

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rules 201 and Rule 200(g) of Regulation SHO**

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 helps 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 aids the Commission and self-regulatory organizations ("SROs") that regulate trading centers in monitoring compliance with the Rule's requirements. In addition, it aids 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) helps 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) helps to ensure that broker-dealers comply with the requirements of the riskless principal provision. The information collected also enables 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) enables 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 provides a record that will aid in surveillance for compliance with the provisions of Rule 201. It also provides 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 helps a trading center determine whether its policies and procedures are reasonable and whether its surveillance is effective.

2. Purpose and Use of the Information Collection

Rule 201 is a short sale-related circuit breaker rule that, if triggered, imposes 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.

Rule 200(g) provides 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 "short exempt" marking requirement of Rule 200(g) 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 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) 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) 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. Consideration Given to Information Technology

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. 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) is not 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 Not Conducting 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, or no collection at all, would impede the ability to verify compliance with the amendments.

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

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable; no payments or gifts were or will be provided to respondents.

10. 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. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

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 have 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 17 registered national securities exchanges that trade covered securities (or “SRO trading centers”),<sup>1</sup> and approximately 383 broker-dealers (including alternative trading systems (“ATs”)) registered with the Commission (or “non-SRO trading centers”).<sup>2</sup>

Although the exact nature and extent of the policies and procedures that a trading center must establish 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 takes an SRO trading center approximately 220 hours<sup>3</sup> of legal, compliance, information technology and business operations personnel time,<sup>4</sup> and a non-SRO trading center approximately 160 hours<sup>5</sup> of legal,

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<sup>1</sup> Currently, there are 17 national securities exchanges (BATS, BOX, BYX, BX, C2, CBOE, CHX, EDGA, EDGX, ISE, MIAX, NASDAQ, NYSE, NYSE Amex, NYSE Arca, OCX, and PHLX) 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* Exchange Act Release No. 61595 (Mar. 10, 2010), 75 FR 11232, 11280, n. 650 (Feb. 26, 2010) (“Adopting Release”). 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.

<sup>2</sup> This number includes the approximately 296 firms that were registered equity market makers, options market makers, or specialists at year-end 2012 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as the 87 ATs that operate trading systems that trade covered securities as of November 2011. 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.

<sup>3</sup> 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* Adopting Release, 75 FR at 11283. 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.

<sup>4</sup> 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.

compliance, information technology and business operations personnel time,<sup>6</sup> to develop the required policies and procedures. We estimate for purposes of this PRA extension that approximately 9 new SRO trading centers and approximately 300 new non-SRO trading centers will register with the Commission over the next three years<sup>7</sup> and therefore become subject to the policies and procedures requirement under Rule 201. Based on these figures, we estimate that it will require a total of 1,980 hours<sup>8</sup> for SRO trading centers to establish the required written policies and procedures, and a total of 48,000 hours<sup>9</sup> for non-SRO trading centers to establish the required written policies and procedures. Thus, we estimate a total of approximately 49,980 burden hours, or approximately 16,660 hours amortized over three years, for trading centers to establish the required written policies and procedures.<sup>10</sup>

Although the exact nature and extent of the policies and procedures of a trading center 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 takes 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.<sup>11</sup> In addition, we estimate that, on average, it takes an SRO and non-SRO

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<sup>5</sup> 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* Adopting Release, 75 FR at 11283. 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.

<sup>6</sup> 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.

<sup>7</sup> These estimates are based on historical data. Between 2004 and 2012, an average of 3 new national securities exchanges registered with the Commission each year. Thus, for purposes of this PRA extension, we estimate that 9 new SRO trading centers (*i.e.*, national securities exchanges) may register with the Commission over the next three years ( $3 \times 3 = 9$ ). Between 2001 and 2012, an average of 57 new market makers and an average of 40 new specialists registered with the Commission each year. Additionally, for purposes of this PRA extension, we estimate that approximately 3 new ATSSs may register with the Commission each year over the next three years based on past trends. Thus, we estimate that 300 new non-SRO trading centers (*i.e.*, market makers, specialists, and ATSSs) may register with the Commission over the next three years  $[(57 + 40 + 3) \times 3 = 300]$ .

<sup>8</sup> The estimated 1,980 burden hours necessary for SRO trading centers to establish policies and procedures are calculated by multiplying 9 times 220 hours ( $9 \times 220 \text{ hours} = 1,980 \text{ hours}$ ).

<sup>9</sup> The estimated 48,000 burden hours necessary for non-SRO trading centers to establish policies and procedures are calculated by multiplying 300 times 160 hours ( $300 \times 160 \text{ hours} = 48,000 \text{ hours}$ ).

<sup>10</sup> These figures were calculated as follows:  $1,980 \text{ hours} + 48,000 \text{ hours} = 49,980 \text{ hours}$ .  $49,980/3 = 16,660 \text{ hours}$ .

<sup>11</sup> This figure was calculated as follows:  $(2 \text{ legal hours} \times 12 \text{ months}) + (3 \text{ compliance hours} \times 12 \text{ months}) = 60 \text{ hours annually per respondent}$ . 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

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.<sup>12</sup> Thus, we estimate a total of 158,400 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.<sup>13</sup>

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.

While not all broker-dealers 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 4,510 registered broker-dealers

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remained in compliance. See Regulation NMS Adopting Release, 70 FR 37496; see also Adopting Release, 75 FR at 11283.

<sup>12</sup> 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.

<sup>13</sup> This figure was calculated as follows: (60 hours x 400 respondents) + (336 hours x 400 respondents) = 158,400 hours annually for all respondents.

will do so. For purposes of the PRA, the Commission staff has estimated that a total of approximately 120.4 million “short exempt” orders are entered annually.<sup>14</sup>

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 vary depending upon the nature of the broker-dealer (*e.g.*, full service broker-dealer vs. market maker), we estimate that, on average, it takes a broker-dealer approximately 160 hours<sup>15</sup> of legal, compliance, information technology and business operations personnel time,<sup>16</sup> to develop the required policies and procedures. We estimate for purposes of this PRA extension that approximately 966 new broker-dealers will register with the Commission over the next three years and therefore become subject to the broker-dealer provision in Rule 201(c) and the riskless principal provision in Rule 201(d)(6).<sup>17</sup> Based on this figure, we estimate that there will be a total initial one-time burden of 154,560 hours, or approximately 51,520 hours amortized over three years, for broker-dealers<sup>18</sup> to establish policies and 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 have under the broker-dealer or the riskless principal provisions vary depending upon the nature of the broker-dealer (*e.g.*, full service broker-dealer vs. market maker), we estimate that it takes, 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),

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<sup>14</sup> Over the time frame of March 2011 through February 2013, we estimate 120.4 million annual “short exempt” orders. Specifically, we calculated an average of 635 thousand “short exempt” transactions per month resulting in an average of 221 million shares traded while the price test applies, aggregated from stocks listed on Amex, NYSE Arca, NYSE, and Nasdaq, and trading on Amex, FINRA, Nasdaq, NYSE Arca, NYSE, BATS, Direct Edge, and National market centers. Based on a review of Rule 605 reports from Amex, NYSE Arca, and Nasdaq, we estimate a ratio of 15.8 shares ordered to shares traded. We gross up 635 thousand short exempt trades by 15.8, which yields a monthly average of 10.03 million short exempt orders during the two year time frame or an annualized figure of 120.4 million.

<sup>15</sup> 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* Adopting Release, 75 FR at 11286.

<sup>16</sup> 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.

<sup>17</sup> This estimate is based on historical data. Between 2001 and 2012, an average of 322 new broker-dealers registered with the Commission each year. Thus, for purposes of this PRA extension, we estimate that approximately 966 (322 x 3 = 966) new broker-dealers will register with the Commission over the next three years.

<sup>18</sup> These figures were calculated as follows: 966 broker-dealers x 160 hours = 154,560 hours. 154,560/3 = 51,520 hours.

or a total of 60 hours annually per respondent.<sup>19</sup> In addition, we estimate that, on average, it takes 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.<sup>20</sup> Thus, we estimate a total of 1,785,960 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.<sup>21</sup>

### iii. Marking Requirements

The amendments to Rule 200(g) in 2010 added 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.”

While not all broker-dealers 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 4,510 registered broker-dealers will do so. For purposes of the PRA, the Commission staff estimates that a total of approximately 120.4 million “short exempt” orders are entered annually.<sup>22</sup> This is an average of approximately 26,696 annual responses by each respondent.<sup>23</sup>

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<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> This figure was calculated as follows: (60 hours x 4,510 respondents) + (336 hours x 4,510 respondents) = 1,785,960 hours annually for all respondents.

<sup>22</sup> Over the time frame of March 2011 through February 2013, we estimate 120.4 million annual “short exempt” orders. Specifically, we calculated an average of 635 thousand “short exempt” transactions per month resulting in an average of 221 million shares traded while the price test applies, aggregated from stocks listed on Amex, NYSE Arca, NYSE, and Nasdaq, and trading on Amex, FINRA, Nasdaq, NYSE Arca, NYSE, BATS, Direct Edge, and National market centers. Based on a review of Rule 605 reports from Amex, NYSE Arca, and Nasdaq, we estimate a ratio of 15.8 shares ordered to shares traded. We gross up 635 thousand short exempt trades by 15.8, which yields a monthly average of 10.03 million short exempt orders during the two year time frame or an annualized figure of 120.4 million.

<sup>23</sup> This figure was calculated as follows: 120.4 million “short exempt” orders divided by 4,510 broker-dealers.



We estimate that each response of marking sell orders “short exempt” takes approximately .000139 hours (.5 seconds) to complete.<sup>24</sup> 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 are 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 4 burden hours (26,696 responses multiplied by 0.000139 hours/responses). The total estimated annual hour burden is 16,736 burden hours (120,400,000 orders marked “short exempt” multiplied by 0.000139 hours/order marked “short exempt”).

### 13. Cost to Respondents

#### i. Policies and Procedures Requirement under Rule 201

We expect that SRO and non-SRO respondents 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 varies widely from entity to entity, we estimate that on average, each trading center outsources 50 hours of legal time in order to establish policies and procedures in accordance with the amendments.<sup>25</sup> We estimate for purposes of this PRA extension that approximately 9 new SRO trading centers and approximately 300 new non-SRO trading centers will register with the Commission over the next three years<sup>26</sup> and therefore become subject to the policies and procedures requirement under Rule 201. Based on these

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<sup>24</sup> 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).

<sup>25</sup> 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.

<sup>26</sup> These estimates are based on historical data. Between 2004 and 2012, an average of 3 new national securities exchanges registered with the Commission each year. Thus, for purposes of this PRA extension, we estimate that 9 new SRO trading centers (*i.e.*, national securities exchanges) may register with the Commission over the next three years (3 x 3 = 9). Between 2001 and 2012, an average of 57 new market makers and an average of 40 new specialists registered with the Commission each year. Additionally, for purposes of this PRA extension, we estimate that approximately 3 new ATs may register with the Commission each year over the next three years based on past trends. Thus, we estimate that 300 new non-SRO trading centers (*i.e.*, market makers, specialists, and ATs) may register with the Commission over the next three years [(57 + 40 + 3) x 3 = 300].

figures, we estimate that it will take trading centers a total of approximately 15,450 hours, or 5,150 hours amortized over three years, to establish policies and procedures in accordance with the amendments.<sup>27</sup> Thus, we estimate a one-time total external cost of approximately \$6,180,000 for both SRO and non-SRO trading centers resulting from outsourced legal work, or approximately \$2,060,000 amortized over three years.<sup>28</sup>

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

In addition, we expect that broker-dealers 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 varies widely from entity to entity, we estimate that on average, each broker-dealer outsources 50 hours<sup>29</sup> 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 for purposes of this PRA extension that approximately 966 new broker-dealers will register with the Commission over the next three years and therefore become subject to the broker-dealer provision in Rule 201(c) and the riskless principal provision in Rule 201(d)(6).<sup>30</sup> Based on this figure, we estimate that it will take broker-dealers a total of approximately 48,300 hours, or 16,100 hours amortized over three years, to establish policies and procedures in accordance with the broker-dealer and riskless principal provisions of Rule 201.<sup>31</sup> Thus, we estimate a one-time total external cost of approximately \$19,320,000, or approximately \$6,440,000 amortized over three years.<sup>32</sup>

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<sup>27</sup> These figures were calculated as follows: (50 legal hours x 9 SRO trading centers) + (50 legal hours x 300 non-SRO trading centers) = 15,450 hours. 15,450/3 = 5,150 hours.

<sup>28</sup> This figure was calculated as follows: (50 legal hours x \$400 x 9 SRO trading centers) + (50 legal hours x \$400 x 300 non-SRO trading centers) = \$6,180,000. \$6,180,000/3 = \$2,060,000. Based on industry sources, the Staff estimates that the average hourly rate for outsourced legal services in the securities industry is \$400.

<sup>29</sup> 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 Adopting Release, 75 FR at 11286.

<sup>30</sup> This estimate is based on historical data. Between 2001 and 2012, an average of 322 new broker-dealers registered with the Commission each year. Thus, for purposes of this PRA extension, we estimate that approximately 966 (322 x 3 = 966) new broker-dealers will register with the Commission over the next three years.

<sup>31</sup> These figures were calculated as follows: 50 legal hours x 966 broker-dealers = 48,300 hours. 48,300/3 = 16,100 hours.

<sup>32</sup> These figures were calculated as follows: 50 legal hours x \$400 x 966 broker-dealers = \$19,320,000. \$19,320,000/3 = \$6,440,000. Based on industry sources, the Staff estimates that the average hourly rate for outsourced legal services in the securities industry is \$400.

iii. Marking Requirements

We believe that the implementation cost of the “short exempt” marking requirement is 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.<sup>33</sup> Based on these estimates, as adjusted for inflation, we estimate that the initial implementation cost of the “short exempt” marking requirement is approximately \$141,450 to \$178,350 per broker-dealer,<sup>34</sup> or approximately \$47,150 to \$59,450 amortized over three years.<sup>35</sup> We estimate for purposes of this PRA extension that approximately 966 new broker-dealers will register with the Commission over the next three years and therefore become subject to the “short exempt” marking requirement.<sup>36</sup> Thus, we estimate a one-time total external cost of approximately \$172,286,100, or approximately \$57,428,700 amortized over three years.<sup>37</sup>

14. Costs to Federal Government

Not applicable.

15. Changes in Burden

Our estimates of the hour burdens and external costs associated with the collection of information requirements for trading centers have not changed from the Adopting Release, except to the extent that: (1) total ongoing burden estimates have changed because we have updated the estimated number of trading centers;<sup>38</sup> and (2) total one-time burden and cost

<sup>33</sup> See 2004 Regulation SHO Adopting Release, 69 FR at 48023. Note that industry sources provided a dollar estimate only and did not provide an estimate of the number of hours associated with implementation.

<sup>34</sup> The adjustment for inflation was calculated using information in the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

<sup>35</sup> These figures were calculated as follows:  $\$141,450/3 = \$47,150$  and  $\$178,350/3 = \$59,450$ .

<sup>36</sup> This estimate is based on historical data. Between 2001 and 2012, an average of 322 new broker-dealers registered with the Commission each year. Thus, for purposes of this PRA extension, we estimate that approximately 966 ( $322 \times 3 = 966$ ) new broker-dealers will register with the Commission over the next three years.

<sup>37</sup> These figures were calculated as follows:  $966 \times \$178,350 = \$172,286,100$ .  $\$172,286,100/3 = \$57,428,700$ .

<sup>38</sup> The Adopting Release indicated that there were approximately 407 non-SRO trading centers, including 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 50 ATSs that operate trading systems that trade NMS stocks. See Adopting Release, 75 FR at 11280. We now estimate that there are approximately 383 non-SRO trading centers, including approximately 296 firms that were registered equity market makers, options market makers, or specialists at year-end 2012 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as 87 ATSs that operate trading systems that trade covered securities. See *supra* note 2. We also note that the number of SRO trading centers has changed from 10 in the Adopting Release to 17. See *supra* note 1.

estimates have changed because this is a PRA extension and our calculations are now based on the estimated number of new trading centers that will become subject to the policies and procedures requirement under Rule 201 over the next three years.<sup>39</sup>

Our estimates of the hour burdens and external costs associated with the collection of information requirements for broker-dealers have not changed from the Adopting Release, except to the extent that: (1) total ongoing burden estimates have changed because we have updated the estimated number of broker-dealers;<sup>40</sup> and (2) total one-time burden and cost estimates have changed because this is a PRA extension and our calculations are now based on the estimated number of new broker-dealers that will become subject to the Rules over the next three years.<sup>41</sup>

Our estimates of the hour burdens associated with the collection of information requirements for broker-dealers in connection with the marking requirements have not changed from the Adopting Release, except to the extent that total burden estimates have changed because we have updated the estimated number of broker-dealers<sup>42</sup> and the estimated number of annual “short exempt” orders.<sup>43</sup>

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<sup>39</sup> Trading centers that existed at the time of the Adopting Release should now have the necessary policies and procedures in place and should no longer experience an initial development burden.

<sup>40</sup> The Adopting Release indicated that there were approximately 5,178 broker-dealers. This number was based on a review of 2008 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* Adopting Release, 75 FR at 11281. We now estimate that there are approximately 4,510 broker-dealers. This number is based on a review of 2013 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.

<sup>41</sup> Broker-dealers that existed at the time of the Adopting Release should now have the necessary policies and procedures in place and should no longer experience an initial development burden.

<sup>42</sup> The Adopting Release indicated that there were approximately 5,178 broker-dealers. This number was based on a review of 2008 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* Adopting Release, 75 FR at 11281. We now estimate that there are approximately 4,510 broker-dealers. This number is based on a review of 2013 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.

<sup>43</sup> In the Adopting Release, we estimated that 12.9 billion “short exempt” orders are entered annually. As we stated in that Release, 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 believed that August 2008 data was 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 estimated a ratio of 14.4 orders to trades. We grossed up 263 million short sale trades by 14.4, which yielded 3.8 billion short sale orders during August 2008 or an annualized figure of 45.4 billion. We estimated that approximately 28.5% of short sale orders are short exempt using Nasdaq short sale data from January to April 2005. We multiplied 45.4 billion times 0.285 to obtain our estimate of 12.9 billion short exempt orders. *See* Adopting Release, 75 FR at 11287. We also noted 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

Our estimates of the external costs associated with the collection of information requirements for broker-dealers in connection with the marking requirements have not changed from the Adopting Release, except to the extent that total external cost estimates have changed because: (1) this is a PRA extension, and our calculations are now based on the estimated number of new broker-dealers that will become subject to the Rules over the next three years;<sup>44</sup> and (2) we have adjusted the estimated implementation costs for inflation.<sup>45</sup>

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.

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not receive any comments on the estimated number of annual “short exempt” orders. Our updated estimate of 120.4 million annual “short exempt” orders is lower than our previous 12.9 billion estimate because our updated estimate takes into account that the circuit breaker rule is not in place at all times or for all securities (*i.e.*, we counted only “short exempt” orders placed while the price test was in effect). Additionally, note that the use of the “short exempt” marking on Nasdaq between January and April 2005 was different than the use of the “short exempt” marking today (*i.e.*, a different exemption was used in 2005).

<sup>44</sup> Broker-dealers that existed at the time of the Adopting Release should now have the necessary policies and procedures in place and should no longer experience an initial development burden.

<sup>45</sup> The adjustment for inflation was calculated using information in the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.