

SUPPORTING STATEMENT

for the Paperwork Reduction Act Information Collection Submission for

Rule 613

A. Justification

1. Necessity of Information Collection

The Securities and Exchange Commission (“Commission”) is adopting Rule 613 under the Securities Exchange Act of 1934 (“Exchange Act” or “Act”) to require national securities exchanges and national securities associations (“self-regulatory organizations” or “SROs”) to submit a national market system (“NMS”) plan to develop, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.

Today, SRO and Commission staffs must rely on the data provided by the separate audit trail systems that are maintained by some of the SROs, which vary in scope, required data elements and format, to exercise their regulatory responsibilities. The Commission believes that there are numerous shortcomings in the completeness, accuracy, accessibility, and timeliness of these existing audit trail systems. Some of these shortcomings are a result of the disparate nature of the systems, which make it impractical, for example, to follow orders through their entire life cycle as they may be routed, aggregated, re-routed, and disaggregated across multiple markets. Other shortcomings are a result of a functional inability to collect key information in the audit trails that would be useful for regulatory oversight, such as the identity of the customers who originate orders, or even the fact that two sets of orders may have been originated by the same customer. The Commission believes that the information contained in the proposed NMS plan required by Rule 613 will provide it and the public with detailed information regarding how the SROs propose to create, implement, and maintain a consolidated audit trail that addresses the shortcomings of the existing audit trails. The Commission believes that collecting such information through an NMS plan is an appropriate first step, given the complexity and the anticipated costs of the consolidated audit trail.

The Commission is discussing below its estimates of the burden hours associated with the development and filing of the NMS plan but, as part of the multi-step process for developing the consolidated audit trail, is deferring its discussion of the much more significant burden hours associated with the other paperwork requirements of the consolidated audit trail. The Commission believes that, because the adopted Rule provides a wider array of solutions to be considered by the SROs than the proposed Rule did, and because the Commission and the public will be able to avail themselves of much more information and analysis in connection with the NMS plan submission, a discussion

of the burden hours associated with the other paperwork requirements of the consolidated audit trail is more appropriately performed once the SROs narrow the expanded array of choices they have and develop a detailed NMS plan. At that time, the Commission will have available to it detailed information provided by the SROs, and any additional information provided by commenters once the NMS plan is published for comment. The Commission also is deferring its discussion of the ongoing burden hours associated with the NMS plan because such ongoing burdens would only be incurred if the Commission approves the NMS plan.

2. Purposes and Use of the Information Collection

The information contained in the proposed NMS plan will provide the Commission and the public with detailed information regarding how the SROs propose to create, implement and maintain a consolidated audit trail that addresses the shortcomings of the existing audit trails. The NMS plan also will contain: (1) an estimate of the costs associated with implementing the consolidated audit trail under the terms of the proposed NMS plan; (2) a discussion of the costs, benefits, and rationale for the choices made in developing the NMS plan; and (3) an analysis of the plan's potential impact on competition, efficiency and capital formation. This information would help the Commission and the public carefully consider all aspects of the NMS plan submitted to the Commission for its consideration. Further, the information contained in the NMS plan should facilitate an analysis of how well the NMS plan will allow regulators to effectively and efficiently carry out their responsibilities.

3. Consideration Given to Information Technology

The Rule requires the preparation and submission of an NMS plan to require the creation of an electronic audit trail record or report for orders in NMS securities. The Commission does not believe that improvements in information technology would have any impact on the burdens associated with the preparation of the NMS plan, nor that any obstacles exist to reducing such burdens.

The Commission notes that the Rule permits the SROs to consider a wider array of solutions than permitted by the proposed Rule. Thus, once the NMS plan required under Rule 613 has been approved by the Commission, improvements in telecommunications and data processing technology may reduce any burdens associated with the Rule.

4. Duplication

The Commission believes that the requirement to prepare and file an NMS plan would not result in a duplication of burden hours for the SROs. As noted above, the Commission believes that there are numerous shortcomings in the completeness, accuracy, accessibility, and timeliness of these existing audit trail systems. The Rule requires the submission of an NMS plan that addresses these shortcomings and thus is not duplicative of any other information request. In addition, the Rule's requirements are intended to ensure that the Commission and the public have sufficiently detailed information to carefully consider all aspects of the NMS plan ultimately submitted by the SROs, facilitating an analysis of how well the NMS plan would allow regulators to

effectively and efficiently carry out their responsibilities.

5. Effect on Small Entities

Rule 613 requires national securities exchanges and national securities associations (FINRA) to submit an NMS plan to implement the consolidated audit trail.¹ Paragraph (e) of Rule 0-10 provides that an exchange is considered a “small business” if it has been exempted from the reporting requirements of Rule 601 of Regulation NMS,² and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10. Under this standard, none of the national securities exchanges subject to Rule 613 is a “small business.” In addition, FINRA is not a small entity as defined in Rule 0-10.³ Accordingly, the Commission believes that no small entities will be affected by Rule 613.

The Commission notes that if it approves the NMS plan, the NMS plan could have an effect on small entities. However, because the Rule provides the SROs with a range of options and greater flexibility for how they choose to meet the requirements of the Rule, the Commission will not know the specific requirements of the NMS plan until it is filed with the Commission and thus cannot analyze how the NMS plan will impact small entities until then.

6. Consequences of Not Conducting Collection

There is no way to not require the collection without undermining the purposes of the Rule. The Commission notes that the Rule merely requires the filing of an NMS plan within 270 days of the date of publication of the Adopting Release in the Federal Register.⁴

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. The comment period for the Proposing Release for proposed Rule 613 was 60 days.⁵ The Commission received 64 comment letters from 56 commenters in response to

¹ See Rule 613(a)(1).

² Section 604(a)(4) of the RFA.

³ 13 CFR 121.201.

⁴ Once the NMS plan required under Rule 613 has been approved by the Commission, audit trail data would be collected from SROs and their members. As noted above, the Commission is deferring its discussion of such burdens until the SROs narrow the expanded array of choices they have and developed a detailed NMS plan.

the proposed consolidated audit trail.⁶ The commenters included national securities exchanges, a national securities association, technology providers, academics, broker-dealers, organizations representing industry participants, individual investors, and members of Congress. In addition, in preparation of the Adopting Release, the Commission discussed the necessary system and hardware changes, and time and costs associated with compliance with the Rule with nine market participants representing a cross-section of the industry.

One commenter specifically commented on the preliminary burden hour estimates in the Proposing Release.⁷ This commenter stated that building a real-time audit trail system, as proposed, would require 6,000 hours of development work, and argued that the Commission's preliminary estimate of approximately 3,000 burden hours per year for members of the SROs to remain in compliance with Rule 613 was too low, noting that it believed that it would need "three full time employees to handle the day-to-day operations of managing such a system, or approximately 6000 hours per year."⁸ The Commission has considered this comment but notes that, as stated above, the Commission, at this time, is only estimating the costs and burden hours associated with creating and filing the NMS plan required by the Rule and is deferring its analysis of the consolidated audit trail (other than with respect to the NMS plan) until such time as it may approve any NMS plan – that is, after the NMS plan, together with its detailed information and analysis, has been submitted by the SROs and there has been an opportunity for public comment.

Several other commenters, while not specifically commenting on the Commission's preliminary burden hour estimates in the Proposing Release, made suggestions that the Commission considered, which resulted in changes to the Commission's burden hour estimates for the development and filing of the NMS plan. Some of these commenters stressed that more time should be allotted for the planning and design of the NMS plan due to the comprehensive business analysis that would be needed in the initial stages of the consolidated audit trail.⁹ Commenters recommended extensive, "up-front business analysis,"¹⁰ explaining that if conducted "during the CAT plan development process, [they] are confident that issues would emerge earlier in the process,

⁵ See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (File No. S7-11-10) ("Proposing Release").

⁶ See Public Comment File for File No. S7-11-10; see also Exhibit A.

⁷ See letter from Christopher Nagy, Managing Director Order Strategy, Co-Head Government Relations, and John Markle, Deputy General Counsel, Co-Head Government Relations, TD AMERITRADE, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 ("Ameritrade Letter"), at 2.

⁸ See Ameritrade Letter, supra note 7, at 2.

⁹ See letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated March 2, 2012 ("FIF Letter II"), at 2-3; letter from Jennifer Setzenfand, Chairman, Security Traders Association, dated March 7, 2012 ("STA Letter"), at 2. See also letter from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX Group, Inc., to Elizabeth M. Murphy, Secretary, dated August 12, 2010 ("Nasdaq Letter I"), at 6.

leading to more efficient and cost-effective solutions.”¹¹ The commenters believed that the business analysis would require many discussions involving the Commission, the SROs and teams comprising members of the securities industry.¹² The commenters also suggested that the business analysis could include a request for information “to engage potential solution providers early in the process,”¹³ and stated that the time needed to perform the analysis to produce a “detailed blueprint for CAT”¹⁴ would be closer to six months,¹⁵ rather than the proposed 90 days.¹⁶ As a basis for their suggestions, one of the commenters provided a breakdown of the time and the types of work needed for FINRA’s expansion of OATS to all NMS securities.¹⁷ This commenter noted that over one-third of the time required for the project was spent on conducting business analysis, and that one-third of the time was spent on project development.¹⁸

In addition, some commenters noted that a consolidated audit trail could be implemented in a number of ways, and thus recommended that the Commission replace the specific system requirements of the proposed Rule with more general “end-user” requirements, perform an analysis of how existing audit trail systems do and do not meet the needs of regulators, and perhaps even engage in a formal RFP process.¹⁹

After consideration of the comments regarding the NMS plan development process, the Commission adopted proposed Rule 613(a)(1) with modifications. The Commission based its original estimates of SRO burden hours to prepare and file the NMS plan on the burden hours spent for existing NMS plans. The Commission, however, in response to the comments, has modified the proposed Rule in several significant ways that differentiate the burden hours to prepare the NMS plan from all other existing NMS plans. The Commission has made modifications to the proposed Rule that require the SROs to expand the NMS plan in the following four ways: (1)

¹⁰ See FIF Letter II, supra note 9, at 1, 3; STA Letter, supra note 9, at 1, 3. See also Nasdaq Letter I, supra note 9, at 6.

¹¹ See FIF Letter II, supra note 9, at 2; STA Letter, supra note 9, at 1.

¹² See FIF Letter II, supra note 9, at 1; STA Letter, supra note 9, at 1-2.

¹³ See FIF Letter II, supra note 9, at 2; STA Letter, supra note 9, at 2.

¹⁴ See FIF Letter II, supra note 9, at 1-2; STA Letter, supra note 9, at 2.

¹⁵ See FIF Letter II, supra note 9, at 2; STA Letter, supra note 9, at 2-3.

¹⁶ See proposed Rule 613(a)(1).

¹⁷ See FIF Letter II, supra note 9, at 3. The commenter also provided the cost to the industry for the expansion of OATS to all NMS stocks - \$48 million. The Commission notes that this is the cost for the project as a whole, not solely for the planning phase, and therefore is not entirely attributable to the cost of the creating and filing the NMS plan required by Rule 613.

¹⁸ The time remaining was spent on “testing and other activities.” See FIF Letter II, supra note 9, at 3.

¹⁹ See Nasdaq Letter I, supra note 9, at 12; FIF Letter II, supra note 9, at 2-3; STA Letter, supra note 9, at 1-3; letter from Eric W. Hess, General Counsel, Direct Edge Holdings, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 (“Direct Edge Letter”), at 2-3, 5.

provide additional information and analysis to address the considerations that are set forth in Rule 613(a)(1);²⁰ (2) include additional provisions that were not required by the proposed Rule relating to enforcement mechanisms,²¹ security and confidentiality,²² and the preparation of a document every two years that contains a retrospective assessment of the performance of the consolidated audit trail, as well as a plan to improve its performance;²³ (3) address error rates;²⁴ and (4) provide for the creation of an Advisory Committee.²⁵ Additionally, the Commission is extending the amount of time allowed for the SROs to submit the NMS plan from 90 days from approval of Rule 613 to 270 days from the date of publication of the Adopting Release in the Federal Register,²⁶ thereby providing time for the SROs to conduct a fulsome business analysis (including planning, analysis, and design) to be reflected in the NMS plan.

In light of these modifications to the proposed Rule, the Commission is increasing substantially its estimated burden hours needed for the development and filing of the NMS plan. The Commission also is adjusting its preliminary burden hour estimates for the preparation and filing of an NMS plan to reflect the registration of two additional SROs after it issued the preliminary estimates.²⁷ The Commission believes that these revised estimates, which include internal SRO personnel time and external legal costs, are appropriate based on the Commission's analysis, set forth below, of the impact of the modifications to the proposed Rule on each of the job categories underlying the estimates. The Commission believes that the modifications to the proposed Rule will

²⁰ The Rule requires the SROs to provide much more information and analysis to the Commission as part of their NMS plan submission. These requirements have been incorporated into the adopted Rule as "considerations" that the SROs must address, and generally mandate that the NMS plan discuss: (1) the specific features and details of the NMS plan (e.g., how data will be transmitted to the central repository, and when linked data will be available to regulators); (2) the SROs' analysis of NMS plan costs and impact on efficiency, competition, and capital formation; (3) the process followed by the SROs in developing the NMS plan (e.g., solicitation of input from members of the SROs); and (4) the information about the implementation and milestones of the consolidated audit trail.

²¹ See Rule 613(h)(3).

²² See Rule 613(e)(4)(i)(A)-(D).

²³ See Rule 613(b)(6)(i)-(ii).

²⁴ See Rule 613(e)(6)(i)-(iv).

²⁵ See Rule 613(b)(7).

²⁶ See Rule 613(a)(1).

²⁷ At the time the Proposing Release was published, there were 14 national securities exchanges. On August 13, 2010, the Commission granted the application of BATS-Y Exchange for registration as a national securities exchange. See Securities Exchange Act Release No. 62719, 75 FR 51295 (August 19, 2010). Additionally, on April 27, 2012, the Commission granted the application of BOX Options Exchange for registration as a national securities exchange. See Securities Exchange Act Release No. 66871, 77 FR 26323 (May 3, 2012).

require SRO Programmer Analysts, Business Analysts, Attorneys, and Compliance Managers to expend additional time to address the requirements of the Rule. As discussed in more detail below, the Commission anticipates that the SROs will spend additional time on many activities, including: (1) research; (2) discussions with members, committees and with industry associations; (3) vendor negotiations; (4) making decisions regarding the various options and increased flexibility provided by the adopted Rule; (5) reviewing alternative NMS plans; (6) choosing between alternative plans and negotiating to reach a consensus on a single NMS plan; (7) providing a detailed estimate of the costs associated with that NMS plan; and (8) drafting the NMS plan.

9. Payment or Gift

Not applicable.

10. Confidentiality

The NMS plan required under Rule 613 must limit the use of the consolidated data by the SROs for purposes of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. This restriction would not prevent any SRO from using the data that it individually collects and provides to the central repository pursuant to the Rule for other purposes as permitted by applicable law, rule or regulation. Further, the NMS plan must contain several provisions requiring the security of the information to be addressed. Rule 613(a)(1)(iv) requires the SROs to discuss the security and confidentiality of the information reported to the central repository in the NMS plan. Rule 613(b)(6) requires the NMS plan to include a provision requiring the plan sponsors to provide to the Commission, at least every two years after effectiveness of the national market system plan, a written assessment of the operation of the consolidated audit trail, which would include an evaluation of the performance of the consolidated audit trail's system security. Rule 613(e)(4)(i) also requires that the NMS plan include policies and procedures, including standards, to be used by the plan processor to ensure the security and confidentiality of all information reported to the central repository. The plan sponsors, and employees of the plan sponsors and central repository, would be required to agree to use appropriate safeguards to ensure the confidentiality of such data. Further, the Rule requires that the NMS plan require that audit trail data may not be used by the SROs other than for surveillance or other regulatory purposes.

The Commission would establish appropriate protections within the agency to help ensure the confidentiality of the records proposed to be accessible to the Commission pursuant to the Rule.

11. Sensitive Questions

The Commission believes that the preparation and filing of the required NMS plan under Rule 613 will not raise any sensitive questions.

12. Burden of Information Collection

A. National Securities Exchanges and National Securities Associations

a. Creation and Filing of NMS Plan

Rule 613 requires the SROs to develop and file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository for the collection of information for NMS securities. The NMS plan must require each SRO and its respective members to provide certain data to the central repository in compliance with Rule 613.

As noted above, the Commission based its original estimates of SRO burden hours to prepare and file the NMS plan on the burden hours spent for existing NMS plans. The Commission, however, has modified the proposed Rule in several significant ways that differentiate the burden hours to prepare the NMS plan from all other existing NMS plans. These modifications require the SROs to expand the NMS plan in the following four ways: (1) provide additional information and analysis to address the considerations that are set forth in Rule 613(a)(1); (2) include additional provisions that were not required by the proposed Rule relating to enforcement mechanisms,²⁸ security and confidentiality,²⁹ and the preparation of a document every two years that contains a retrospective assessment of the performance of the consolidated audit trail, as well as a plan to improve its performance;³⁰ (3) address error rates;³¹ and (4) provide for the creation of an Advisory Committee.³²

In light of these modifications to the proposed Rule, the Commission is increasing substantially its estimated burden hours needed for the development and filing of the NMS plan. The Commission also is adjusting its preliminary burden hour estimates for the preparation and filing of an NMS plan to reflect the registration of the two additional SROs after it issued the preliminary estimates.³³

The Commission believes that these revised estimates, which include internal SRO personnel time and external legal costs, are appropriate based on the Commission's analysis, set forth below, of the impact of the modifications to the proposed Rule on each of the job categories underlying the estimates. The Commission believes that the modifications to the proposed Rule will require SRO Programmer Analysts, Business Analysts, Attorneys, and Compliance Managers to expend additional time to address the requirements of the Rule. As discussed in more detail below, the Commission anticipates that the SROs will spend additional time on many activities, including: (1) research; (2) discussions with members, committees and with industry associations; (3) vendor negotiations; (4) making decisions regarding the various options and increased flexibility provided by the adopted Rule; (5) reviewing alternative NMS plans; (6) choosing between alternative plans and negotiating to reach a consensus on a single NMS plan; (7) providing a detailed estimate of the costs associated with that NMS plan; and (8) drafting

²⁸ See Rule 613(h)(3).

²⁹ See Rule 613(e)(4)(i)(A)-(D).

³⁰ See Rule 613(b)(6)(i)-(ii).

³¹ See Rule 613(e)(6)(i)-(iv).

³² See Rule 613(b)(7).

³³ See supra note 27.

the NMS plan. The Commission also believes that these increased estimates are appropriate in light of the comments, including the comment that asserted that the Commission underestimated the time the SROs would spend on the business analyses to be performed in designing the NMS plan, based on the experience of broker-dealers, vendors and SROs when OATS was expanded to all NMS stocks.³⁴ In response, as discussed in more detail below, the Commission is increasing its estimated Programmer Analyst, Business Analyst, Attorney and Compliance Manager hours.

- Programmer Analyst

The Commission is increasing its estimated one-time reporting burden for the hours a Programmer Analyst would likely spend with respect to the preparation and filing of the NMS plan from 220 hours, as originally estimated, to 880 hours, per SRO. The Commission anticipates that a Programmer Analyst would need to spend substantially more time to address the considerations included in the Rule and the “use cases” detailed in the Adopting Release. Specifically, the SROs will need to rely on Programmer Analysts to help address many of the considerations, as many of those are of a technical nature. For example, several of the considerations relate to the specific features and details of the NMS plan. Programmer Analysts likely will be consulted when the SROs are considering the specific features and details of the NMS plan. The Programmer Analysts likely will provide guidance and information regarding whether a particular feature or detail is technologically possible. For instance, the SROs probably will consult with Programmer Analysts on the feasibility, benefits and costs of any technological upgrades associated with reporting the allocation information described in Rule 613(a)(1)(vi). The SROs also likely will consult Programmer Analysts when drafting the additional provisions required by the Rule. For example, in drafting the security and confidentiality provisions, Programmer Analysts, who may have knowledge about information security practices and issues, may be consulted to provide input on draft provisions in light of technologies with respect to security and confidentiality. Programmer Analysts also may be consulted with respect to addressing error rates because such analysts may have a technical understanding of trading and reporting systems and be able to provide recommendations on how errors that are introduced can be addressed. In each of these instances, Programmer Analysts may be involved in the NMS plan research, any industry discussions, negotiations with vendors and SROs, and in developing cost estimates for the consolidated audit trail. Thus, for these reasons, the Commission believes it is appropriate to increase its estimate of the number of hours expended by Programmer Analysts in the creation and filing of the NMS plan.

- Business Analyst

The Commission is increasing its estimated one-time reporting burden for the hours a Business Analyst would likely spend with respect to the preparation and filing of an NMS plan from 360 hours, as originally estimated, to 880 hours, per SRO. The Commission anticipates that a Business Analyst would spend substantially more time to address the considerations and the “use cases.” Overall, the Commission anticipates that this amount of additional time will be comparable to the time that would likely be spent by Programmer Analysts for the same reasons because Business Analysts will likely be involved in many of the same tasks as Programmer Analysts, albeit with separate

³⁴ See FIF Letter II, supra note 9, at 2-3. See also STA Letter, supra note 9, at 2-3.

responsibilities. The SROs will need to rely on Business Analysts to help address many of the technical considerations that have relevance to the business and operations of SROs. The Commission also believes that the SROs will need to rely on Business Analysts to work with the Programmer Analysts and the Compliance Managers to analyze the business impact of particular features and details of the NMS plan. Because Rule 613 is less prescriptive than the proposed Rule, Business Analysts may have a larger role in helping to determine which option the NMS plan will propose. Business Analysts also will likely be involved in determining the cost estimates and in analyzing the NMS plan's impact on efficiency, competition, and capital formation. The SROs also likely will consult with Business Analysts when drafting the responses to the considerations and the "use cases," as well as the additional provisions required by the Rule. For example, the SROs probably will consult with Business Analysts on the feasibility, benefits and costs of any technological upgrades associated with reporting the allocation information described in Rule 613(a)(1)(vi). Further, in drafting the security and confidentiality provisions, Business Analysts may have knowledge about the costs and the business risks of certain security and confidentiality decisions. Business Analysts also may be consulted with respect to addressing error rates because any decisions made may impact business operations and the cost estimates. Further, Business Analysts may likely be consulted by Attorneys with respect to the performance assessment and improvement plan. In each of these instances, Business Analysts may be involved in the NMS plan research, any industry discussions (particularly with members and other SROs), negotiations with vendors and SROs, and in developing cost estimates for the consolidated audit trail. Thus, for these reasons, the Commission believes it is appropriate to increase its estimate of the number of hours expended by Business Analysts in the creation and filing of the NMS plan.

- Attorney

The Commission is increasing its estimated one-time reporting burden for the hours an Attorney would likely spend with respect to the preparation and filing of an NMS plan from 400 hours to 700 hours per SRO. The Commission now anticipates that an Attorney would spend substantially more time than the Commission had previously estimated to draft the NMS plan. The NMS plan that Attorneys would draft must now include a discussion of the considerations and the additional provisions required by the Rule, and must reflect additional consultations with Programmer Analysts, Business Analysts and Compliance Managers. Further, the NMS plan drafted also would likely reflect additional consultations on the "use cases." The NMS plan would also likely require Attorney work on the Advisory Committee requirement and on the NMS plan policies and procedures to be used by the plan processor³⁵ to ensure the security and confidentiality and accuracy of the information submitted to the central repository.³⁶ Attorney work would also be required on the mechanism to enforce compliance by plan sponsors with the NMS plan, as required by Rule 613(h)(3), including penalty provisions, if the plan sponsors deem appropriate. The Commission believes that an Attorney would also be involved in the NMS plan research, any industry discussions, negotiations with vendors, negotiations with SROs (in particular, to reach consensus on an NMS plan), and in developing cost estimates for the consolidated audit trail. Thus, for these reasons, the

³⁵ See Rule 613(e)(4).

³⁶ See Rule 613(e)(4)(i)(A)-(B).

Commission believes it appropriate to increase its estimate of the number of hours expended by Attorneys in the creation and filing of the NMS plan.

- Compliance Manager

The Commission is increasing its estimated one-time reporting burden for the hours a Compliance Manager would likely spend with respect to the preparation and filing of an NMS plan from 100 hours to 300 hours per SRO. The Commission now anticipates that a Compliance Manager would spend substantially more time than the Commission had previously estimated to draft the NMS plan. Compliance Managers likely will help shape provisions of the NMS plan that deal with monitoring member and SRO compliance with the NMS plan's requirements. Compliance Managers likely will also be involved in the Advisory Committee requirement. They likely will also work on NMS plan policies and procedures to be used by the plan processor to ensure the security and confidentiality and accuracy of the information submitted to the central repository, and to ensure that these policies and procedures are feasible for SRO compliance and for member compliance.³⁷ They will likely also work on the mechanism to enforce compliance by plan sponsors with the NMS plan, as required by Rule 613(h)(3), including penalty provisions, if the plan sponsors deem appropriate. Further, Compliance Managers will also work on NMS plan provisions that address error rates and performance assessment and improvement. The Commission believes that Compliance Managers may also be involved in the NMS plan research and industry discussions (particularly with regard to SRO and member compliance issues). Thus, for these reasons, the Commission believes it is appropriate to increase its estimate of the number of hours expended by Compliance Managers in the creation and filing of the NMS plan.

Therefore, the Commission now estimates that the aggregate one-time burden hour amount for preparing and filing an NMS plan would be approximately 2,760 burden hours per SRO,³⁸ or approximately 46,920 burden hours in the aggregate,³⁹ compared to an initial estimate, in the Proposing Release, of 840 burden hours per SRO or approximately 12,600 burden hours in the aggregate to prepare and file an NMS plan.⁴⁰

The Commission estimates that it would take the SROs approximately 15,640 annualized burden hours of internal legal, compliance, information technology, and business operations time to develop and file the NMS plan [(2,760 initial one-time burden hours amortized over three years) X (17 SROs)].

³⁷ See Rule 613(e)(4)(i)(A)-(B).

³⁸ Commission staff estimates that each SRO would spend [(880 Programmer Analyst hours) + (880 Business Analyst hours) + (700 Attorney hours) + (300 Compliance Manager hours) = 2,760 burden hours to prepare and file an NMS plan.

³⁹ Commission staff estimates that the SROs would spend an aggregate of [(2,760 hours) x (17 SROs)] = 46,920 burden hours to prepare and file an NMS plan.

⁴⁰ In the Proposing Release, Commission staff estimated that the SROs would spend an aggregate of [(840 hours) x (15 SROs)] = 12,600 burden hours to prepare and file an NMS plan.

13. Costs to Respondents

A. National Securities Exchanges and National Securities Associations

a. Preparation and Filing of NMS Plan

As discussed above in Item 12.A.a., Rule 613 requires the SROs to develop and file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository for the collection of information for NMS securities. In addition to providing the Commission and the public with detailed information regarding how the SROs proposed to create, operate and maintain the consolidated audit trail, the NMS plan must (1) provide additional information and analysis to address the considerations that are set forth in Rule 613(a)(1); (2) include additional provisions that were not required by the proposed Rule relating to enforcement mechanisms,⁴¹ security and confidentiality,⁴² and the preparation of a document every two years that contains a retrospective assessment of the performance of the consolidated audit trail, as well as a plan to improve its performance;⁴³ (3) address error rates;⁴⁴ and (4) provide for the creation of an Advisory Committee.⁴⁵

In the Proposing Release, the Commission preliminarily estimated that SROs would incur a one-time reporting burden for outsourced legal services to develop and draft the NMS plan.⁴⁶ The Commission is increasing its preliminary one-time reporting burden estimate to prepare and file the NMS plan to reflect the registration of the two additional SROs, since the preliminary estimates were developed.⁴⁷

Commission staff estimates that, on average, each exchange and association would outsource 50 hours of legal time to develop and draft the NMS plan, at an average hourly rate of \$400. The Commission estimates that the aggregate one-time reporting burden for preparing and filing an NMS plan would be approximately \$20,000 in external costs per SRO,⁴⁸ for an aggregate, annualized capital external cost of approximately \$113,333.39 resulting from outsourced legal work [(50 hours @ \$400 per hour = \$20,000, amortized over three years) x (17 SROs)], compared to an initial estimate of \$20,000 in external costs and \$100,000 in annualized external costs,⁴⁹ to prepare and file an NMS plan.

⁴¹ See Rule 613(h)(3).

⁴² See Rule 613(e)(4)(i)(A)-(D).

⁴³ See Rule 613(b)(6)(i)-(ii).

⁴⁴ See Rule 613(e)(6)(i)-(iv).

⁴⁵ See Rule 613(b)(7).

⁴⁶ See Proposing Release, *supra* note 5, at 32589.

⁴⁷ See *supra* note 27.

⁴⁸ Commission staff estimates that each SRO would spend 50 Legal hours @ \$400 per hour = \$20,000 in external costs to prepare and file an NMS plan.

⁴⁹ Commission staff originally estimated that the SROs would spend [(50 Legal hours, amortized over three years) X (15 SROs)] = \$100,000 in aggregate, annualized external costs to prepare and file an NMS plan.

14. Costs to Federal Government

There would be no additional costs to the Federal Government.

15. Changes in Burden

In light of the modifications to the proposed Rule, the Commission is increasing substantially its estimated burden hours needed for the development and filing of the NMS plan. The Commission also is adjusting its preliminary burden hour estimates for the preparation and filing of an NMS plan to reflect the registration of two additional SROs after it issued the preliminary estimates.⁵⁰

Most significantly, the adopted Rule, at this stage, requires one information collection – the creation and filing of an NMS plan – versus seven information collections which were detailed in the burden hour submission for the proposed Rule. As noted above, the Commission is deferring its economic analysis of the consolidated audit trail (other than with respect to the NMS plan) until after the NMS plan, including the detailed information and analysis, has been submitted by the SROs and there has been an opportunity for public comment. Similarly, the Commission is deferring its discussion of the much more significant burden hours associated with the other paperwork requirements of the consolidated audit trail. The Commission also is deferring its discussion of the ongoing burden hours associated with the NMS plan because such ongoing burdens would only be incurred if the Commission approves the NMS plan. Instead, the Commission will defer these discussions until after the NMS plan, including the detailed information and analysis, has been submitted by the SROs and there has been an opportunity for public comment.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Display of OMB Approval Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Methods

This information collection does not involve statistical methods.

⁵⁰ See supra note 27.

Exhibit A

Key to Comment Letters Cited in Adopting Release Proposal to Implement Consolidated Audit Trail (File No. S7-11-10)

1. Letter from Rep. Melissa L. Bean, U.S. Congress, to Mary Schapiro, Chairman, Commission, dated May 20, 2010.
2. Letter from Norris W. Beach to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010.
3. Letter from Steven Vannelli to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010.
4. Letter from Simhan Mandyam, Managing Partner, Triage Life Sciences LLC, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010.
5. Letter from Paul Drescher, Registered Principal, Foothill Securities, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated May 28, 2010.
6. Letter from Chandler Green to Elizabeth M. Murphy, Secretary, Commission, dated June 1, 2010.
7. Letter from Dan T. Nguyen, Wealth Management Company, to Elizabeth M. Murphy, Secretary, Commission, dated June 5, 2010.
8. Letter from Nicos Anastaspoulos to Elizabeth M. Murphy, Secretary, Commission, dated June 6, 2010.
9. Letter from Ning Wen, Sales Director, Know More Software, Inc., to Heather Seidel, Division of Trading and Markets, Assistant Director, Commission, dated June 9, 2010.
10. Letter from John McCrary to Elizabeth M. Murphy, Secretary, Commission, dated June 11, 2010.
11. Letter from Howard Meyerson, General Counsel, and Vlad Khandros, Market Structure and Public Policy Analyst, Liquidnet, to Elizabeth M. Murphy, Secretary, Commission, dated July 19, 2010.
12. Letters from Justin S. Magruder, President, Noetic Partners, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 22, 2010 and August 3, 2010.
13. Letter from Martin Koopman, Director, Aditat, to Elizabeth M. Murphy, Secretary, Commission, dated July 28, 2010.
14. Letter from Courtney Doyle McGuinn, FPL Operations Director, FIX Protocol Limited, to Elizabeth M. Murphy, Secretary, Commission, dated August 5, 2010.
15. Letter from Senator Edward E. Kaufman, U.S. Senate, to Elizabeth M. Murphy, Secretary, Commission, dated August 5, 2010.
16. Letter from Mahesh Kumaraguru to Elizabeth M. Murphy, Secretary, Commission, dated August 5, 2010.
17. Letter from R. T. Leuchtkafer to Elizabeth M. Murphy, Secretary, Commission, dated August 5, 2010.
18. Letter from Horst Simon, Associate Laboratory Director for Computing Sciences and Division Director, Computational Research Department, and David Leinweber, Director, LBNL Center for Innovative Financial Technology Computing Sciences, Lawrence Berkeley National Laboratory, to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2010.

19. Letter from Peter A. Bloniarz, Dean, College of Computing & Information, University of Albany, George Berg, Associate Professor and Chair, Department of Computer Science, University of Albany, Sandor P. Schuman, Affiliated Faculty, Department of Informatics, University of Albany, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
20. Letter from Christopher Nagy, Managing Director Order Strategy, Co-Head Government Relations, and John Markle, Deputy General Counsel, Co-Head Government Relations, TD AMERITRADE, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
21. Letter from James J. Angel, Associate Professor of Finance, Georgetown University, Commission, dated August 9, 2010.
22. Letter from Eric J. Swanson, Senior Vice President and General Counsel, BATS Exchange, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
23. Letter from Anthony D. McCormick, Chief Executive Officer, Boston Options Exchange Group, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
24. Letter from Charlie J. Marchesani, President Broadridge Financial Solutions, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 .
25. Letter from Eric W. Hess, General Counsel, Direct Edge Holdings, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
26. Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
27. Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, and Janet McGinness Kissane, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
28. Letter from Ted Myerson, Chief Executive Officer, Doug Kittelsen, Chief Technology Officer, and M. Gary LaFever, General Counsel and Chief Corporate Development Officer, FTEN, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
29. Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
30. Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
31. Letter from Dror Segal and Lou Pizzo, Mansfield Consulting, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
32. Letter from Andrew C. Small, General Counsel, Scottrade, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
33. Letter from Devin Wenig, Chief Executive Officer, Markets Division, Thomson Reuters, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
34. Letter from Jon Feigelson, Senior Vice President, General Counsel and Head of Corporate Governance, TIAA-CREF Individual and Institutional Services, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.

35. Letter from Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010.
36. Letter from John A. McCarthy, General Counsel, GETCO, to Elizabeth M. Murphy, Secretary, Commission, dated August 10, 2010.
37. Letter from Michael Erlanger, Managing Principal, Marketcore, Inc., to Commission, dated August 10, 2010.
38. Letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc., to Commission, dated August 11, 2010.
39. Letter from Leonard J. Amoruso, Senior Managing Director and General Counsel, Knight Capital Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 11, 2010.
40. Letter from Jose Manso, Executive Vice President, Sales and Marketing, Middle Office Solutions LLC, to Commission, dated August 11, 2010.
41. Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, dated August 12, 2010.
42. Letter from John Harris, Chief Executive Officer, BondMart Technologies, Inc., to Commission, dated August 12, 2010.
43. Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX Group, Inc., to Elizabeth M. Murphy, Secretary, dated August 12, 2010.
44. Letter from Patrick J. Healy, Chief Executive Officer, Issuer Advisory Group LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 15, 2010.
45. Letter from James T. McHale, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 17, 2010.
46. Letter from Mike Riley, Chief Executive Officer, Endace Technology Limited, to Elizabeth M. Murphy, Secretary, Commission, dated August 30, 2010.
47. Letter from Terry Keene, Chief Executive Officer, Integration Systems LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 12, 2010.
48. Letter from Bonnie K. Wachtel, Wachtel & Co., Inc., to Elizabeth M. Murphy, Secretary, Commission, dated November 24, 2010.
49. Letter from Richard A. Ross to Elizabeth M. Murphy, Secretary, Commission, dated December 6, 2010.
50. Letter from James T. McHale, Managing Director and Associated General Counsel, Securities Industry and Financial Markets Association, to David Shillman, Associate Director, Division of Trading and Markets, Commission, dated January 12, 2011.
51. Letter from Daniel J. Connell, Chief Executive Officer, Correlix, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated February 4, 2011.
52. Letter from Richard A. Ross, Founder, High Speed Analytics, to Elizabeth M. Murphy, Secretary, Commission, dated February 9, 2011.
53. Letter from Michael Belanger, President, Jarg Corporation; Joseph Carrabis, Chief Regulatory Officer and Founder, NextStage Evolution; Wayne Ginion, Vice President, Enterprise Infrastructure Services; and David Morf, Partner, Senior Regional Economics Advisor, Founding Member, Center for Adaptive Solutions, to Elizabeth M. Murphy, Secretary, Commission, dated April 6, 2011 (note, this letter is an amended letter that replaces a letter submitted by the same parties on March 30, 2011).

54. Letter from Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA, to Robert Cook, Director, Division of Trading and Markets, and Carlo DiFlorio, Director, Office of Compliance Inspections and Examinations, Commission, dated April 6, 2011.
55. Letter from Senator Charles E. Schumer, U.S. Senate, to Mary L. Schapiro, Chairman, Commission, dated May 9, 2011.
56. Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.
57. Letter from Geraldine M. Lettieri to Elizabeth M. Murphy, Secretary, Commission, dated November 29, 2011.
58. Letter from James T. McHale, Managing Director and Associated General Counsel, Securities Industry and Financial Markets Association, to Robert Cook, Director, Division of Trading and Markets, Commission, dated February 7, 2012.
59. Letter from John M. Damgard, President, Futures Industry Association, to Elizabeth M. Murphy, Secretary, Commission, dated February 22, 2012.
60. Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated March 2, 2012.
61. Letter from Jennifer Setzenfand, Chairman, Security Traders Association, dated March 7, 2012.
62. Letter from Dr. Gil Van Bokkelen, Chairman and Chief Executive Officer, Athersys, Inc., to Mary Schapiro, Chairman, Commission, dated March 14, 2012.

* Four letters were not included in this list because they were irrelevant to the proposal.