

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 31 and Form R31

A. Justification

1. Necessity of Information Collection

Pursuant to Section 31 of the Securities Exchange Act of 1934 ("Exchange Act"),¹ the Securities and Exchange Commission ("SEC") is required to collect fees and assessments from national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") based on the volume of their securities transactions. To collect the proper amounts, the SEC has adopted Rule 31 and Form R31 under the Exchange Act whereby the SROs must report to the SEC the volume of their securities transactions and the SEC, based on that data, calculates the amount of fees and assessments that the SROs owe pursuant to Section 31. Rule 31 and Form R31 require the SROs to provide this data on a monthly basis.

2. Purpose and Use of the Information Collection

Rule 31 implements the requirements of Section 31 of the Act by requiring SROs to provide trade data that, in turn, enables the SEC to calculate accurately the amount of fees and assessments owed by SROs pursuant to Section 31. Without this rule, the SEC would not be able to satisfy its obligations under Section 31.

3. Consideration Given to Information Technology

Much of the information required on Form R31 consists of data that is already compiled by respondents in electronic form. Therefore, the SEC believes that there is only limited scope for information technology to reduce the respondents' burden.

4. Duplication

The SEC does not believe that Rule 31 and Form R31 require any duplicative filing requirements.

5. Effects on Small Entities

Rule 31 and Form R31 have no effect on any small entity. Currently, Rule 31 and Form R31 impose duties on 19 national securities exchanges, one security futures exchange, one national securities association, and two registered clearing agencies (which are required to provide certain data in their possession needed by the SROs to complete Form R31). And based on past experience, it is not unreasonable to expect that new exchanges will come into existence

¹ 15 U.S.C. 78ee.

and be subject to Rule 31 and Form R31. Of the 23 current and 3 expected new respondents, none is a small entity.

6. Consequences of Not Conducting Collection

Obtaining monthly data on all sales of securities and transactions in security futures that are subject to Section 31 enables the SEC to calculate and book on its financial statement a monthly receivable for Section 31 fees and assessments. The SEC believes that it is appropriate to recognize and record on its financial statement accounts receivable for Section 31 fees and assessments on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred. Thus, any less frequent collection could render the SEC unable to fulfill its obligations under the Accountability of Tax Dollars of 2002 ("Accountability Act").

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

5 CFR 1320.5(d)(2) states that, unless an agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information that has any one of eight characteristics. Rule 31 has two of these characteristics. Nevertheless, the SEC believes that these characteristics are justified by "statutory requirements or other substantial need." The eight characteristics are set forth below:

(i) requiring respondents to report information to the agency more often than quarterly;

Under Rule 31, respondents are required to submit a completed Form R31 on a monthly basis. This permits the SEC to calculate the fees and assessments owed by each SRO every month, even though they are due only twice per year (on or before March 15 and September 30 of each year). The Accountability Act requires the SEC to produce audited financial statements. The SEC believes that it is appropriate to recognize and record on its financial statement accounts receivable on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred.

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Rule 31 requires respondents to submit a completed Form R31 in fewer than 30 days after receiving the data that would have to be reported on the form. However, the SEC believes that this requirement is justified by statutory requirements or other substantial need.

The first billing cycle established under Section 31(e) of the Exchange Act² is from January 1 to August 31; the due date for fees and assessments incurred in that period is September 30. Thus, the first billing cycle allows only 30 days between the close of the billing period (August 31) and the date on which the SROs must pay fees and assessments based on securities transactions occurring in that period (September 30). For the SEC to bill an SRO the correct amount, issue the bill before the September 30 due date, and give the SRO reasonable time to pay the bill, the SEC must obtain the data on the SRO's securities transactions in fewer than 30 days after August 31.

In addition, requiring respondents to submit a completed Form R31 in fewer than 30 days after receiving the data to be reported allows the SEC to better carry out its responsibilities under Section 31(j)(2) of the Exchange Act.³ Section 31(j)(2) requires the SEC to adjust the rate at which it levies fees on sales of securities if the SEC makes certain findings relating to the estimated volume of securities transactions in the fiscal year by every March 1. Obtaining data on these transactions in less than 30 days after the respondents receive such data helps the SEC to make determinations regarding fee rate adjustments within the time frame stipulated in Section 31(j)(2) of the Exchange Act.

(iii) requiring respondents to submit more than an original and two copies of any document;

Not applicable

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Not applicable

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

² 15 U.S.C. 78ee(e).

³ 15 U.S.C. 78ee(j)(2).

Not applicable

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Not applicable

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. The information to be collected on Form R31 is not confidential.

11. Sensitive Questions

Not applicable. No issues of a sensitive nature are involved. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

As stated in item #5, there are currently 23 respondents with obligations under Rule 31: 19 national securities exchanges, one security futures exchange, one national securities association, and two registered clearing agencies. Of these 23 respondents, 21 are required to file Form R31 on a monthly basis; the two registered clearing agencies are required to provide certain data in their possession needed by the SROs to complete Form R31, although these two entities are not themselves required to complete and submit Form R31. The SEC estimates that the annual compliance burden of Rule 31 on the 23 current respondents collectively will be 390 staff hours, or 32.5 hours per month. This estimate is derived as follows:

- Concerning the one national securities association, the SEC estimates that FINRA will incur compliance burdens of 2 staff hours per month for an annual aggregate of 24 hours.
- Concerning the two registered clearing agencies, the SEC estimates that NSCC will incur compliance burdens of 6 staff hours per month (an annual aggregate of 72 hours) and OCC will incur compliance burdens of 4 staff hours per month (an annual aggregate of 48 hours) to provide data to the

exchanges for which they currently serve, and are expected to serve over the authorization period, as the designated clearing agency.

- Concerning the existing national securities and security futures exchanges, the SEC has taken the view that an exchange's compliance burden will depend on whether it trades NSCC-settled products (*i.e.*, equities), OCC-settled products (*i.e.*, options or security futures), or both. Currently, there are 6 OCC-only exchanges, 7 NSCC-only exchanges, and 7 dual exchanges. Thus the estimated totals for the current exchanges are as follows: 6 OCC-only exchanges will require 0.5 hours per month, 7 NSCC-only exchanges will require 1.0 hour per month, and 7 dual exchanges will require 1.5 hours per month. Thus, the SEC estimates that the 20 exchanges will incur ongoing monthly burdens of 20.5 hours collectively – (6 OCC-only exchanges x 0.5 hour/exchange = 3 hours; 36 hours as an annual aggregate) + (7 NSCC-only exchanges x 1.0 hour/exchange = 7.0 hours; 84 hours as an annual aggregate) + (7 dual exchanges x 1.5 hours/exchange = 10.5 hours; 126 hours as an annual aggregate).
- The SEC also estimates that three new national securities exchanges will become registered and subject to the reporting requirements of Rule 31 over the course of the authorization period (*i.e.*, one new exchange per year). The SEC estimates that one of these exchanges will trade only OCC-settled products, one will trade only NSCC-settled products, and one will be a dual exchange. Thus, the SEC estimates a preliminary annual burden for the three expected new respondents of 36 hours – (1 expected OCC-only exchange x 0.5 hours/month x 12 months) + (1 expected NSCC-only exchange x 1.0 hours/month x 12 months) + (1 expected dual exchange x 1.5 hours/month x 12 months). However, it is not clear exactly when these additional respondents will become registered as national securities exchanges; therefore, for purposes of estimating their reporting burden, the Commission amortizes evenly the rate at which they are expected to come on board over the next 3 years (*i.e.*, the Commission expects on average that the three new respondents will come on board one and a half years into the 3 year authorization period). Taking into account such amortization, the total annual burden for the three expected new respondents is 18 hrs.

Based on the above, the SEC estimates that Rule 31 and Form R31 will cause the 23 existing respondents to incur an annual burden of 390 staff hours, and the three expected new respondents to incur an average annual burden of 18 staff hours, for a total annual burden for all respondents of 408 staff hours.

13. Costs to Respondents

Not applicable. The SEC does not believe that the 23 existing or 3 expected new respondents will have to incur any capital or start-up costs, or any additional operational or

maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements imposed by Rule 31 and Form R31.

14. Costs to Federal Government

The SEC estimates that its operational cost to review each Form R31 submission is \$56.75, representing 17 minutes of staff time. These figures were derived as follows:

5 minutes of clerical work at \$69 an hour;
12 minutes of work by economists at \$255 an hour;
for a total of 17 minutes with a weighted average of \$200.29 an hour.

The SEC estimates that processing each Form R31 will result in annual staff burdens of 81.6 hours (288 filings (21 existing and 3 expected new filers x 12 months—as previously stated NSCC and OCC do not file Form R31) per year x 17 minutes/filing divided by 60 minutes/hour) and \$16,343.66 (81.6 hours x \$200.29/hour).

15. Changes in Burden

The increase in burden from 390 to 408 hours represents a proportional increase based on an increase in registered respondents and expected new respondents during the authorization period. The cost burden has decreased from \$12,000 to zero because it was erroneously included as a cost in the previous submission.

16. Information Collection Planned for Statistical Purposes

Not applicable. This information is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The SEC requests authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Method

Not applicable. This collection does not involve statistical methods.