

SUPPORTING STATEMENT  
for the Paperwork Reduction Act Information Collection Submission for  
Rule 9b-1

A. JUSTIFICATION

1. Necessity of Information Collection

In February 1979, the Commission published the Report of the Special Study of the Options Market (“Options Study”), which identified several problems arising from efforts to accommodate listed options trading within the existing framework for registering securities under the Securities Act. The Options Study found that the requirements to provide information on the mechanics and risks of options trading, as well as information about the issuer, made the prospectus lengthy and complicated and did not meet the needs of options investors, many of whom may lack the financial background needed to understand the relatively technical descriptions presented in the registration statement. The Options Study concluded that information relating to options and the trading markets for options should be separated from information about the issuer and that the information concerning listed options should be presented in a “readily understandable” manner to a reader without a financial background.

Based on these findings, the Options Study recommended that a specifically tailored Exchange Act disclosure document be developed into which certain of the information currently in the options prospectus would be moved. It was contemplated that this disclosure document would present a description of the risks and uses of options trading in a manner that would be intelligible to unsophisticated investors. Rule 9b-1 (17 CFR 240.9b-1), which was adopted in 1982 in conjunction with two other rules, implemented this Options Study recommendation.

Rule 9b-1 requires that prior to purchasing or selling a contract for a standardized option, an investor must receive a copy of the options disclosure document (“ODD”). Under this options disclosure system, the ODD, rather than a traditional prospectus, is an investor’s primary source of information about standardized options. Rule 9b-1 also sets forth the specific categories of information required to be disclosed in the ODD and requires the ODD to be filed with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b-1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers.

2. Purpose and Use of the Information Collection

The information in the ODD is intended to enhance investor understanding of standardized options by presenting all essential information about such options in a readable form. The ODD, rather than a traditional prospectus, is an investor’s primary source of information about standardized options.

### 3. Consideration Given to Information Technology

In May 1996, the Commission issued an interpretive release that permits the use of electronic media to deliver, among other things, the ODD to investors.

### 4. Duplication

Rule 9b-1 permits two or more options markets to work together in formulating a single disclosure document covering options traded on each participating options market.

### 5. Effect on Small Entities

Some of the broker-dealers that are subject to Rule 9b-1 are small entities. The staff, however, believes that the rule requirements are not unduly burdensome on smaller broker-dealers. The information contained in the ODD is in a standardized format prepared by the options markets and, therefore, does not need to be generated internally by the broker-dealer. The broker-dealer is required to deliver the ODD and any amendments only once with respect to each customer. The expense of providing this information would be limited to delivery, either through postal mail or electronically.

### 6. Consequences of Not Conducting Collection

The ODD furnished to customers is a substitute for a prospectus. If such disclosure were less frequent, customers might not have the information necessary to properly understand standardized options prior to purchase.

### 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

The respondents receive no payments or gifts.

### 10. Confidentiality

There is no assurance of confidentiality provided by Rule 9b-1.

## 11. Sensitive Questions

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

## 12. Information Collection Burden

### Reporting

There are 15 options markets<sup>1</sup> that must comply with Rule 9b-1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. The respondents file approximately 3 amendments per year. The ODD is generally filed on behalf of the options markets by the Options Clearing Corporation (“OCC”). The OCC also works on the drafts and submits the ODD amendments to the Commission.<sup>2</sup> The staff calculates that the preparation and filing of amendments should take no more than 8 hours per options market. Thus, the total time burden for all options markets per year is 360 hours (15 options markets x 8 hours per amendment x 3 amendments).

### Third Party Disclosure

In addition, the staff estimates that there are approximately 1,144 broker-dealers subject to Rule 9b-1, and that each of these firms will process an average of 3 new customers for options each week. Thus, each respondent will have to furnish approximately 156 ODDs per year (3 new customers x 52 weeks per year). The staff calculates that the furnishing of the ODD should take no more than 30 seconds per customer, resulting in a total time burden for each broker-dealer of 78 minutes or 1.3 hours. Thus, the total time burden for all broker-dealers per year is 1,487 hours (1,144 broker-dealers x 1.3 hours).

Therefore, the aggregate time burden for all respondents (both options markets and broker-dealers), is 1,847 hours per year (360 hours for options markets + 1,487 hours for broker-dealers).

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<sup>1</sup> The fifteen options markets are as follows: BOX Options Exchange LLC, Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Miami International Securities Exchange LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, the Nasdaq Options Market (NOM), NYSE Arca, Inc., and NYSE American LLC.

<sup>2</sup> While the OCC assists the options exchanges in preparing ODD amendments and submitting them to the Commission, these hours are not included in the burden estimate because the OCC is not a “respondent” for purposes of PRA. Instead, the hours that the Commission staff estimates that the OCC spends on behalf of the options exchanges in preparing and submitting ODD amendments are incorporated in the total estimated burden hours for the options exchanges.

The estimated internal cost of compliance for options markets is \$412 per hour for an in-house attorney,<sup>3</sup> for an annualized cost of \$148,320. The estimated internal cost of compliance for broker-dealers is \$62 per hour for a general clerk,<sup>4</sup> for an annualized cost of \$92,194. The sum of the internal compliance costs for all respondents (both options markets and broker-dealers), is \$240,514 per year. These figures were computed in the following manner:

360	hours of legal work of the options exchanges (attorney)	@ \$412 per hour = \$148,320
1,487	hours of administrative work of broker-dealers (general clerk)	@ \$62 per hour = \$92,194
		\$240,514

### 13. Costs to Respondents

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up costs to comply with Rule 9b-1; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance costs (other than provided for in Item No. 12 above) to comply with the Rule.

### 14. Costs to Federal Government

Cost to the federal government results from appropriate regulatory agency staff time and related overhead cost devoted to assuring compliance by broker-dealers with the requirements of the Rule and reviewing any ODDs and amendments filed by the OCC on behalf of the options markets. The staff estimates that approximately 99 hours of professional staff time and 66 hours of office staff time per year are devoted to this activity, at a cost of \$277 per hour for professionals and \$75 per hour for office staff, for a total cost of \$32,370 for staff time.<sup>5</sup> This amount was based upon our

<sup>3</sup> SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the \$412 figure is based on the 2013 figure (\$380) adjusted for inflation. See Item 15. Changes in Burden. The \$380 per hour figure for an Attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>4</sup> The \$62 figure is based on the 2013 figure (\$57) adjusted for inflation. See *supra* note 2. The \$57 per hour figure for a General Clerk is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>5</sup> The 2017 estimate for SEC office workers (\$75) is based on the 2013 estimate, adjusted for inflation. See Item 15. Changes in Burden. The 2013 estimate for SEC office workers (\$69) was the midpoint of the Washington, DC annual salary for a Grade SK-5 employee, divided by the OMB standard of 2087 hours and multiplied by 2.93 to account for benefit and overhead costs. The 2017 estimate for SEC professionals (\$277) is based

computation of the value of staff time devoted to this activity and the related overhead. This estimate was computed based upon GSA, Guide to Estimating Reporting Costs (1973).

### 15. Changes in Burden

The estimated net decrease in the time burden is the result of two factors: an increase in the reporting burden for the options exchanges and a decrease in the broker-dealers' burden of furnishing the ODD to customers.

The increase in the reporting burden for the options exchanges is due to an increase in the estimated number of options markets that must comply with Rule 9b-1, which increased from 12 to 15. It is estimated that each options market will file approximately three amendments per year and spend approximately eight hours on the preparation and filing of each amendment. The previous compliance burden estimate was 288 hours (12 options markets x 8 hours per amendment x 3 amendments per year). This compliance burden has increased by 72 hours to a total compliance burden of 360 hours (15 options markets x 8 hours per amendment x 3 amendments per year).

The burden for furnishing the ODD to customers decreased because the number of broker-dealers that must comply with Rule 9b-1 decreased from 1,500 to 1,144.<sup>6</sup> It is estimated that each broker-dealer will process an average of 3 new customers for options each week, requiring it to deliver approximately 156 ODDs per year (3 new customers x 52 weeks per year). Based on the staff estimate that the furnishing of the ODD should take no more than 30 seconds per customer, the total time burden for each broker-dealer should be 1.3 hours. The previous burden estimate was 1,950 hours (1,500 broker-dealers x 1.3 hours). The total time burden for all broker-dealers per year has decreased to 1,487 hours (1,144 broker-dealers x 1.3 hours).

As a result, the overall time burden decreased from 2,238 hours (288 hours for options markets + 1,950 hours for broker-dealers) in 2015 to 1,847 hours (360 hours for options markets + 1,487 hours for broker-dealers) in 2017.

The estimated internal cost of compliance increased due to inflation. As discussed above, the cost for an in-house attorney increased from \$380 per hour to \$412 per hour. The cost for a general clerk increased from \$57 per hour to \$62 per hour. Normally, these figures are taken from the SIFMA's Management & Professional Earnings in the Securities Industry and its Office Salaries in the Securities Industry from 2013. However, SIFMA did its last annual survey in 2013 and will

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on the 2013 estimate, adjusted for inflation. The 2013 estimate for SEC professionals (\$255) was the average of the midpoints of the Washington, DC annual salaries for SK-11 and SK-12 employees, divided by the OMB standard of 2087 hours and multiplied by 5.35 to account for benefit and overhead costs.

<sup>6</sup> The estimate of 1,144 broker-dealers required to comply with Rule 9b-1 is derived from Item 12 of the Form BD (OMB Control No. 3235-0012). This estimate may be high as it includes broker-dealers that engage in only a proprietary business, and as a result are not required to deliver an ODD, as well as those broker-dealers subject to Rule 9b-1.

not resume the survey process. According to the Division of Economic and Risk Analysis, SIFMA's 2013 data was used for the years 2013, 2014, and 2015. Therefore, we estimated the 2017 internal cost of compliance for an in-house attorney and a general clerk by multiplying the cost per hour from SIFMA's 2013 reports by the rate of inflation for 2016, 1.0288, and multiplying the result by the rate of inflation for 2017, 1.0545, as calculated by the Bureau of Labor Statistics in its CPI Inflation Calculator. The professional and office staff costs increased from \$255 per hour and \$69 per hour, respectively, to \$277 per hour and \$75 per hour based on inflation calculated using the same method.

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. **COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection does not involve statistical methods.