

MEMORANDUM

TO: Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Michael Coe
Daniel Gray
Division of Trading and Markets
Securities and Exchange Commission

RE: 3235-0500; Request for Emergency Clearance of an Information Collection for Rule 608

DATE: [May 21, 2020]

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,¹ “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”² 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,³ and the information collection requirements of that rule were submitted and approved under OMB Control Number 3235-0500. When Rule 11Aa3-2 was re-numbered as Rule 608 with the adoption of Regulation NMS, the information collection requirements of the rule remained the same.⁴ However, Commission staff inadvertently and mistakenly discontinued the OMB Control Number associated with these information collection requirements on December 10, 2007 following the re-numbering of Rule 11Aa3-2 as Rule 608 – an error that was only recently discovered.

¹ See 15 U.S.C. 78k-1(a)(2).

² See 15 U.S.C. 78k-1(a)(3)(B).

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

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

The Commission is hereby requesting, on an emergency basis, a reinstatement of the previously approved information collection requirements associated with OMB Control Number 3235-0500. This emergency reinstatement would prevent the disruption of normal collection efforts pursuant to Rule 608, which are still in force. There are a number of existing and active NMS Plans,⁵ and the participants or sponsors of existing NMS Plans amend those plans with some frequency. In addition, the Commission has recently ordered the development of a new NMS Plan.⁶ If an emergency reinstatement is not granted, the Commission may be unable to determine whether to approve new NMS Plans or amendments to existing NMS Plans within the statutory deadlines set forth in Rule 608.⁷ Emergency reinstatement would also enable the Commission to better monitor and regulate existing NMS Plans and the SROs that are participants or sponsors of those NMS Plans. These functions, which are critical to the Commission's statutory mandate to facilitate the establishment of a national market system for securities, would be much more difficult without the information collected pursuant to Rule 608.

* * * * *

If you have any questions about this matter, please feel free to contact Michael Coe at (202) 551-4875, or Daniel Gray, at (202) 551-5603.

⁵ 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.

⁶ See Securities Exchange Act Release No. 88827 (May 6, 2020), __ FR ____ (May __, 2020) (Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data).

⁷ See 17 CFR 242.608(b)(2) (providing the Commission with 120 days to approve new NMS Plans or certain NMS Plan amendments).