

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 10b-10

A. JUSTIFICATION

1. Necessity of Information Collection

Rule 10b-10 under the Securities Exchange Act of 1934 (“Exchange Act”)¹ requires broker-dealers to disclose specified information to customers regarding their securities transactions. The information required by the rule includes the date and time of the transaction, the identity and number of shares bought or sold, and whether the broker-dealer acts as agent for the customer or as principal for its own account. In addition, depending on whether the broker-dealer acts as agent for the customer or as principal for its own account, the rule requires the disclosure of commissions and, under specified circumstances, mark-up and mark-down information. For transactions in debt securities (other than U.S. savings bonds and municipal securities) the rule requires the disclosure of redemption and yield information. For transactions in securities futures products in a futures account, the rule permits the disclosure of alternative information. This alternative information includes: the date the transaction was executed; the identity and number of shares bought or sold; the price, the delivery month, and the exchange on which the transaction was executed; the source and amount of any remuneration received or to be received by the broker-dealer in connection with the transaction; whether the broker receives payment for order flow for such transactions; and the fact that other specified information, including whether the broker-dealer is acting as agent or principal, will be available upon written request.

Rule 10b-10 also requires broker-dealers to inform their customers if they are not members of the Securities Investor Protection Corporation (“SIPC”). The purpose of this disclosure is to ensure that customers are not led to believe that their accounts are subject to SIPC protection when they are not. In addition, for transactions in any NMS stock, the rule requires broker-dealers to state whether they receive payment for order flow for transactions in such securities and that the source and nature of the compensation received in connection with particular transactions will be furnished upon written request.

The confirmation has long been a customary document in the securities industry, and it serves several functions, which include: broker-dealers use it as a billing statement; it serves as a customer invoice; it informs customers of the details of transactions and facilitates their checking for errors or misunderstandings; it provides information that helps investors evaluate the cost and quality of services provided by broker-dealers; it discloses conflicts of interest that may arise

¹ 17 CFR 240.10b-10 (the “rule”).

between investors and broker-dealers; and it safeguards against fraud by helping customers detect problems with transactions.

2. Purpose and Use of the Information Collection

The purpose of Rule 10b-10 is to ensure that investors are given the necessary information to evaluate their securities transactions and the broker-dealers effecting those transactions. In the absence of the rule's requirements, investors may not be fully informed of important information relating to their securities transactions and the cost and quality of services they receive from broker-dealers.

3. Consideration Given to Information Technology

Most customer confirmations are generated by automated systems, which allow confirmations to be generated in a fraction of the time it would take to generate a confirmation manually. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage, to be approximately 63 cents. The Commission staff also estimates that the cost of producing and sending a wholly electronic confirmation is approximately 39 cents. Based on informal discussions with industry participants as well as no-action positions taken in this area, the staff estimates that broker-dealers use electronic confirmations for approximately 35 percent of transactions.

It appears that broker-dealers use paper confirmations for approximately 65 percent of transactions because many of their customers prefer to receive paper confirmations rather than electronic confirmations. Some broker-dealers have given their customers incentives to agree to receive electronic rather than paper confirmations, including by charging a fee, currently in the range of approximately two to five dollars, for each paper confirmation while not charging for electronic confirmations, but many customers choose to continue to receive paper confirmations. The Commission staff has sought to help respondents reduce the rule's information collection burden through technology by issuing no-action letters to broker-dealers seeking to rely on electronic trade confirmations generated by and delivered through an electronic platform to satisfy their confirmation delivery obligations under the rule.²

4. Duplication

Not applicable; there is no duplication of information.

² See, e.g., Letter re: Bloomberg L.P. (Nov. 24, 2015); Letter re: Omgeo LLC (Nov. 19, 2010) (citing Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644, 46-47 (May 15, 1996) (stating that broker-dealers may deliver confirmations electronically with the informed consent of the customer, provided they meet the basic requirements of notice, access, and evidence of delivery)).

5. Effect on Small Entities

The requirements of Rule 10b-10 are not unduly burdensome on smaller broker-dealers. Broker-dealers routinely use confirmations for billing purposes, and would send their customers some type of written memorialization of the material terms of securities transactions and potential conflicts of interest regardless of the requirements of the rule, based on commercial considerations and requirements of the law of agency, the statute of frauds, and other applicable requirements of the securities laws and the rules of self-regulatory organizations. For example, Section 11(d)(2) of the Exchange Act has since 1934 generally required every broker-dealer to disclose whether it has acted as a dealer for its own account or as a broker for the customer or some other person in effecting the transaction.

The number of confirmations sent and the cost of the confirmations vary from firm to firm. Smaller firms send fewer confirmations than larger firms because they effect fewer transactions. Nonetheless, the Commission has considered and rejected the possibility of exempting smaller broker-dealers from requirements of Rule 10b-10. For example, in adopting amendments to the rule in 1985 to require disclosure of trade prices and mark-ups for principal transactions in reported securities, the Commission noted that it had requested comment on exempting certain small broker-dealers that transact a limited number of transactions from the requirements of the amendment, but determined not to create such an exemption because the Commission agreed with the National Association of Securities Dealers' conclusion that such an exemption was not warranted because competitive considerations require that similar transactions be reported in similar fashion by all broker-dealers, and because no smaller firms had suggested that the amendments would place a disproportionate burden on them.³

6. Consequences of Not Conducting Collection

One of the primary purposes of Rule 10b-10 is to provide customers with immediate written notification of their securities transactions so that they can monitor the trading activity in their accounts. Less frequent dissemination of trade information to customers would substantially lessen the rule's investor protection functions.

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).

³ See Confirmation Disclosure for Reported Securities, Exchange Act Release No. 22397 (Sept. 11, 1985), 50 F.R. 37648, 37653 (Sept. 17, 1985).

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; respondents provide information to their customers about their own transactions.

11. Sensitive Questions

Rule 10b-10 is a third-party disclosure rule and the SEC does not have a program or information system for collecting, processing, or storing the third-party disclosures required by the rule. No information of a sensitive nature, including Social Security numbers, 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

Rule 10b-10 potentially applies to all of the approximately 3,750 broker-dealers that are registered with the Securities and Exchange Commission and that effect transactions for or with customers. It is important to note, however, that the confirmation is a customary document used by the industry as a matter of good business practice, as well as for purposes under the laws of agency and contract.

Based on information provided by registered broker-dealers to the Commission in annual Form X-17a-5 Schedule I FOCUS Reports filed from January 1, 2018 to December 31, 2018, in response to items 16a, 16b, and 16c on the form, the Commission staff estimates that on average, registered broker-dealers process approximately 18,843,624,843 order tickets per year for transactions for or with customers in (a) equity securities transactions effected on a national securities exchange, (b) equity securities transactions effected other than on a national securities exchange, and (c) commodity, bond, option, and other transactions effected on or off a national securities exchange. Each order ticket representing a transaction effected for or with a customer generally results in one confirmation. Therefore, the Commission staff estimates that approximately 18,843,624,843 confirmations are sent to customers annually.

The number of confirmations sent and the cost of the confirmations vary from firm to firm as smaller firms send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates from information provided by industry participants that it takes

about thirty seconds to generate and send a confirmation. As a result, the Commission staff estimates that the annual burden to brokers-dealers to comply with the confirmation delivery requirements of Rule 10b-10 would be approximately 157,030,207 hours.⁴ This is an ongoing, third-party disclosure burden.

SUMMARY OF ANNUAL TIME BURDEN

Burden Type	Number of Annual Responses	Time Per Response (Hours)	Total Annual Burden Per Burden Type (Hours)
Third-party disclosure	18,843,624,843	0.008333333333	157,030,207

13. Costs to Respondents

Since 1996, the Commission has permitted broker-dealers to comply with Rule 10b-10 by means of electronic communications. Informal discussions with securities industry representatives, as well as representations made in requests for exemptive and no-action letters, lead us to believe that broker-dealers use electronic confirmations as their sole confirmations for approximately 35 percent of transactions. For the remaining 65 percent of transactions, we believe that broker-dealers continue to send paper confirmations.

The Commission staff calculates that, as a result, approximately 12,248,356,148 paper confirmations are mailed to customers each year.⁵ According to information previously provided by industry participants, the Commission staff estimates that the average cost for paper confirmations, including postage, for a one-page confirmation is 63 cents.⁶ Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and mailing paper confirmations would be approximately \$7,716,464,373.⁷

As explained above, the Commission staff estimates that approximately 35 percent of confirmations generated are sent by electronic means alone. This means that approximately

⁴ 18,843,624,843 confirmations at 0.5 minutes per confirmation = 9,421,812,421.5 minutes; 9,421,812,421.5 minutes/60 minutes per hour = 157,030,207.025 hours, rounded down to 157,030,207 hours.

⁵ 65 percent of 18,843,624,843 is 12,248,356,147.95, rounded up to 12,248,356,148.

⁶ This estimate includes a six-cent increase in the cost of postage stamp for mailing a domestic, one-ounce, First-Class Mail single-piece letter, from 49 cents, as of January 26, 2014, to 55 cents, as of January 27, 2019.

⁷ 12,248,356,148 paper confirmations at 63 cents per confirmation is \$7,716,464,373.24, rounded down to \$7,716,464,373.

6,595,268,695 wholly electronic confirmations are sent each year.⁸ The Commission staff estimates that the cost of each wholly electronic confirmation is 39 cents. Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and sending wholly electronic confirmations is approximately \$2,572,154,791.⁹

Based upon discussions with industry participants, the Commission staff estimates that the total annual cost associated with generating and delivering to investors the information required under Rule 10b-10 would be \$10,288,619,164.¹⁰

SUMMARY OF COSTS TO RESPONDENTS

Type of Cost to Respondents	Number of Annual Responses	Cost Per Response	Annual Cost Per Burden Type
Paper third-party disclosure	12,248,356,148	0.63	\$7,716,464,373
Electronic third-party disclosure	6,595,268,695	0.39	\$2,572,154,791
<i>Total Annual Costs</i>			\$10,288,619,164

14. Costs to Federal Government

Rule 10b-10 does not require that any information be submitted to the Federal government, and thus no costs to the Federal government are imposed by the rule's requirement that broker-dealers disclose information to their customers.¹¹

⁸ 35 percent of 18,843,624,843 is 6,595,268,695.05, rounded down to 6,595,268,695.

⁹ 6,595,268,695 electronic confirmations at 39 cents per confirmation is \$2,572,154,791.05, rounded down to \$2,572,154,791.

¹⁰ \$7,716,464,373 + \$2,572,154,791 = \$10,288,619,164.

¹¹ Broker-dealers maintain copies of the customer confirmations required by the rule, in compliance with their record-keeping obligations under other rules. These records may be reviewed by Commission staff occasionally, but only on an as-needed basis in connection with the regular duties of staff working on a discrete examination, investigation, or enforcement matter.

15. Changes in Burden

The estimated total annual hour burden associated with Rule 10b-10 increased by approximately 18,680,989 hours because, while the estimated time per response remained 30 seconds (or 0.5 minutes) per response, and the number of respondents decreased from approximately 4,138 to approximately 3,750, the estimated total number of responses per year increased by approximately 2,241,718,635, from approximately 16,601,906,208 in 2016 to approximately 18,843,624,843 in 2019.¹²

The estimated total annual cost to respondents associated with generating and delivering to investors the information required under Rule 10b-10 increased by approximately \$1,871,452,717, from \$8,417,166,447 to \$10,288,619,164.¹³ This increase is attributable to the estimated average cost of mailing a confirmation increasing from 57 cents in 2016 (including 49 cents for postage) to 63 cents in 2019 (including 55 cents for postage); to the estimated number of paper confirmations mailed to customers each year increasing by 1,457,117,113, from 10,791,239,035 to 12,248,356,148,¹⁴ which means the estimated annual cost of mailing paper confirmations increased by approximately \$1,565,458,123, from \$6,151,006,250 to \$7,716,464,373;¹⁵ and to the estimated number of electronic confirmations sent to customers each year increasing by 784,601,522, from 5,810,667,173 to 6,595,268,695,¹⁶ which means the estimated annual cost of sending electronic confirmations increased by approximately \$305,994,594, from \$2,266,160,197 to \$2,572,154,791.¹⁷ The increase of \$1,565,458,123 for the annual cost of sending paper confirmations and the increase of \$305,994,594 for the annual cost of sending electronic

¹² 18,843,624,843 responses per year in 2019 – 16,601,906,208 responses per year in 2016 = 2,241,718,635 more responses per year; 2,241,718,635 more responses per year x 0.5 minutes per response = 1,120,859,317.5 more minutes per year; 1,120,859,317.5 more minutes per year / 60 minutes per hour = 18,680,988.625 more hours per year, rounded up to 18,680,989 more hours per year.

¹³ (\$10,288,619,164 in 2019 – \$8,417,166,447 in 2016 = \$1,871,452,717.

¹⁴ 12,248,356,148 paper confirmations per year in 2019 – 10,791,239,035 paper confirmations per year in 2016 = 1,457,117,113 more paper confirmations per year.

¹⁵ 10,791,239,035 paper confirmations per year in 2016 x \$0.57 = \$6,151,006,249.95, rounded up to \$6,151,006,250; 12,248,356,148 paper confirmations per year in 2019 x \$0.63 = \$7,716,464,373.24, rounded down to \$7,716,464,373; \$7,716,464,373 – \$6,151,006,250 = \$1,565,458,123 more for mailing paper confirmations.

¹⁶ 6,595,268,695 electronic confirmations per year in 2019 – 5,810,667,173 paper confirmations per year in 2016 = 784,601,522 more electronic confirmations per year.

¹⁷ 5,810,667,173 electronic confirmations per year in 2016 x \$0.39 = \$2,266,160,197.47, rounded down to \$2,266,160,197; 6,595,268,695 electronic confirmations per year in 2019 x \$0.39 = \$2,572,154,791.05, rounded down to \$2,572,154,791; \$2,572,154,791 – \$2,266,160,197 = \$305,994,594.

confirmations caused the total annual cost of providing both paper and electronic confirmations to increase by approximately \$1,871,452,717.¹⁸

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

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

18. Exceptions to Certification

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.

¹⁸ \$1,565,458,123 more for mailing paper confirmations + \$305,994,594 more for sending electronic confirmations = \$1,871,452,717 total increase.