

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection
Submission for CAT Implementation Plan and Quarterly Progress Reports**

New Request—Proposed Rule

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

The Commission recently proposed amendments to the national market system plan governing the consolidated audit trail (“the CAT”), which was originally filed with the Commission in 2015 to comply with the requirements of Rule 613.¹ The Commission adopted Rule 613 in 2012 to improve the completeness, accuracy, accessibility, and timeliness of existing audit trail systems.² Rule 613 directed each national securities exchange and national securities association (collectively, the “Participants”) to create a national market system plan to adopt a consolidated audit trail (the “CAT NMS Plan”),³ and this plan was approved by the Commission on November 15, 2016.⁴ The consolidated audit trail (the “CAT”) was intended to create a system that provides regulators with more timely access to a sufficiently comprehensive set of trading data, enabling regulators to more efficiently and effectively reconstruct market events, monitor market behavior, and identify and investigate misconduct.⁵

However, the Participants’ progress towards implementing the CAT has suffered multiple setbacks and delays. Each delay to CAT implementation further postpones the ability of the Participants and the Commission to obtain necessary audit trail data and thereby realize the regulatory benefits of the CAT. Moreover, these delays may cause uncertainty for market participants trying to bring their systems into compliance for future reporting to the CAT.

¹ See 17 CFR 242.613; See also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45722 (August 1, 2012) (“Rule 613 Adopting Release”).

² See id.

³ Id.

⁴ See Securities Exchange Act Release No. 78318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order” or “CAT NMS Plan”).

⁵ See Rule 613 Adopting Release, supra note 2, at 45723, 45730-33.

Accordingly, pursuant to the statutory authority provided by the Exchange Act,⁶ including Sections 11A(a)(3)(B),⁷ 17(a),⁸ 19(b),⁹ and 23(a)¹⁰ thereof, and pursuant to Rule 608(a)(2) and (b)(2),¹¹ the Commission proposed to amend the CAT NMS Plan to increase operational transparency regarding the implementation of the CAT on September 9, 2019.¹² The proposed amendment also establishes financial accountability provisions that establish target deadlines for four implementation milestones and reduces the amount of fee recovery available to the Participants if those target deadlines are missed. The proposed amendment also requires two new collections of information:

The proposed amendment to the CAT NMS Plan would require two new collections of information:

- a. Implementation Plan. The proposed amendment would require the Participants, within 30 calendar days following the effective date of the proposed amendment, to prepare, file with the Commission, and make publicly available on a website a complete CAT implementation plan (“Implementation Plan”) that includes a detailed timeline for achieving various implementation milestones.
- b. Quarterly Progress Reports. The proposed amendment would require the Participants, within 15 business days after the end of each calendar quarter, to prepare, file with the Commission, and make publicly available on a website a complete report (the “Quarterly Progress Report”) that provides a detailed and up-to-date description of the progress made by the Participants toward each of the milestones identified in the Implementation Plan.

⁶ See 15 U.S.C. 78a.

⁷ See 15 U.S.C. 78k-1(a)(3)(B).

⁸ See 15 U.S.C. 78q(a).

⁹ See 15 U.S.C. 78s(b).

¹⁰ See 15 U.S.C. 78w(a).

¹¹ See 17 CFR 242.608(a)(2), (b)(2).

¹² See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19) (“Proposing Release”).

The Implementation Plan and each Quarterly Progress Report must be approved by at least a Supermajority Vote¹³ of the Operating Committee¹⁴ before such documents are filed with the Commission or made publicly available on a website. However, if the Implementation Plan or any Quarterly Progress Report is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee, each Participant whose Operating Committee member did not vote to approve the Implementation Plan or Quarterly Progress Report must separately file with the Commission, and make publicly available on a website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. Prior to the Operating Committee's vote, the Implementation Plan and Quarterly Progress Reports must also be submitted by the Operating Committee to the Chief Executive Officer ("CEO"), President, or an equivalently situated senior officer ("senior management") of each Participant.

The Commission believes that these collections of information are necessary to ensure that the CAT implementation proceeds transparently, without further delay, and in accordance with Rule 613 and the CAT NMS Plan. Without the proposed collections of information, the Commission believes that market participants may continue to find it difficult to monitor the status of CAT implementation, which may affect how market participants stage their resources and otherwise plan for CAT implementation and eventual data reporting to the CAT. The Commission also believes that the above-described measures will lend credibility to the timelines presented by the Participants, as well as promote senior management attention and promote accountability with respect to CAT implementation.

2. Purpose and Use of the Information Collection

The Commission believes that the Implementation Plan and Quarterly Progress Reports required by the proposed amendment will provide up-to-date, critical information to the Commission, other regulators, and market participants regarding the intended goals and deadlines of the Participants. Access to this information will help the Commission and market participants to monitor the progress of CAT implementation. Requiring the Participants to publish the Implementation Plan and Quarterly Progress Reports may also prevent further delays by keeping the Participants accountable to the public and to the Commission, thus incentivizing the Participants to proceed expeditiously towards implementation of the CAT. In addition, the

¹³ Section 1.1 of the CAT NMS Plan defines a "Supermajority Vote" as an "affirmative vote of at least two-thirds of all of the members of the Operating Committee or any Subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the Operating Committee or any Subcommittee, as applicable . . . ; provided that if two-thirds of all such members authorized to cast a vote is not a whole number then that number shall be rounded up to the nearest whole number."

¹⁴ The Operating Committee is the governing body established by the CAT NMS Plan. Each Participant has one voting member (and an alternate voting member) representing it on the Operating Committee, although one individual may serve as the voting of the Operating Committee for multiple affiliated Participants. See CAT NMS Plan, supra note 4, at Section 4.2(a).

Commission believes that requiring that the Operating Committee approve the Implementation Plan and each Quarterly Progress Report by at least a Supermajority Vote will lend credibility to the timelines and information presented by the Participants in these documents. Finally, the Commission believes that requiring the Operating Committee to submit the Implementation Plan and Quarterly Progress Reports to the CEO, President, or an equivalently situated senior officer prior to the Operating Committee's vote will promote senior management attention and promote accountability with respect to CAT implementation.

3. Consideration Given to Improved Information Technology

The proposed amendment uses information technology to lessen the burden on the Participants. The Implementation Plan and Quarterly Progress Reports are to be publicly posted on websites and may be submitted electronically to the Commission. The Commission further notes that it does not prohibit the Participants from using any kind of information technology to facilitate the collection and/or preparation of the information required by the proposed amendment.

4. Duplication

The proposed amendment would not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

The Participants have voluntarily published some documents containing information regarding certain CAT implementation milestones. Some of this information is similar to that which might be provided in the Implementation Plan and in the Quarterly Progress Reports. However, the information would not necessarily be presented in the same form in the Implementation Plan and Quarterly Progress Reports. Also, additional detail may be provided in the Implementation Plan and Quarterly Progress Reports that is not currently made available to the public in the documents published by the Participants.

5. Effects on Small Entities

The Commission does not believe that the requirements under the proposed amendment would affect small entities.¹⁵ The proposed amendment only imposes requirements on national securities exchanges and FINRA. With respect to the national securities exchanges, the Commission's definition of a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 of Regulation NMS and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁶ None of the national securities exchanges subject to the proposed amendment fall within this definition, and FINRA similarly does not qualify as a "small entity."¹⁷

¹⁵ See Proposing Release, *supra* note 12, at Part VI.

¹⁶ See 17 CFR 240.0-10(e).

¹⁷ See 13 CFR 121.201.

6. Consequences of Not Conducting Collection

The information required by the proposed amendment should enhance operational transparency and increase the financial accountability of the Participants, which may incentivize the timely implementation of the CAT.

The Participants' progress towards implementing the CAT has suffered multiple setbacks and delays. If the Commission does not collect the information required by the proposed amendment, the Commission believes that the CAT may not be implemented in a timely manner, thus further delaying the ability of the Commission, other regulators, and market participants to realize the regulatory benefits of the CAT. In addition, market participants may continue to find it difficult to monitor the status of CAT implementation, which may affect how market participants stage their resources and otherwise plan for CAT implementation and eventual data reporting to the CAT.

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

The Participants are required by law to retain the records and information that would be collected pursuant to the proposed amendment for a period of not less than 5 years, the first 2 years in an easily accessible place.¹⁸ The proposed amendment does not affect this existing requirement.

There are no other special circumstances, and this collection is otherwise consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission has issued a release soliciting comment on the proposed amendment's requirements and associated paperwork burdens.¹⁹ 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 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.

¹⁸ See 17 CFR 240.17a-1(b).

¹⁹ See note 12 *supra*.

10. Confidentiality

Neither the Implementation Plan nor the Quarterly Progress Reports would be confidential. Rather, each would be publicly posted by the Participants on a public website.

11. Sensitive Questions

The CAT Implementation Plan and Quarterly Progress Reports may contain a limited amount of personally identifying information that may include name, job title, work address, work telephone number, and work email address from a senior official certifying the report on behalf of the Self-Regulatory Organization. The reports are submitted to the Commission, but no information of a sensitive nature, including social security numbers, will be required under this collection of information. The Commission has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the Commission has conducted a Privacy Impact Assessment (PIA) of the GSS system, in connection with this collection of information. The GSS PIA, published on June 3, 2019, is available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

As noted above, the proposed amendment would establish two new collections of information: (1) Implementation Plan and (2) Quarterly Progress Reports. The Commission anticipates that the Participants would incur the following third-party disclosure burdens.

Summary of Approximate Hourly Burdens									
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden Per Entity	Annual Total Responses	Annual Industry Burden
Implementation Plan	23	0	3 rd -Party Disclosure	Initial One-Time	1	76.8	25.6 ²⁰	23	588.8
Quarterly Progress Reports	23	0	3 rd -Party Disclosure	Ongoing	4	76.8	307.2	92	7065.6
TOTAL ANNUAL INDUSTRY BURDEN									7,654.4

These burdens are described in more detail below.

a. Implementation Plan

²⁰ As the Commission anticipates it will request a three-year approval for the collection of information, it has divided the initial, one-time burden by three in order to amortize the burden over three years.

The respondents to this collection of information would be the Participants.²¹ Within 30 calendar days following the effective date of the proposed amendment, the Participants must prepare, file with the Commission, and make publicly available on a website a complete Implementation Plan that includes a detailed timeline and various implementation milestones.

The Commission estimates that the Implementation Plan would result in an initial, one-time third-party disclosure burden of approximately 76.8 hours per respondent,²² or an annualized burden of 25.6 hours per year per respondent,²³ and 588.8 hours per year for the industry.²⁴ This burden is discussed in more detail below.

The Commission estimates that each Participant would incur, on average, an initial, one-time burden of approximately 52.2 hours to confer with other Participants, to draft an Implementation Plan, and to vote as to whether to approve the Implementation Plan. The Commission further estimates that it will take each Participant approximately 10 hours, on average, to ensure that the Operating Committee submits the Implementation Plan to the CEO, President, or equivalently situated senior officer of each Participant, to review the information contained in the Implementation Plan and for senior management consultations as needed, and to vote on approving the Implementation Plan. To account for the possibility that the Implementation Plan may be approved only by a Supermajority Vote, and not by a unanimous vote, the Commission estimates that each Participant will incur, on average, an initial, one-time burden of approximately 4.6 hours in connection with the proposed rule's requirement that each Participant whose Operating Committee member does not vote to approve the Implementation Plan must file an explanatory statement. Finally, the Commission estimates that each Participant will incur, on average, an initial, one-time burden of 10 hours to ensure that the Implementation Plan, and any explanatory statement (if applicable), is filed with the Commission and made publicly available on a website.

b. Quarterly Progress Reports

The respondents to this quarterly collection of information would be the Participants. Within 15 business days after the end of each calendar quarter, the Participants must prepare, file with the Commission, and make publicly available on a website a complete report that provides a detailed and up-to-date description of the progress made by the Participants toward each of the implementation milestones identified in the Implementation Plan.

²¹ There are 23 Participants. See Proposing Release, supra note 12, at 48458-48459 n.3-4.

²² 52.2 hours + 10 hours + 4.6 hours + 10 hours = 76.8 hours per respondent.

²³ 76.8 hours / 3 years = 25.6 hours per year per respondent.

²⁴ 25.6 hours per year per respondent * 23 Participants = 588.8 hours per year for the industry.

The Commission estimates that the Quarterly Progress Report would result in an ongoing third-party disclosure burden of approximately 307.2 per respondent per year,²⁵ or approximately 7,065.6 hours per year for the industry.²⁶ This burden is discussed in more detail immediately below.

The Commission estimates that each Participant would incur, for each Quarterly Progress Report, an average ongoing burden of approximately 62.2 hours²⁷ to confer with other Participants, to draft a Quarterly Progress Report, to ensure that the Operating Committee submits each Quarterly Progress Report to the CEO, President, or an equivalently situated senior officer of each Participant, and to vote as to whether to approve each Quarterly Progress Report. To account for the possibility that a Quarterly Progress Report may be approved only by a Supermajority Vote, and not by a unanimous vote, the Commission estimates that each Participant will incur, on average, an ongoing burden of approximately 4.6 hours in connection with the proposed rule’s requirement that each Participant whose Operating Committee member does not vote to approve a Quarterly Progress Report must file an explanatory statement. In addition, the Commission estimates that each Participant would incur, on average, an ongoing burden of approximately 10 hours to ensure that each Quarterly Progress Report, and any explanatory statement (if applicable), is filed with the Commission and made publicly available on a website.

c. Total Industry Burdens

The total estimated industry burden for both collections of information is **7,654.4 hours per year.**²⁸

13. Costs to Respondents

The Commission believes that respondents will incur costs in connection with the CAT Implementation Plan and the Quarterly Progress Reports. The Commission anticipates that the Participants would incur the following third-party disclosure burdens.

Summary of Approximate Cost Burdens									
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Cost	Ongoing or Initial Cost	Annual Responses per Entity	Cost per Entity per Response	Annual Cost Per Entity	Annual Total Responses	Annual Industry Cost

²⁵ 62.2 hours + 4.6 hours + 10 hours = 76.8 hours per Quarterly Progress Report. 76.8 hours per Quarterly Progress Report * 4 reports a year = 307.2 hours per respondent per year.

²⁶ 307.2 hours per respondent per year * 23 Participants = 7,065.6 hours per year for the industry.

²⁷ See Proposing Release, supra note 12, at 48475.

²⁸ 588.8 hours + 7,065.6 hours = 7,654.4 hours.

CAT Implementation Plan	23	0	3 rd -Party Disclosure	Initial One-Time	1	\$8,695.65	\$2,898.55 ²⁹	23	\$66,666.65
Quarterly Progress Reports	23	0	3 rd -Party Disclosure	Ongoing	4	\$8,695.65	\$34,782.60	92	\$799,999.80
TOTAL ANNUAL INDUSTRY COST									\$866,666.45

These burdens are described in more detail below.

a. CAT Implementation Plan

The respondents to this collection of information would be the Participants. Within 30 calendar days following the effective date of the proposed amendment, the Participants must prepare, file with the Commission, and make publicly available on a website a complete Implementation Plan that includes a detailed timeline and various implementation milestones.

The Commission estimates that each Participant would incur an initial, one-time, third-party disclosure cost of approximately \$8,695.65,³⁰ on average, in external public relations, legal, and consulting costs related to the development of the Implementation Plan. **This estimate would result in an annualized cost of approximately \$2,898.55 per year per respondent³¹ and \$66,666.65 per year for the industry.³²**

b. Quarterly Progress Reports

The respondents to this quarterly collection of information would be the Participants. Within 15 business days after the end of each calendar quarter, the Participants must prepare, file with the Commission, and make publicly available on a website a complete report that provides a detailed and up-to-date description of the progress made by the Participants toward each of the implementation milestones identified in the Implementation Plan.

The Commission estimates that each Participant would incur, for each Quarterly Progress Report, an ongoing third-party disclosure cost of approximately \$8,695.65,³³ on average, in external public relations, legal, and consulting costs related to the development of the Quarterly Progress

²⁹ As the Commission anticipates it will request a three-year approval for the collection of information, it has divided the initial, one-time cost by three in order to amortize the cost over three years.

³⁰ See id.

³¹ $\$8,695.65 / 3 \text{ years} = \$2,898.55 \text{ per year per respondent.}$

³² $\$2,898.55 \text{ per year per respondent} * 23 \text{ Participants} = \$66,666.65 \text{ per year for the industry.}$

³³ See Proposing Release, supra note 12, at ____.

Report. **This estimate would result in a cost of approximately \$34,782.60 per year per respondent³⁴ and approximately \$799,999.80 per year for the industry.³⁵**

c. Total Industry Costs

The total estimated industry cost for both collections of information is **\$866,666.45 per year.**³⁶

14. Cost to Federal Government

The federal government would 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.

³⁴ \$8,695.65 * 4 Quarterly Progress Reports = \$34,782.60 per year per respondent.

³⁵ \$34,782.60 per year per respondent * 23 Participants = \$799,999.80 per year for the industry.

³⁶ \$66,666.65 + \$799,999.80 = \$866,666.45.