relies pursuant to this provision.

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[76] This figure was calculated as follows: (2 legal hours x 12 months) + (3 compliance hours x 12 months) = 60 hours annually per respondent. As discussed above, this burden estimate of 60 hours is based on experience and what was estimated for Regulation NMS to ensure that written policies and procedures were up-to-date and remained in compliance. *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* Proposal, 74 FR at 18087.

[77] This figure was calculated as follows: (16 compliance hours x 12 months) + (8 information technology hours x 12 months) + (4 legal hours x 12 months) = 336 hours annually per respondent. As discussed above, this burden estimate of 336 hours is based on experience and what was estimated for Regulation NMS regarding similarly required on-going monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

[78] This figure was calculated as follows: (60 hours x 417 respondents) + (336 hours x 417 respondents) = 165,132 hours annually for all respondents.

Our estimates of the burdens associated with the collection of information requirements for broker-dealers have not changed from the Proposal, except to the extent that total burden estimates have changed because we have updated the estimated number of broker-dealers.[79]

While not all broker-dealers likely will enter sell orders in securities covered by the amendments to Rules 201 and 200(g) in a manner that will subject them to this collection of information, we estimate, for purposes of the PRA, that all of the approximately 5,178 registered broker-dealers will do so. For purposes of the PRA, the Commission staff has estimated that a total of approximately 12.9 billion "short exempt" orders are entered annually.[80]

Although the exact nature and extent of the required policies and procedures that a broker-dealer must establish under the broker-dealer or the riskless principal provisions likely will vary depending upon the nature of the broker-dealer (*e.g.*, full service broker-dealer vs. market maker), we estimate that it initially will, on average, take a broker-dealer approximately 160 hours[81] of legal, compliance, information technology and business operations personnel time,[82] to develop the required policies and procedures. We estimate that there will be a total initial one-time burden of 828,480 hours for all broker-dealers[83] to establish policies and

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79 The Proposal indicated that there were approximately 5,561 broker-dealers. This number was based on a review of 2007 FOCUS Report filings reflecting registered broker-dealers, including introducing broker-dealers. This number did not include broker-dealers that were delinquent on FOCUS Report filings. *See* Proposal, 74 FR at 18086. We now estimate that there are approximately 5,178 broker-dealers. This number is based on a review of 2008 FOCUS Report filings reflecting registered broker-dealers, including introducing broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

80 As we stated in the Proposal, our estimate of 12.9 billion "short exempt" orders was calculated based on a review of short sale trades and short sale orders during August 2008. We believe that August 2008 data is representative of a normal month of trading. Specifically, we calculated that there were about 263 million short sale trades during August 2008 for Amex, FINRA, Nasdaq, NYSE Arca, and NYSE market centers. Based on a review of Rule 605 reports from the three largest market centers during August 2008, we estimate a ratio of 14.4 orders to trades. We gross up 263 million short sale trades by 14.4, which yields 3.8 billion short sale orders during August 2008 or an annualized figure of 45.4 billion. We estimate that approximately 28.5% of short sale orders are short exempt using Nasdaq short sale data from January to April 2005. We multiply 45.4 billion times 0.285 to obtain our estimate of 12.9 billion short exempt orders. *See* Proposal, 74 FR at 18089. We also note that, because the circuit breaker rule will not be in place at all times or for all securities, the frequency and, therefore, the estimated burden of marking "short exempt" is expected to be lower. We did not receive any comments on the estimated number of annual "short exempt" orders.

81 We base this estimate of 160 hours on the estimated burden hours we believe it will take a non-SRO trading center (which includes broker-dealers) to develop similarly required policies and procedures, since the policies and procedures required under the broker-dealer provision or the riskless principal exception will be similar to those required for non-SRO trading centers in complying with paragraph (b) of Rule 201. *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* Proposal, 74 FR at 18087.

82 Based on experience and the estimates provided in connection with Regulation NMS, we anticipate that of the 160 hours we estimate will be spent to establish policies and procedures, 37 hours will be spent by legal personnel, 77 hours will be spent by compliance personnel, 23 hours will be spent by information technology personnel and 23 hours will be spent by business operations personnel of the broker-dealer.

83 The estimated 828,480 burden hours necessary for a broker-dealer to establish policies and procedures are calculated by multiplying 5,178 times 160 hours (5,178 x 160 hours = 828,480 hours). *See supra* note 81.

procedures required under the broker-dealer provision in Rule 201(c) and the riskless principal provision in Rule 201(d)(6).

Although the exact nature and extent of the required policies and procedures that a broker-dealer must establish under the broker-dealer or the riskless principal provisions likely will vary depending upon the nature of the broker-dealer (*e.g.*, full service broker-dealer vs. market maker), we estimate that it will take, on average, a broker-dealer approximately two hours per month of internal legal time and three hours of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 201(c) or 201(d)(6), or a total of 60 hours annually per respondent.[84] In addition, we estimate that, on average, it will take a broker-dealer approximately 16 hours per month of on-going compliance time, 8 hours per month of on-going information technology time, and 4 hours per month of on-going legal time associated with on-going monitoring and surveillance for and enforcement of trading in compliance with Rule 201, or a total of 336 hours annually per respondent.[85] Thus, we estimate a total of 2,050,488 annual burden hours for all broker-dealers to ensure that their written policies and procedures are up-to-date and remain in compliance with Rule 201(c) or 201(d)(6) and for on-going monitoring and surveillance for and enforcement of trading in compliance with Rule 201.[86]

iii. Marking Requirements

The amendments to Rule 200(g) add a new marking requirement of "short exempt." In particular, if the broker-dealer chooses to rely on its own determination that it is submitting the short sale order to the trading center at a price that is above the current national best bid at the time of submission or to rely on an exception specified in the Rule, it must mark the order as "short exempt."

Our estimates of the burdens associated with the collection of information requirements for broker-dealers in connection with the marking requirements have not changed from the Proposal, except to the extent that total burden estimates have changed because we have updated the estimated number of broker-dealers.[87]

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84 This figure was calculated as follows: (2 legal hours x 12 months) + (3 compliance hours x 12 months). As discussed above, this burden estimate of 60 hours is based on experience and what was estimated for a Regulation NMS respondent to ensure that its written policies and procedures were up-to-date and remained in compliance.

85 This figure was calculated as follows: (16 compliance hours x 12 months) + (8 information technology hours x 12 months) + (4 legal hours x 12 months) = 336 hours annually per respondent. As discussed above, this burden estimate of 336 hours is based on experience and what was estimated for Regulation NMS for similarly required on-going monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

86 This figure was calculated as follows: (60 hours x 5,178 respondents) + (336 hours x 5,178 respondents) = 2,050,488 hours annually for all respondents.

87 *See supra* note 79.

While not all broker-dealers likely will enter sell orders in securities covered by the amendments to Rules 201 and 200(g) in a manner that will subject them to this collection of information, we estimate, for purposes of the PRA, that all of the approximately 5,178 registered broker-dealers will do so. For purposes of the PRA, the Commission staff has estimated that a total of approximately 12.9 billion "short exempt" orders are entered annually.[88] This is an average of approximately 2,491,309 annual responses by each respondent.[89]

We estimate that each response of marking sell orders "short exempt" will take approximately .000139 hours (.5 seconds) to complete.[90] We believe this estimate is appropriate because, in accordance with the current marking requirements of Rule 200(g) of Regulation SHO, broker-dealers are already required to mark a sell order either "long" or "short." Thus, most broker-dealers already have the necessary mechanisms and procedures in place, are already familiar with processes and procedures to comply with the marking requirements of Rule 200(g) of Regulation SHO, and will be able to continue to use the same mechanisms, processes and procedures to comply with the amendments to Rule 200(g) and 200(g)(2). We note, however, that this estimate may be too high given technological advances, such as automation of sell order marking, since the adoption of Rule 200(g) in 2004.

Thus, our estimate for the paperwork compliance for the "short exempt" marking requirement of Rule 200(g) for each broker-dealer is approximately 346 burden hours (2,491,309 responses multiplied by 0.000139 hours/responses). The total approximate estimated annual hour burden per year is 1,793,100 burden hours (12,900,000,000 orders marked "short exempt" multiplied by 0.000139 hours/order marked "short exempt").

13. Estimate of Total Annualized Cost Burden

i. Policies and Procedures Requirement under Rule 201

We expect that SRO and non-SRO respondents will incur one-time external costs for outsourced legal services. While we recognize that the amount of legal outsourcing utilized to help establish written policies and procedures may vary widely from entity to entity, we estimate that on average, each trading center will outsource 50 hours of legal time in order to establish policies and procedures in accordance with the amendments.[91] We estimate a one-time total cost

88 *See supra* note 80.

89 This figure was calculated as follows: 12.9 billion "short exempt" orders divided by 5,178 broker-dealers.

90 This estimate is based on the same time estimate for marking sell orders "long" or "short" used upon adoption of Rule 200(g) under Regulation SHO. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48023, n.140 (Aug. 6, 2004) ("2004 Regulation SHO Adopting Release"); *see also* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, 63000, n.232 (Nov. 6, 2003).

91 As discussed above, we base our burden estimate of 50 hours of outsourced legal time on the burden estimate used for Regulation NMS because the policies and procedures developed in connection with that Regulation's Order Protection Rule are in many ways similar to what a trading center will need to do to comply with Rule 201. *See* Regulation NMS Adopting Release, 70 FR 37496.

of approximately $8,340,000, for both SRO and non-SRO trading centers resulting from outsourced legal work, or approximately $2,780,000 amortized over three years.[92]

ii. Policies and Procedures Requirements under the Broker-Dealer and Riskless Principal Provisions

In addition, we expect that broker-dealers will incur one-time external costs for outsourced legal services. While we recognize that the amount of legal outsourcing utilized to help establish written policies and procedures will vary widely from entity to entity, we estimate that on average, each broker-dealer will outsource 50 hours[93] of legal time in order to establish policies and procedures in accordance with the broker-dealer provision in Rule 201(c) and the riskless principal provision in Rule 201(d)(6). We estimate a total cost of approximately $103,560,000 for broker-dealers resulting from outsourced legal work, or approximately $34,520,000 amortized over three years.[94]

iii. Marking Requirements

We believe that the implementation cost of the "short exempt" marking requirement will likely be similar to the implementation cost of the order marking requirements of Rule 200(g) of Regulation SHO, which had originally included the category of "short exempt." Industry sources at that time estimated initial implementation costs for the former "short exempt" marking requirement to be approximately $100,000 to $125,000.[95] Based on these estimates, as adjusted for inflation, we estimate that the initial implementation cost of the "short exempt" marking requirement will be approximately $115,000 to $145,000 per broker-dealer[96] for a total initial implementation cost of approximately $595,470,000 to $750,810,000 for all broker-dealers, or approximately $198,490,000 to $250,270,000 amortized over three years.[97]

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92 This figure was calculated as follows: (50 legal hours x $400 x 10 SRO trading centers) + (50 legal hours x $400 x 407 non-SRO trading centers) = $8,340,000. $8,340,000/3 = $2,780,000. Based on industry sources, the Staff estimates that the average hourly rate for outsourced legal services in the securities industry is $400.

93 As discussed above, we base our burden estimate of 50 hours of outsourced legal time on the burden estimate used for Regulation NMS because the policies and procedures developed in connection with that Regulation's Order Protection Rule are in many ways similar to what a broker-dealer will need to do to comply with the policies and procedures required under the broker-dealer provision and the riskless principal exception of Rule 201. *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* Proposal, 74 FR at 18087.

94 This figure was calculated as follows: (50 legal hours x $400 x 5,178 broker-dealers) = $103,560,000. $103,560,000/3 = $34,520,000. Based on industry sources, we estimate that the average hourly rate for outsourced legal services in the securities industry is $400.

95 *See* 2004 Regulation SHO Adopting Release, 69 FR at 48023.

96 The adjustment for inflation was calculated using information in the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

97 These figures were calculated as follows: ($115,000 x 5,178) /3 = $198,490,000 and ($145,000 x 5,178) / 3= $250,270,000.

14. Estimate of Cost to the Federal Government

Not applicable.

15. Explanation of Changes in Burden

Not applicable.

16. Information Collections Planned for Statistical Purposes

Not applicable; there is no intention to publish the information for statistical purposes.

17. Explanation as to why Expiration Date will not be Displayed

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.