

**SUPPORTING STATEMENT**  
**Paperwork Reduction Act Information Collection Submission for Rule 608**

**OMB Control Number 3235-0500**  
**Reinstatement with Change**

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**

Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the “Act”) enables the Securities and Exchange Commission (the “Commission”) to act, in furtherance of its statutory directive to facilitate the establishment of a national market system for securities,<sup>1</sup> “by rule or by order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof . . . .”<sup>2</sup> This section, however, does not specify any procedures for filing or amending national market system plans (“NMS Plans”).

The Commission adopted Rule 11Aa3-2 to establish such procedures.<sup>3</sup> This rule was later re-numbered as Rule 608 with the adoption of Regulation NMS, but the information collection requirements of the rule remained the same:<sup>4</sup>

- a. New NMS Plans. Self-regulatory organizations (“SROs”) filing a new NMS Plan must submit the text of the NMS Plan to the Commission, along with a statement of purpose,<sup>5</sup> and, if applicable, specified supporting materials. Such materials may include: (1) a copy of all governing or constituent documents;<sup>6</sup> (2) a description of the manner in which the NMS Plan, and any facility or procedure contemplated by the NMS Plan, will be implemented;<sup>7</sup> (3) a listing of all significant phases of development and implementation contemplated by the NMS

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<sup>1</sup> See 15 U.S.C. 78k-1(a)(2).

<sup>2</sup> See 15 U.S.C. 78k-1(a)(3)(B).

<sup>3</sup> See Securities Exchange Act Release No. 17580 (Feb. 26, 1981), 46 FR 15866 (Mar. 10, 1981).

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37570 (June 29, 2005).

<sup>5</sup> See 17 CFR 242.608(a)(1).

<sup>6</sup> See 17 CFR 242.608(a)(4)(i).

<sup>7</sup> See 17 CFR 242.608(a)(4)(ii)(A).

Plan, including a projected completion date for each phase;<sup>8</sup> (4) an analysis of the competitive impact of implementing the NMS Plan and any facility or procedure contemplated by the NMS Plan;<sup>9</sup> (5) a description of any written agreements or understandings between or among plan participants or sponsors relating to interpretations of the NMS Plan or conditions for becoming a plan participant or sponsor;<sup>10</sup> and (6) a description of the manner in which any facility contemplated by the NMS Plan shall be operated.<sup>11</sup> Participants or sponsors to the NMS Plan must ensure that a current and complete version of the NMS Plan is posted on a designated website or a plan website after being notified by the Commission that the NMS Plan is effective. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan.<sup>12</sup>

- b. NMS Plan Amendments. SROs proposing to amend an existing NMS Plan must submit the text of the amendment to the Commission, along with a statement of purpose,<sup>13</sup> and, if applicable, the supporting materials described above,<sup>14</sup> as well as a statement that the amendment has been approved by the plan participants or sponsors in accordance with the terms of the NMS Plan.<sup>15</sup> Participants or sponsors to the NMS Plan must ensure that any proposed amendments are posted to a designated website or a plan website after filing the amendments with the Commission and that those websites are updated to reflect the current status of the amendment and the NMS Plan. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan.<sup>16</sup>
- c. Plan Processor Selections. To the extent that a plan processor is required for any facility contemplated by a NMS Plan, the plan participants or sponsors must file with the Commission a statement identifying the plan processor selected, describing the material terms under which the plan processor is to serve, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered, and the reasons for the selection of the plan processor.<sup>17</sup>

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<sup>8</sup> See 17 CFR 242.608(a)(4)(ii)(B).

<sup>9</sup> See 17 CFR 242.608(a)(4)(ii)(C).

<sup>10</sup> See 17 CFR 242.608(a)(4)(ii)(D).

<sup>11</sup> See 17 CFR 242.608(a)(5).

<sup>12</sup> See 17 CFR 242.608(a)(8)(i).

<sup>13</sup> See 17 CFR 242.608(a)(1).

<sup>14</sup> See notes 5-11 and associated text supra for a description of these supporting materials.

<sup>15</sup> See 17 CFR 242.608(a)(4)(ii)(E).

<sup>16</sup> See 17 CFR 242.608(a)(8)(i)-(ii).

<sup>17</sup> See 17 CFR 242.608(a)(6).

Although described in more detail in this submission, these information collection requirements were previously submitted and approved in connection with Rule 11Aa3-2 under OMB Control Number 3235-0500. Commission staff inadvertently and mistakenly discontinued this OMB Control Number on December 10, 2007, following the re-numbering of Rule 11Aa3-2 as Rule 608, even though the information collection requirements imposed by Rule 608 remained in place and unchanged from those imposed by Rule 11Aa3-2. Accordingly, the Commission is requesting, on an emergency basis, a reinstatement of the previously approved information collection requirements associated with OMB Control Number 3235-0500.

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

The information collected pursuant to Rule 608 is necessary to further the above-described statutory directive to facilitate the establishment of a national market system for securities.<sup>18</sup> The collected information enables the Commission to determine whether to authorize the creation or amendment of NMS Plans. It also enables the Commission to better monitor and regulate existing NMS Plans and the SROs that are participants or sponsors to such NMS Plans. These functions would be much more difficult without the information collected pursuant to Rule 608.

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

Rule 608 uses information technology to lessen the burden on the SROs that are participants or sponsors to NMS Plans. While NMS Plans and NMS Plan amendments are still submitted in paper form to the Commission, the SROs generally submit courtesy copies to the Commission in electronic form, lessening the need for any additional copying or scanning. In addition, much of the information collected pursuant to Rule 608 is posted electronically on a website. The Commission further notes that it does not prohibit the SROs from using any kind of information technology to facilitate the collection and/or preparation of the information required by Rule 608.

## **4. Duplication**

Rule 608 will not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

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

Rule 608 does not affect small entities. Rule 608 only imposes requirements on self-regulatory organizations that are national securities exchanges and national securities associations. 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

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<sup>18</sup> See notes 1-2 and associated text supra. The above-described collections of information also ensure that affected market participants have access, via a public and designated website or a plan website, to a current and updated version of any effective NMS Plans.

Regulation NMS and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.<sup>19</sup> None of the national securities exchanges subject to the amendments fall within this definition, and national securities associations similarly do not qualify as a “small entity.”<sup>20</sup>

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

The information collected pursuant to Rule 608 is necessary to further the above-described statutory directive to facilitate the establishment of a national market system for securities.<sup>21</sup> If the Commission did not collect this information, it would be more difficult for the Commission to determine whether to approve the creation or amendment of NMS Plans. It would also be more difficult for the Commission to monitor and regulate existing NMS Plans and the SROs that are participants or sponsors to such NMS Plans.

Moreover, the information collected pursuant to Rule 608 cannot be collected less frequently. The information submitted with each NMS Plan, amendment, or selection of a plan processor is only submitted once.

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

The SROs are required by law to retain the records and information that are collected pursuant to Rule 608 for a period of not less than 5 years, the first 2 years in an easily accessible place.<sup>22</sup> Rule 608 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 and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. However, because the Commission is requesting a reinstatement of a previously approved information collection on an emergency basis, the Commission has not yet specifically solicited comments on this information collection. If reinstatement is granted, the Commission will publish a notice soliciting comments in the Federal Register prior to seeking an extension of the term of the information collection.

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<sup>19</sup> See 17 CFR 240.0-10(e).

<sup>20</sup> See 13 CFR 121.201.

<sup>21</sup> See notes 1-2 and associated text supra. The above-described collections of information also ensure that affected market participants have access, via a public and designated website or a plan website, to a current and updated version of any effective NMS Plans.

<sup>22</sup> See 17 CFR 240.17a-1(b).

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

The text of the NMS Plans and any amendments will not be confidential, but published on a designated website or a plan website. To the extent that Rule 608 requires the SROs to submit confidential information to the Commission, that information will be kept confidential subject to the provisions of applicable law.<sup>23</sup>

## **11. Sensitive Questions**

No information of a sensitive nature, including Personally Identifiable Information (PII), is required under this collection of information.

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

As noted above, Rule 608 establishes the following information collection requirements in connection with (1) New NMS Plans, (2) NMS Plan Amendments, and (3) Plan Processor Selections. The Commission estimates that up to 25 SROs<sup>24</sup> incur the following reporting and/or third-party disclosure burdens:

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<sup>23</sup> See, e.g., 5 U.S.C. 552 et seq.; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

<sup>24</sup> Currently, the following SROs are participants to a NMS Plan: BOX Exchange, LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. One additional SRO – MEMX LLC – may become a participant to NMS Plans in the future and has therefore been included in the estimated number of respondents.

Summary of 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 Industry Burden
New NMS Plan	25	0	3 <sup>rd</sup> -Party Discl.	Ongoing	1	5	5	125
			Reporting	Ongoing	1 <sup>25</sup>	170	34	850
NMS Plan Amendments	25	0	3 <sup>rd</sup> -Party Discl.	Ongoing	13	0.38	5	125
			Reporting	Ongoing	13	34	442	11,050
Plan Processor Selections	25	0	Reporting	Ongoing	1 <sup>26</sup>	34	11.33	283.33
<b>TOTAL ANNUAL INDUSTRY BURDEN</b>								<b>12,433.33</b>

These burdens are discussed further below.

a. New NMS Plans

The Commission further estimates that the SROs would further incur, on average, an ongoing third-party disclosure burden of approximately 5 hours per year to keep a current and complete version of the NMS Plan posted on a designated website or a plan website, and to provide a link to the current version of the NMS Plan on its own website. **This would result in an average aggregated annual burden of approximately 125 hours.**<sup>27</sup>

Although the burdens involved with the creation of a new NMS Plan can and will vary, the Commission estimates that each SRO would incur, on average, a burden of approximately 170 hours to create and submit to the Commission a new NMS Plan, along with a statement of purpose, and if, applicable, any of the specified supporting materials. The Commission believes that a new NMS Plan would only be created approximately once every five years. Accordingly, the Commission estimates that the creation and submission of a new NMS Plan and any related

<sup>25</sup> The Commission estimates that a response would only be required once every five years. The annual burdens included in this chart and detailed below therefore reflect burdens that are annualized over five years. See notes 28-29 and associated text infra.

<sup>26</sup> The Commission estimates that a response would only be required once every three years. The annual burdens included in this chart and detailed below therefore reflect burdens that are annualized over three years. See notes 34-35 and associated text infra.

<sup>27</sup> 5 burden hours \* 25 Participants = 125 burden hours.

materials would result, on average, in **an annual ongoing burden of approximately 34 hours per SRO<sup>28</sup> and an aggregated annual burden of approximately 850 hours.**<sup>29</sup>

b. NMS Plan Amendments

Although the burdens involved with the development of a NMS Plan amendment can and will vary, the Commission estimates that each SRO would incur, on average, a reporting burden of approximately 34 hours to create and submit to the Commission a NMS Plan amendment and any supporting materials. Because the Commission believes that approximately 13 NMS Plan amendments will be submitted each year, the Commission estimates that the creation and submission of NMS Plan amendments and any related materials would result, on average, in **an ongoing burden of approximately 442 hours per SRO<sup>30</sup> and an aggregate burden of approximately 11,050 hours.**<sup>31</sup>

The Commission further estimates that the SROs would further incur, on average, an ongoing third-party disclosure burden of approximately 0.38 hours to post any pending NMS Plan amendments to a designated website or a plan website and to update such websites to reflect the current status of the amendment and the NMS Plan. **This would result, in average, in an annual burden of approximately 5 hours per SRO<sup>32</sup> and an aggregated annual burden of approximately 125 hours.**<sup>33</sup>

c. Plan Processor Selections

Although the burdens involved with the selection of a plan processor can and will vary, the Commission estimates that each SRO would incur, on average, a reporting burden of approximately 34 hours to submit to the Commission a statement identifying the plan processor selected and supporting materials. The Commission further estimates that one plan processor will be selected every three years. Accordingly, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result, on average, in **an ongoing annual burden of approximately 11.33 hours per SRO<sup>34</sup> and an aggregated annual burden of approximately 283.33 hours.**<sup>35</sup>

The above estimates result in a **total annual industry burden of 12,433.33 hours.**

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<sup>28</sup> 170 burden hours / 5 = 34 burden hours per year.

<sup>29</sup> 34 burden hours \* 25 Participants = 850 burden hours.

<sup>30</sup> 34 burden hours \* 13 NMS Plan amendments = 442 burden hours per SRO per year.

<sup>31</sup> 442 burden hours per SRO per year \* 25 SROs = 11,050 burden hours.

<sup>32</sup> 0.38 burden hours \* 13 NMS Plan amendments = 5 burden hours per SRO per year.

<sup>33</sup> 5 burden hours \* 25 Participants = 125 burden hours.

<sup>34</sup> 34 burden hours / 3 years = 11.33 burden hours per SRO per year.

<sup>35</sup> 11.33 burden hours per SRO per year \* 25 SROs = 283.33 burden hours.

### 13. Costs to Respondents

The Commission estimates that up to 25 SROs<sup>36</sup> will incur the following costs in connection with the collections of information required by Rule 608:

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 Industry Cost
New NMS Plans	25	0	Reporting	Ongoing	1	\$30,000 <sup>37</sup>	\$6,000	\$150,000
NMS Plan Amendments	25	0	Reporting	Ongoing	13	\$1,000	\$13,000	\$325,000
Plan Processor Selections	25	0	Reporting	Ongoing	1	\$1,000 <sup>38</sup>	\$333.33	\$8,333.33
<b>TOTAL ANNUAL INDUSTRY COST</b>								<b>\$483,333.33</b>

These burdens are described in more detail below.

#### a. New NMS Plans

Although the costs involved with the creation of a new NMS Plan can and will vary, the Commission estimates that each SRO would incur, on average, reporting costs of approximately \$30,000 in external public relations, legal, and consulting costs related to the development of a new NMS Plan and any related supporting materials. The Commission believes that a new NMS Plan would only be created approximately once every five years. Accordingly, the Commission estimates that the creation of a new NMS Plan and any related materials would result, on average, in **ongoing annual costs of approximately \$6,000 per SRO<sup>39</sup> and aggregated annual costs of approximately \$150,000.**<sup>40</sup>

#### b. NMS Plan Amendments

Although the costs involved with the creation of a NMS Plan amendment can and will vary, the Commission estimates that each SRO would incur, on average, reporting costs of approximately \$1,000 in external public relations, legal, and consulting costs related to the creation and submission of a new NMS Plan and any related supporting materials. Because the Commission estimates that

<sup>36</sup> See note 24 *supra*.

<sup>37</sup> See note 25 *supra*; see also notes 39-40 and associated text *infra*.

<sup>38</sup> See note 26 *supra*; see also notes 43-44 and associated text *infra*.

<sup>39</sup> \$30,000 / 5 = \$6,000 per SRO per year.

<sup>40</sup> \$6,000 per SRO per year \* 25 SROs = \$150,000.



13 NMS Plan amendments would be filed each year, the Commission estimates that the creation and submission of a NMS Plan amendment and any related materials would result, on average, in **ongoing annual costs of approximately \$13,000 per SRO<sup>41</sup> and aggregated annual costs of approximately \$325,000.**<sup>42</sup>

c. Plan Processor Selections

The Commission estimates that each SRO would incur, on average, reporting costs of approximately \$1,000 in external legal and consulting costs related to the preparation and submission of materials related to the selection of a plan processor. The Commission further estimates that a plan processor would be selected approximately once every three years. Accordingly, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result, on average, in **ongoing annual costs of approximately \$333.33 per SRO<sup>43</sup> and aggregated annual costs of approximately \$8,333.33.**<sup>44</sup>

The above estimates result in a **total annual industry cost of \$483,333.33.**

**14. Cost to Federal Government**

The federal government will not incur a cost in connection with these collections of information.

**15. Changes in Burden**

Since its last submission of an information collection request for Rule 608, the Commission has revised its burden and cost estimates, as summarized in this chart:

Type of Burden or Cost	Annual Industry Burden or Cost	Annual Industry Burden or Cost Previously Approved	Change in Burden or Cost	Reason for Change
Total Reporting Burdens	12,433.33	433	12,000.33 Hours	Change in Agency Estimate
Total Third-Party Disclosure Burdens	250 Hours	120 Hours	130 Hours	Change in Agency Estimate
Total Reporting Costs	\$483,333.33	\$0	\$483,333.33	Change in Agency Estimate

<sup>41</sup> \$1,000 \* 13 NMS Plan amendments = \$13,000 per SRO per year.

<sup>42</sup> \$13,000 per year \* 25 SROs = \$325,000.

<sup>43</sup> \$1,000 / 3 years = \$333.33 per SRO per year.

<sup>44</sup> \$333.33 per SRO per year \* 25 SROs = \$8,333.33.

These burdens and costs have increased since the last submission of an information collection request for a number of reasons. First, when the last information collection request was submitted, there were only 10 SROs. There are now up to 25 SROs that must comply with the provisions of Rule 608, which has resulted in a significant increase in the estimated annual industry burdens. Second, when the last information collection request was submitted, only 6 NMS Plans were in force. There are currently 11 NMS Plans in place,<sup>45</sup> so the burdens and costs related to the preparation and submission of new NMS Plans and NMS Plan amendments have increased. Finally, in the years since the last submission of an information collection request for Rule 608, the Commission's experience with the creation and submission of new NMS Plans and NMS Plan amendments has suggested that the estimated burdens and costs associated with these requirements should be revised upwards.

#### **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.

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<sup>45</sup> These NMS Plans are: (1) the NMS Plan Governing the Consolidated Audit Trail; (2) the NMS Plan to Address Extraordinary Market Volatility; (3) the NMS Plan for the Selection and Reservation of Securities Symbols; (4) the Consolidated Tape Association NMS Plan; (5) the Consolidated Quotation NMS Plan; (6) the NMS Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis; (7) the NMS Plan Establishing Procedures Under Rule 605 of Regulation NMS; (8) the Options Regulatory Surveillance Authority Plan; (9) the Options Listing Procedure NMS Plan; (10) the Options Order Protection and Locked/Crossed Market NMS Plan; and (11) the Options Price Reporting Facility NMS Plan. In addition, the Commission has recently directed the SROs to submit a new NMS Plan. See Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020). Once this new NMS Plan is operational, three of the existing NMS Plans will cease to operate: (1) the Consolidated Tape Association NMS Plan; (2) the Consolidated Quotation NMS Plan; and (3) the NMS Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.