

## **SUPPORTING STATEMENT**

### **For the Paperwork Reduction Act Information Collection Submission for Rule 10b-10**

#### **A. JUSTIFICATION**

##### **1. Necessity of Information Collection**

Rule 10b-10 under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> requires broker-dealers to disclose specified information to customers regarding their securities transactions. The information required by the rule includes the date and time of the transaction, the identity and number of shares bought or sold, and whether the broker-dealer acts as agent for the customer or as principal for its own account. In addition, depending on whether the broker-dealer acts as agent for the customer or as principal for its own account, the rule requires the disclosure of commissions and, under specified circumstances, mark-up and mark-down information. For transactions in debt securities (other than U.S. savings bonds and municipal securities) the rule requires the disclosure of redemption and yield information. For transactions in securities futures products in a futures account, the rule permits the disclosure of alternative information. This alternative information includes: the date the transaction was executed; the identity and number of shares bought or sold; the price, the delivery month, and the exchange on which the transaction was executed; the source and amount of any remuneration received or to be received by the broker-dealer in connection with the transaction; whether the broker receives payment for order flow for such transactions; and the fact that other specified information, including whether the broker-dealer is acting as agent or principal, will be available upon written request.

Rule 10b-10 also requires broker-dealers to inform their customers if they are not members of the Securities Investor Protection Corporation (“SIPC”). The purpose of this disclosure is to ensure that customers are not led to believe that their accounts are subject to SIPC protection when they are not. In addition, for transactions in any NMS stock, the rule requires broker-dealers to state whether they receive payment for order flow for transactions in such securities and that the source and nature of the compensation received in connection with particular transactions will be furnished upon written request.

The confirmation has long been a customary document in the securities industry, and it serves several functions, which include: broker-dealers use it as a billing statement; it serves as a customer invoice; it informs customers of the details of transactions and facilitates their checking for errors or misunderstandings; it provides information that helps investors evaluate the cost and quality of services provided by broker-dealers; it discloses conflicts of interest that may arise between investors and broker-dealers; and it safeguards against fraud by helping customers detect problems with transactions.

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<sup>1</sup> 17 CFR 240.10b-10 (the “rule”).

## **2. Purpose and Use of the Information Collection**

The purpose of Rule 10b-10 is to ensure that investors are given the necessary information to evaluate their securities transactions and the broker-dealers effecting those transactions. In the absence of the rule's requirements, investors may not be fully informed of important information relating to their securities transactions and the cost and quality of services they receive from broker-dealers.

## **3. Consideration Given to Information Technology**

Most customer confirmations are generated by automated systems, which allow confirmations to be generated in a fraction of the time it would take to generate a confirmation manually. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage, to be approximately 57 cents. The Commission staff also estimates that the cost of producing and sending a wholly electronic confirmation is approximately 39 cents. Based on informal discussions with industry participants as well as no-action positions taken in this area, the staff estimates that broker-dealers used electronic confirmations for approximately 35 percent of transactions.

## **4. Duplication**

Not applicable; there is no duplication of information.

## **5. Effect on Small Entities**

The requirements of Rule 10b-10 are not unduly burdensome on smaller broker-dealers.

## **6. Consequences of Not Conducting Collection**

One of the primary purposes of Rule 10b-10 is to provide customers with immediate written notification of their securities transactions so that they can monitor the trading activity in their accounts. Less frequent dissemination of trade information to customers would substantially lessen the rule's investor protection functions.

## **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.

#### **10. Confidentiality**

Not applicable; respondents provide information to their customers about their own transactions.

#### **11. Sensitive Questions**

Not applicable; no information of a sensitive nature is required under the rule. The information collection does not collect any Personally Identifiable Information (PII).

#### **12. Burden of Information Collection**

Rule 10b-10 potentially applies to all of the approximately 4,183 broker-dealers that are registered with the Securities and Exchange Commission and that effect transactions for or with customers. It is important to note, however, that the confirmation is a customary document used by the industry as a matter of good business practice, as well as for purposes under the laws of agency and contract.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that on average, registered broker-dealers process approximately 1,383,492,184 order tickets per month for transactions for or with customers. Each order ticket representing a transaction effected for or with a customer results in one confirmation. Therefore, the Commission staff estimates that approximately 16,601,906,208 confirmations are sent to customers annually.<sup>2</sup>

The number of confirmations sent and the cost of the confirmations vary from firm to firm as smaller firms send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates from information provided by industry participants that it takes about thirty seconds to generate and send a confirmation. As a result, the Commission staff estimates that the annual burden to brokers-dealers to comply with the confirmation delivery requirements of Rule 10b-10 would be approximately 138,349,218 hours.<sup>3</sup> This is an ongoing, third-party disclosure burden.

#### **13. Costs to Respondents**

Since 1996, the Commission has permitted broker-dealers to comply with Rule 10b-10 by means of electronic communications. Informal discussions with securities industry

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<sup>2</sup> (1,383,492,184 confirmations/month x 12 months/year = 16,601,906,208 confirmations.)

<sup>3</sup> (16,601,906,208 confirmations at 0.5 minutes per confirmation = 8,300,953,104 minutes; 8,300,953,104 minutes/60 minutes per hour = 138,349,218.4 hours.)

representatives, as well as representations made in requests for exemptive and no-action letters, lead us to believe that broker-dealers use electronic confirmations as their sole confirmations for approximately 35 percent of transactions. For the remaining 65 percent of transactions, we believe that broker-dealers continue to send paper confirmations.

The Commission staff calculates that, as a result, approximately 10,791,239,035 paper confirmations are mailed to customers each year.<sup>4</sup> According to information previously provided by industry participants, the Commission staff estimates that the average cost for paper confirmations, including postage, for a one-page confirmation is 57 cents.<sup>5</sup> Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and mailing paper confirmations would be approximately \$6,151,006,250.<sup>6</sup>

As explained above, the Commission staff estimates that approximately 35 percent of confirmations generated are sent by electronic means alone. This means that approximately 5,810,667,173 wholly electronic confirmations are sent each year.<sup>7</sup> The Commission staff estimates that the cost of each wholly electronic confirmation is 39 cents. Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and sending wholly electronic confirmations is approximately \$2,266,160,197.<sup>8</sup>

Based upon discussions with industry participants, the Commission staff estimates that the total annual cost associated with generating and delivering to investors the information required under Rule 10b-10 would be \$8,417,166,447.<sup>9</sup>

#### **14. Costs to Federal Government**

Rule 10b-10 does not require that any documents be submitted to the Federal government, thus no costs to the Federal government are imposed directly by the rule. Costs to the Federal government are attributable to ensuring compliance with and enforcing the rule. The cost to the Federal government attributable to the operation of Rule 10b-10 is estimated at \$20,665 per year (500 reviews at one hour at a cost of \$41.33 per hour, including overhead).<sup>10</sup> It should be noted

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<sup>4</sup> (65 percent of 16,601,906,208 is 10,791,239,035.2.)

<sup>5</sup> This estimate includes a three-cent increase in the cost of postage stamp for mailing a domestic, one-ounce, First-Class Mail single-piece letter, from 46 to 49 cents, which went into effect on January 26, 2014.

<sup>6</sup> (10,791,239,035 paper confirmations at 57 cents per confirmation is \$6,151,006,249.95.)

<sup>7</sup> (35 percent of 16,601,906,208 is 5,810,667,172.8.)

<sup>8</sup> (5,810,667,173 confirmations at 39 cents per confirmation is \$2,266,160,197.47.)

<sup>9</sup> (\$6,151,006,250 + \$2,266,160,197 = \$8,417,166,447.)

<sup>10</sup> The estimate of \$40.00 per hour used in 2013 was increased by the percentages by which federal employee pay increased each year: an increase of 1% in 2014, an increase of 1% in 2015, and an

that the Financial Industry Regulatory Authority, Inc. conducts its own examinations to determine compliance with confirmation rules.

## 15. Changes in Burden

The estimated total annual hour burden associated with Rule 10b-10 decreased by approximately 1,650,782 hours because, while the estimated time per response remained 30 seconds (or 0.5 minutes) per response, the estimated total number of responses per year fell by approximately 198,093,792, from approximately 16,800,000,000 to approximately 16,601,906,208.<sup>11</sup>

The estimated total annual cost to respondents associated with generating and delivering to investors the information required under Rule 10b-10 increased by approximately \$227,166,447, from \$8,190,000,000 to \$8,417,166,447.<sup>12</sup> This increase is attributable to the estimated average cost of postage for mailing a confirmation increasing from 54 cents to 57 cents. While the estimated number of paper confirmations mailed to customers each year decreased by 128,760,965, from 10,920,000,000 to 10,791,239,035,<sup>13</sup> the estimated annual cost of mailing paper confirmations increased by approximately \$254,206,250, from \$5,896,800,000 to \$6,151,006,250.<sup>14</sup> The increase of \$254,206,250 in the estimated annual cost of mailing paper confirmations was partially offset by a decrease of approximately \$27,039,803 in the estimated annual cost of sending electronic confirmations, from \$2,293,200,000 to \$2,266,160,197,<sup>15</sup> for a total increase of approximately \$227,166,447 in the annual cost of providing both paper and electronic confirmations.<sup>16</sup>

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increase of 1.3% in 2016 ( $\$40.00 \times 0.01 = \$0.40$ ;  $\$40.00 + \$0.40 = \$40.40$ ;  $\$40.40 \times 0.1 = \$0.404$ ;  $\$40.40 + \$0.404 = \$40.804$ ;  $\$40.804 \times 1.3\% = \$0.530452$ ;  $\$40.804 + \$0.530452 = \$41.334452$ ).

<sup>11</sup> (16,800,000,000 responses per year – 16,601,906,208 responses per year = 198,093,792 fewer responses per year; 198,093,792 fewer responses per year x 0.5 minutes per response = 99,046,896 fewer minutes per year; 99,046,896 fewer minutes per year / 60 minutes per hour = 1,650,781.6 fewer hours per year, rounded up to 1,650,782 fewer hours per year.)

<sup>12</sup> ( $\$8,417,166,447 - \$8,190,000,000 = \$227,166,447$ .)

<sup>13</sup> (10,920,000,000 paper confirmations per year – 10,791,239,035 paper confirmations per year = 128,760,965 fewer paper confirmations per year.)

<sup>14</sup> (10,920,000,000 paper confirmations x \$0.54 = \$5,896,800,000; 10,791,239,035 paper confirmations x \$0.57 = \$6,151,006,249.95, rounded up to \$6,151,006,250; = \$6,151,006,250 – \$5,896,800,000 = \$254,206,250.)

<sup>15</sup> (5,880,000,000 electronic confirmations x \$0.39 = \$2,293,200,000; 5,810,667,173 electronic confirmations x \$0.39 = \$2,266,160,197.47, rounded down to \$2,266,160,197; \$2,293,200,000 – \$2,266,160,197 = \$27,039,803.)

<sup>16</sup> (\$254,206,250 increase for paper confirmations – \$27,039,803 decrease for electronic confirmations = \$227,166,447 total increase.)

**16. Information Collections Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

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

**18. Exceptions to Certification**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.