

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
for Rule 613: Consolidated Audit Trail--Filing a National
Market System Plan

A. Justification

1. Information Collection Necessity

The Securities and Exchange Commission (“Commission”) adopted 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 jointly submit to the Commission 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, staff of the SROs and the Commission 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 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.

When it adopted Rule 613, the Commission discussed the burden hours associated with the development and submission of the NMS plan.¹ In doing so, the Commission noted that the development and submission of the NMS plan is part of a multi-step process for developing the consolidated audit trail and that the Commission deferred its discussion of the burden hours associated with the other paperwork requirements required by Rule 613 – such as the requirements to provide certain data to the central repository –

¹ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Adopting Release”), at 45804–45807.

until after the SROs submit an NMS plan and there has been an opportunity for public comment.² Therefore, the existing collection of information associated with Rule 613 covers only the Commission's estimates of the burden hours associated with the development and filing of the NMS plan. The SROs submitted to the Commission the NMS plan on September 30, 2014³ and an amended and restated NMS Plan on February 27, 2015.⁴ Although the existing collection of information pertains to the development and submission of an NMS plan, and such NMS plan has been developed and submitted, Commission staff believes it is prudent to extend this collection of information beyond its expiration during the pendency of the Commission's review of the NMS plan.

2. Information Collection Purposes and Use

The information contained in the 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 is required to contain: (1) an estimate of the costs associated with implementing the consolidated audit trail under the terms of the 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 should 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.

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. Commission staff 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.

Duplication

Commission staff 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

² Id. at 45804.

³ See Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated September 30, 2014.

⁴ See Letter from the SROs, to Brent J. Fields, Secretary, Commission, dated February 27, 2015.

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 submitted by the SROs, facilitating an analysis of how well the NMS plan would allow regulators to effectively and efficiently carry out their responsibilities.

Effect on Small Entities

Rule 613 requires the SROs to submit an NMS plan to implement the consolidated audit trail.⁵ 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, 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 0-10.⁶ 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 0-10.⁷ Accordingly, Commission staff believes that no small entities will be affected by Rule 613.

Commission staff 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, Commission staff will not know the specific requirements of the NMS plan until the Commission has completed its review of the NMS plan and thus cannot analyze how the NMS plan will impact small entities until then.

Consequences of Not Conducting Collection

There is no way to not require the collection without undermining the purposes of the Rule.⁸ Commission staff notes that the Rule requires the filing of an NMS plan within 270 days of the date of publication of the Adopting Release in the Federal Register.⁹

⁵ See Rule 613(a)(1).

⁶ 17 CFR 240.0-10. See also 13 CFR 121.201.

⁷ Id.

⁸ 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 after there has been an opportunity for public comment on the NMS plan.

⁹ See supra notes 3 and 4. At the SROs' request, the Commission granted exemptions extending the deadline for the filing of the NMS Plan to December 6, 2013, and then to September 30, 2014. See Securities Exchange Act Release No. 69060 (March 7, 2013), 78 FR 15771 (March 12, 2013); Securities Exchange Act Release No. 71018 (December 6, 2013), 78 FR 75669 (December 12, 2013). As

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).

Consultations Outside the Agency

The required Federal Register notices with 60-day and 30-day comment periods soliciting comments on this collection of information were published. One public comment letter was received in response to this submission.¹⁰

The comment letter, which was submitted by the SROs, notes that the amended and restated NMS plan contained estimates of the SROs' contribution of full time employee hours and public relations, legal and consulting costs already incurred by the SROs to develop and file the NMS Plan¹¹ and the amended and restated NMS Plan as of February 27, 2015.¹²

Commission staff acknowledges the cost information received from the SROs relating to the development and filing of the NMS Plan required under Rule 613. Commission staff, however, notes that the estimates in this extension relate to the estimated costs of compliance with the requirement in Rule 613 to develop and file the NMS plan during the three year period beginning on the expiration of the original paperwork collection statement and not to costs already incurred. Given that the NMS Plan has already been filed with the Commission,¹³ that the SROs' estimates relate to costs already incurred, and that the extension covers the following three years, Commission staff does not believe it necessary to adjust the estimates contained in the Federal Register. Commission staff, however, is clarifying that the estimates contained herein relate to the activities following the expiration of the original paperwork collection statement. Commission staff believes it is taking a conservative approach of extending the current paperwork collection to address activities associated with the already-filed NMS plan during the pendency of the Commission's review of the NMS plan.

noted above, the SROs filed the NMS Plan on September 30, 2014, and then filed an amended and restated NMS Plan on February 27, 2015. Although the existing collection of information pertains to the development and submission of an NMS plan, and such NMS plan has been developed and submitted, Commission staff believes it is prudent to extend this collection of information during the pendency of the Commission's review of the NMS plan.

¹⁰ See Letter from the SROs to Pamela Dyson, Director/Chief Information Officer, Commission, dated September 25, 2015 ("SRO Comment Letter").

¹¹ See supra note 3.

¹² See supra note 4.

¹³ See supra notes 3 and 4.

Payment or Gift

Not applicable.

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.

Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

Burden of Information Collection

Rule 613 requires the SROs to submit to the Commission 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, Commission staff believes it is taking a conservative approach of extending the current paperwork collection to address activities associated with the already-filed NMS plan during the pendency of the Commission’s review of the NMS plan (the “Extension Period”). Accordingly, Commission staff estimates that the aggregate one-time burden hour amount for these activities would be approximately 2,760 burden hours per SRO,¹⁴ or approximately 52,440 burden hours in the aggregate.¹⁵

Commission staff estimates that it would take the SROs approximately 17,480 annualized burden hours of internal legal, compliance, information technology, and business operations time during the Extension Period [(2,760 initial one-time burden hours amortized over three years) X (19 SROs)].

Costs to Respondents

Commission staff estimates that, on average, each exchange and association would outsource 50 hours of legal time during the Extension Period, at an average hourly rate of \$400.¹⁶ Commission staff estimates that the aggregate one-time reporting burden would be approximately \$20,000 in external costs per SRO,¹⁷ or approximately \$380,000 in the aggregate.¹⁸

Commission staff estimates that the SROs would incur an aggregate, annualized capital external cost of approximately \$126,666.67 during the Extension Period resulting from outsourced legal work [(50 hours x \$400 per hour = \$20,000, amortized over three years) x (19 SROs)].

Costs to Federal Government

The Commission has incurred an external cost of \$250,000 for technology consulting services.

Changes in Burden

¹⁴ 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.

¹⁵ Commission staff estimates that the SROs would spend an aggregate of [(2,760 hours) x (19 SROs)] = 52,440 burden hours.

¹⁶ This is based on an estimated \$400 per hour cost for outside legal services used in “Regulation Systems Compliance and Integrity” final rule: Securities Exchange Act Release No. 73639, 79 FR 72252 (December 5, 2014).

¹⁷ Commission staff estimates that each SRO would spend 50 legal hours x \$400 per hour = \$20,000 in external costs.

¹⁸ Commission staff estimates that the SROs would spend an aggregate of [(\$20,000) x (19 SROs)] = \$380,000 on outsourced legal work.

The estimated one-time aggregate burden hours for SROs has increased from 46,920 to 52,440. Relatedly, the estimated annualized burden hours has increased from 15,640 to 17,480 annualized burden hours. These increases are due to an increase in the number of SRO respondents, from 17 SROs to 19 SROs. In addition, the one-time aggregate, annualized external cost has increased from \$113,333.39 to \$126,666.67. These increases are the result of an increase in the number of SRO respondents (from 17 SROs to 19 SROs). The external legal cost per SRO has not changed. All other assumptions remain unchanged.

Information Collection Planned for Statistical Purposes

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

Approval to Omit OMB Expiration Date

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

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 Methods

This information collection does not involve statistical methods.