

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 605 of Regulation NMS

A. Justification

1. Necessity of Information Collection

This information collection is required under Rule 605 and Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”).¹ The order execution information required by Rule 605 of Regulation NMS (“Rule 605”)², f/k/a Rule 11Ac1-5, is necessary to further the national market system objectives set forth in Section 11A(a)(1)(C). These objectives include the economically efficient execution of orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors’ orders in the best market.

On November 2, 2018, the Commission adopted amendments to Rule 606 of Regulation NMS³ to require new disclosures by broker-dealers relating to their handling of certain categories of orders and enhance existing disclosures relating to their handling to certain other categories of orders and solicited public comment.⁴ The Commission also amended Rule 605(a)(2) to require market centers to keep reports required pursuant to Rule 605(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. As discussed below, this amendment does not impose a burden because previous Rule 605 required that reports to be posted to an Internet Web site and the amendment merely prescribes a minimum period of time that the reports shall remain posted. The total annual burden is increasing due to an increase in the number of respondents based on the availability of more recent data.

2. Purpose and Use of the Information Collection

The purpose of the information collection is to make information about order execution practices available to the public and allow investors, broker-dealers, and market centers (which include exchange markets, over-the-counter market makers, and alternative trading systems)⁵ to

1 OMB No. 3235-0542.

2 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

3 OMB No. 3235-0541.

4 See Securities Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (“Adopting Release”).

5 See 17 CFR 242.600(b)(38).

undertake a comparative analysis of these practices across markets. Broker-dealers may use the information to make more informed choices in deciding where to route orders for execution and to evaluate their internal order handling practices. Investors may use the information to evaluate the order handling practices of their brokers. Market centers may use the information to compete on the basis of execution quality.

If the Commission did not require market centers to disclose this information, then investors would be uninformed as to the quality of their orders' executions, and there would be limited opportunities for fair competition among market centers based on the quality of their order execution services.

3. Consideration Given to Information Technology

Rule 605 requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format. Consequently, the Rule would not require substantial additional data collection burdens. Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or a self-regulatory organization) that would generate the statistics and reports.

Market centers are not prohibited from using any technology that facilitates consumer understanding and that permits review, as appropriate, by the Commission or other appropriate regulatory authorities.

4. Duplication

The collections of information are unique and cover the particular circumstances of each market center. No duplication exists.

5. Effect on Small Entities

Not applicable. Neither the national securities exchanges nor any market centers that must comply with the Rule would be considered small entities as described in the OMB guidelines for completing this Submission.

6. Consequences of Not Conducting Collection

This collection of information is intended to help investors and broker-dealers evaluate the quality of execution they received for their order at different market centers. Because market conditions change frequently, a less frequent collection would not provide data that would be as timely or pertinent to the public. A monthly disclosure gives a sufficient sample of statistics to be

meaningful to investors and broker-dealers in their analyses.

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

The Commission notes that market centers that are national securities exchanges or national securities associations are required to retain the collections of information required under Rule 605 for a period of not less than five years, the first two years in an easily accessible place. All other market centers are required to retain the collections of information required under Rule 605 for a period of not less than three years, the first two in an easily accessible place.

8. Consultations Outside the Agency

The Commission solicited comments on the proposal to amend Rule 605(a)(2) to require market centers to keep reports required pursuant to Rule 605(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.⁶ The Commission received one related comment letter, which supported the Proposal.⁷ The letter is available to the public on the Commission's website at <https://www.sec.gov/comments/s7-14-16/s71416.htm>.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No information of a sensitive nature, will be required under this collection of information. The 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

⁶ See Securities Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49431 (July 27, 2016), at 49467.

⁷ See Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities to Brent J. Fields, Secretary, Commission, dated October 13, 2016 (stating that requiring that Rule 605 reports remain publicly available for at least three years will assist investors in comparing various broker-dealers).

Because of the amendment to Rule 605(a)(2), the Commission is updating the burden of information collection with more recent data on respondents. The collection of information obligations of Rule 605 would apply to all market centers that receive covered orders in national market system securities. The Commission estimates that approximately 381 market centers (214 market makers, plus 21 exchanges, 1 securities association, 104 exchange market makers, and 41 ATSS) would be subject to the collection of information obligations of Rule 605. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 605 causes respondents to spend 6 hours per month to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 381 market centers subject to Rule 605, the total data collection time burden to comply with the monthly reporting requirement is estimated to be 27,432 hours per year.

Because reports were already required to be posted to an Internet Web site pursuant to previous Rule 605, the Commission estimates the adopted amendment to Rule 605 would not impose an additional burden. The adopted amendment prescribes a minimum period of time for which such reports that are already required to be posted on an Internet Web site shall remain posted.

13. Costs to Respondents

Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately \$2,978 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on the \$2,978 estimate, the monthly cost to the 381 market centers to retain service providers to prepare reports would be \$1,134,618, or an annual cost of approximately \$13,615,416.

14. Costs to Federal Government

Not applicable.

15. Changes in Burden

The total annual hourly and cost burden increased from 9,504 hours and \$4,717,152, respectively, to 27,432 hours and \$13,615,416, respectively due to an increase in the number of respondents from 132 to 381 since the most recent renewal. This increase was due to the inclusion of OTC market makers among the respondents, which had erroneously been omitted in the 2016 renewal.

	Respondents	Individual hourly burden (yearly)	Individual cost burden (monthly)	Annual hourly burden	Annual cost burden
2016	132	72	\$2,978	9,504 hours	\$4,717,152
2018	381	72	\$2,978	27,432 hours	\$13,615,416
Change	249	0	\$0	17,928 hours	\$8,898,264

16. Information Collection Planned for Statistical Purposes

These are disclosures from market centers to the general public. The Commission is not collecting data. The Commission has no information to publish and no plans to publish any data for statistical or other 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

Not applicable.

B. Collection of Information Employing Statistical Methods.

Not applicable.