

## SUPPORTING STATEMENT

### for the Paperwork Reduction Act Information Collection Submission for the EQUITY TRANSACTION FEE PILOT

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

#### A. JUSTIFICATION

##### 1. Necessity of Information Collection

In recent years, the fee schedules of U.S. stock exchanges have attracted considerable attention and generated a public debate about the impact of those fees on the markets and market participants. The predominant fee model among exchanges is the “maker-taker” fee model, in which an exchange pays its broker-dealer members a per share rebate to provide (i.e., “make”) liquidity in securities and assesses them a fee to remove (i.e., “take”) liquidity. The exchange earns as revenue the difference between the fee and the rebate. In a variation on this theme, some exchanges have adopted a “taker-maker” pricing model in which they charge a fee to the provider of liquidity and pay a rebate to the taker of liquidity.

A variety of concerns have been expressed about the maker-taker and taker-maker fee models, and, in particular, about the rebates that exchanges pay to attract orders. For example, some have opined that the prevailing fee structures have created conflicts of interest for broker-dealers, have undermined market transparency, and have driven order flow to non-exchange venues. Others contend that the prevailing fee structures may have positive effects by enabling exchanges to compete with off-exchange trading venues and by narrowing quote spreads by subsidizing posted prices.

In the absence of data sufficient to permit statistical analysis of the impact of these fees and rebates, market participants have urged the Commission to conduct a market-wide pilot study to gather data to assess the potential impact of transaction fees and rebates on the equities markets. Most recently, the Equity Market Structure Advisory Committee recommended that the Commission conduct a pilot to study the impact of transaction fees and rebates on market quality and order routing behavior.<sup>1</sup> Such a pilot would produce meaningful data to facilitate analysis that would otherwise be impossible to perform in the absence of a market-wide pilot.

Accordingly, pursuant to the statutory authority provided by the Exchange Act,<sup>2</sup> including Sections 11A(a)(1), 17(a), and 23(a) thereof,<sup>3</sup> the Commission proposed to amend

---

<sup>1</sup> See Recommendation for an Access Fee Pilot (July 8, 2016), available at <https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf>.

<sup>2</sup> See 15 U.S.C. 78a.

<sup>3</sup> See 15 U.S.C. 78k-1, 78q, and 78w(a).

Title 17 of the Code of Federal Regulations by adding Rule 610T to Regulation NMS to conduct an Equity Transaction Fee Pilot (“Pilot”).<sup>4</sup> The Pilot would establish three new collections of information to gather the following categories of data:<sup>5</sup>

- a. Pilot Securities Exchange Lists and Pilot Securities Change Lists. Each primary listing exchange for NMS stocks would be required to maintain, update, and publicly post on its website downloadable files containing a Pilot Securities Exchange List, in pipe-delimited ASCII format, of all Pilot Securities for which it serves as the primary listing exchange. In addition, each exchange would be required to publicly on its website downloadable files containing a Pilot Securities Change List, in pipe-delimited ASCII format, that cumulatively lists each separate change to the Pilot Securities for which it serves or has served as the primary listing exchange. The exchanges would be required to update this information prior to the beginning of trading on each business day that the U.S. equities markets are open for trading.
- b. Exchange Transaction Fee Summaries. Each exchange that trades NMS stocks would be required to publicly post on its website downloadable files containing certain information concerning its transaction fees and rebates, using an XML schema to be published on the Commission’s website. The exchanges would be required to update this information on a monthly basis.
- c. Order Routing Data. Each exchange that trades NMS stocks would be required to publicly post on its website downloadable files, in pipe-delimited ASCII format, containing monthly order routing data containing aggregated and anonymized broker-dealer order routing information, according to the specifications set forth in proposed Rule 610T.

For all three categories of data, each respondent would be required to keep this information freely and persistently available and easily accessible on its website for a period of not less than five years from the conclusion of the post-Pilot period. Each category of data shall be presented in a manner that facilitates access by machines without encumbrance, and not subject to any restrictions, including restrictions on access, retrieval, distribution, and reuse.

---

<sup>4</sup> See Securities Exchange Act Release No. \_\_\_\_\_ (\_\_\_\_. \_\_, 2017), \_\_ FR \_\_\_\_\_ (\_\_\_\_. \_\_, 2017) (“Proposing Release”).

<sup>5</sup> The Commission anticipates that each respondent would submit one Form 19b-4 fee filing at the beginning of the proposed Pilot to impose the required pricing restrictions and one Form 19b-4 fee filing at the conclusion of the proposed Pilot to remove the required pricing restrictions. Each respondent might also choose to submit additional Form 19b-4 fee filings during the Pilot. The Commission notes, however, that these burdens are already accounted for in the Paperwork Reduction Act Information Collection submission for Form 19b-4. See OMB Control No. 3235-0045 (Aug. 19, 2016), 81 FR 57946 (Aug. 24, 2016) (Request to OMB for Extension of Rule 19b-4 and Form 19b-4 PRA). The Commission does not expect the baseline number of Form 19b-4 fee filings reflected in that submission to increase as a result of the proposed Pilot.

These collections of information are necessary to further the national market system objectives set forth in Rule 11A(a)(1). These objectives include the economically efficient execution of orders; fair competition among broker-dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and the practicability of brokers executing investors' orders in the best market. Without the proposed Pilot, the Commission and the public would lack access to data that is necessary to study the effects of exchange transaction fees and rebates on order routing behavior, market quality, and execution quality, which, in turn, can inform the need for further regulatory action in this area.

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

The purpose of the information collection is to enable the Commission, market participants, and researchers to study the impact that transaction-based fees and rebates have on the U.S. equities markets. If the Commission did not gather this data through the proposed Pilot, it would be more difficult for the Commission to assess what effects, if any, certain proposed changes to transaction-based fees and rebates might have on order routing behavior, market quality, and execution quality. The information gathered through the Pilot should facilitate a data-driven evaluation of the need for regulatory action in this area.

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

The proposed Pilot uses information technology to lessen the burden on the respondents. All data is to be publicly posted on websites either in a pipe-delimited ASCII format<sup>6</sup> or using an XML schema prescribed by the Commission.<sup>7</sup>

In addition, the Commission preliminarily believes that the respondents already have processes in place to gather at least some of the information to be collected by the proposed Pilot. With respect to the Pilot Securities Exchange Lists and Pilot Securities Change Lists, for example, the primary listing exchanges already have rules in place that require listed issuers to report the relevant information to them. Respondents also may be able to leverage existing systems in order to collect the order routing data described above.

---

<sup>6</sup> The Commission understands that exchanges and market participants have experience utilizing this common electronic file format. The Commission further notes that this format has been used to gather data in connection with another recent pilot program. See Tick Size Pilot Data Collection Securities Files, available at: <http://www.finra.org/industry/oats/tick-size-pilot-data-collection-securities-files> (noting that “[t]he Pilot Securities files are pipe-delimited .txt files”).

<sup>7</sup> The Commission considered using a CSV or JSON electronic file format, but believes that an XML schema is best suited to this information collection. The CSV format provides a more compact file size, but it cannot convey the same complexity or directly incorporate validation rules, which may result in lower data quality. The JSON format provides a file size similar to XML and can convey complex data structures; however, its use within the Commission to date has been somewhat limited, which may adversely impact analysis of the data.

The Commission further notes that it does not prohibit respondents from using any kind of information technology to facilitate the collection and/or preparation of the data to be posted on their respective websites.

#### **4. Duplication**

The proposed Pilot would not result in, or require the collection of, duplicate information that otherwise is currently available in a similar form. While several data sources provide information on transaction fees, order routing, and execution quality, they do not provide the exact information sought in this information collection. Moreover, these sources have data limitations that would hamper meaningful research.<sup>8</sup>

It is possible that exchanges will begin reporting certain order routing data to the Consolidated Audit Trail by the time the proposed Pilot commences. However, that confidential data would not be aggregated and anonymized in the format required by the proposed Pilot and would not be available to the public or available for use by researchers. The Commission believes that independent analyses of the data collected by the proposed Pilot could reveal helpful information about the effects that transaction-based fees and rebates have on order routing behavior, market quality, and execution quality. For that reason, the Commission preliminarily believes that it is appropriate to require the collection of order routing data in the requested format.

Further, the proposed Pilot Securities Exchange Lists and Pilot Securities Change Lists would contain information unique to the proposed Pilot, notably the grouping of NMS stocks into the Test Groups of the proposed Pilot and the ability to track updates to the stocks on those lists. Finally, the Exchange Transaction Fee Summaries also would be unique to the proposed Pilot and would be designed to allow researchers to correlate changes in order routing behavior, market quality, and execution quality to changes to each exchange's fees and rebates. In the absence of that information, such analysis would be exceptionally difficult.

#### **5. Effects on Small Entities**

The Commission does not believe that the requirements under the proposed Pilot would affect small entities.

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

The information gathered through the Pilot should facilitate a data-driven evaluation of the need for regulatory action in this area, which is in the public interest and will benefit both retail and institutional investors. If the Commission does not conduct the proposed Pilot, it would be more difficult for the Commission (or other researchers) to study what effects, if any, that changes to transaction-based fees and rebates have on order routing behavior, market quality, and execution quality. Similarly, if the data outlined above was collected less

---

<sup>8</sup> See Proposing Release, supra note 4, at Section V.B.1.b.iii.

frequently, it could undermine timely analysis of the data. Transaction-based fees and rebates can change with no advance notice as exchanges compete for market share; if the Commission (or other researchers) did not have access to accurate, up-to-date information, it would be more difficult to track how transaction-based fees and rebates impacted order routing behavior, market quality, and execution quality, all of which may fluctuate in response to changes to pricing structures. Moreover, the Commission preliminarily believes that some of the information to be gathered by the proposed Pilot – specifically, the Pilot Securities Exchange Lists and the Pilot Securities Change Lists – could be useful to broker-dealers and other market participants when making daily routing and execution decisions.

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

The proposed Pilot would require respondents to report or update certain information on a daily or monthly basis. As previously noted, if the data outlined above was collected less frequently, it could undermine any analysis of the data. Transaction-based fees and rebates can change with no advance notice as exchanges compete for market share; if the Commission (or other researchers) did not have access to accurate, up-to-date information, it would be difficult to track how transaction-based fees and rebates impacted order routing behavior, market quality, and execution quality, all of which may fluctuate in response to changes to pricing structures. Moreover, the Commission preliminarily believes that some of the information to be gathered by the proposed Pilot – specifically, the Pilot Securities Exchange Lists and the Pilot Securities Change Lists – could be useful to broker-dealers and other market participants when making daily routing and execution decisions.

The proposed Pilot also would require each respondent to retain each category of collected information on its website for a period of not less than five years from the conclusion of the post-Pilot period. This extended retention period is necessary in order to provide the Commission, market participants, academic scholars and other researchers with sufficient time to conduct a comprehensive and thorough analysis of the data collected by the proposed Pilot.

Finally, the Commission notes that it has taken steps to protect the confidentiality of order routing data by requiring exchanges to anonymize the data before making it publicly available. Although the proposed Pilot requires each respondent to publicly post order routing data on its website, the Commission has required that such data be anonymized according to a key provided by the Commission and aggregated in such a way as to protect the identities and trading strategies of broker-dealers.

## **8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the proposed Pilot requirements and associated paperwork burdens.<sup>9</sup> A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and

---

<sup>9</sup> See note 4 *supra*.

informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

Not applicable.

## **11. Sensitive Questions**

No information of a sensitive nature will be required under this collection of information. This information collection does not collect personally identifiable information (“PII”). The agency has determined that a system of records notice (“SORN”) and privacy impact assessment (“PIA”) are not required in connection with the collection of information.

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

As noted above, the proposed Pilot would require the collection of three categories of data: (1) Pilot Securities Exchange Lists and Pilot Securities Change Lists; (2) Exchange Transaction Fee Summaries; and (3) Order Routing Data. The Commission anticipates that the respondents would incur various third-party disclosure burdens. These burdens are summarized below.

### **a. Pilot Securities Exchange Lists and Pilot Securities Change Lists**

The respondents to this collection of information would be the five primary listing exchanges for common stocks and ETPs. Each primary listing exchange would be required to update the required information prior to the beginning of trading on each business day that the U.S. equities markets are open for trading.

The Commission preliminarily estimates that each primary listing exchange would incur an initial burden of 8 hours to compile and publicly post their initial Pilot Securities Exchange List, as well as an initial burden of 12 hours to develop appropriate systems for tracking, compiling, and publishing the information necessary to create the Pilot Securities Change List. The Commission further estimates that each primary listing exchange would incur an ongoing burden of 0.50 hours per daily response, or 126 hours per year (including the first year),<sup>10</sup> to compile any changes to the lists, to update the lists, and to publicly post the lists on its website.

---

<sup>10</sup> 0.50 hours per daily response \* 252 trading days per year = 126 hours per year

This would result in an estimated burden of 398 hours per respondent,<sup>11</sup> or 132.67 hours per year per respondent when annualized over three years.<sup>12</sup> The total estimated industry burden would be 1,990 hours,<sup>13</sup> or 663.33 hours per year when annualized over three years.<sup>14</sup>

b. Exchange Transaction Fee Summaries

The respondents to this monthly collection of information would be the thirteen equities exchanges that are currently registered with the Commission.

The Commission preliminarily estimates that each equities exchange would incur an initial burden of 80 hours to develop systems to automatically track, format, and post this data on its website in accordance with the proposed Pilot, as well as an initial burden of 6 hours to complete and publicly post the first Exchange Transaction Fee Summary. The Commission further estimates that each equities exchange would incur an ongoing burden of 40 hours per year (including the first year) to monitor and, if necessary, update its systems, as well as an ongoing burden of 24 hours per year (including the first year) to update and publicly post all subsequent Exchange Transaction Fee Summaries. This would result in an ongoing monthly burden of 5.33 hours per monthly response for each exchange.<sup>15</sup>

This would result in an estimated burden of 278 hours per respondent,<sup>16</sup> or 92.67 hours per year per respondent when annualized over three years.<sup>17</sup> The total estimated industry burden would be 3,614 hours,<sup>18</sup> or 1,204.67 hours per year when annualized over three years.<sup>19</sup>

c. Order Routing Data

The respondents to this monthly collection of information would be the thirteen equities exchanges that are currently registered with the Commission.

The Commission preliminarily estimates that each equities exchange would incur an initial burden of 80 hours to ensure that its systems and technology are able to aggregate, anonymize, and

---

<sup>11</sup> (126 hours in first year + 8 hours initial burden + 12 hours initial burden) + 126 hours in second year + 126 hours in third year = 398 hours per respondent

<sup>12</sup> 398 hours per respondent / 3 years = 132.67 hours per year per respondent

<sup>13</sup> 398 hours per year \* 5 primary listing exchanges = 1,990 industry hours

<sup>14</sup> 1,990 industry hours / 3 years = 663.33 industry hours per year

<sup>15</sup> (40 ongoing hours + 24 ongoing hours) / 12 months per year = 5.33 hours per monthly response

<sup>16</sup> (64 hours in first year + 80 hours initial burden + 6 hours initial burden) + 64 hours in second year + 64 hours in third year = 278 hours per respondent

<sup>17</sup> 278 hours / 3 years = 92.67 hours per year per respondent

<sup>18</sup> 278 hours per year \* 13 equities exchanges = 3,614 industry hours

<sup>19</sup> 3,614 industry hours / 3 years = 1,204.67 industry hours per year

publicly post the required order routing data.<sup>20</sup> The Commission further estimates that each equities exchange would incur an ongoing burden of 40 hours per year (including the first year) to monitor and, if necessary, update its systems, as well as an ongoing burden of 72 burden hours per year (including the first year) to prepare and publicly post the required order routing data. This would result in an ongoing monthly burden of 9.33 hours per monthly response for each exchange.<sup>21</sup>

This would result in an estimated burden of 416 hours per respondent,<sup>22</sup> or 138.67 hours per year per respondent when annualized over three years.<sup>23</sup> The total estimated industry burden would be 5,408 hours,<sup>24</sup> or 1,802.67 hours per year when annualized over three years.<sup>25</sup>

Summary of Hourly Burdens										
Name of Information Collection	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Industry Burden	Small Business Entities Affected
Pilot Securities Exchange Lists and Pilot Securities Change Lists	3 <sup>rd</sup> -Party Discl.	5	252	0.079 (20 / 252)	0.026	0.50	0.526	132.67	663.33	0.00
Exchange Transaction Fee Summaries	3 <sup>rd</sup> -Party Discl.	13	12	7.17 (86 / 12)	2.39	5.33	7.72	92.67	1,204.67	0.00
Order Routing Data	3 <sup>rd</sup> -Party Discl.	13	12	6.67 (80 / 12)	2.22	9.33	11.56	138.67	1,802.67	0.00
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>3,670.67</b>	

### 13. Costs to Respondents

Not applicable. It is not anticipated that the respondent exchanges will have to incur any capital and/or start-up costs to comply with the proposed Pilot, nor is it anticipated that the

<sup>20</sup> The Commission expects that there will be no burden to the equities exchanges to capture the required order routing data, as the Commission believes that the equities exchanges will be able to collect the required data through existing systems and technology already in place for the collection of data for reporting to the Consolidated Audit Trail, regardless of whether reporting to the Consolidated Audit Trail has already commenced.

<sup>21</sup> (40 ongoing hours + 72 ongoing hours) / 12 months per year = 9.33 hours per monthly response

<sup>22</sup> (112 hours in first year + 80 hours initial burden) + 112 hours in second year + 112 hours in third year = 416 hours per respondent

<sup>23</sup> 416 hours / 3 years = 138.67 hours per year per respondent

<sup>24</sup> 416 hours per year \* 13 equities exchanges = 5,408 industry hours

<sup>25</sup> 5,408 industry hours / 3 years = 1,802.67 industry hours per year



respondents will have to incur any external operational or maintenance costs – other than the internal costs provided for in Item 12 – to comply with the proposed Pilot.

**14. Cost to Federal Government**

The federal government will not incur a cost in connection with the collection of this information.

**15. Changes in Burden**

Not applicable.

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

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

**17. OMB Expiration Date Display Approval**

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

**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 METHODS**

This collection does not involve statistical methods.