

MEMORANDUM

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

FROM: Molly Kim
Daniel Gray
Division of Trading and Markets
Securities and Exchange Commission

RE: 3235-0435; Request for Emergency Clearance of an Information Collection for Rule 607

DATE: April 2021

Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) charges the Securities and Exchange Commission (“Commission”) with the responsibility to assure that the national market system develop and operate in accordance with specific goals and objectives.¹ Among the national market system’s goals and objectives are the public availability of quotation information, fair competition, market efficiency, best execution and disintermediation.

The Commission adopted Rule 11Ac1-3 to advance the statutory directive that the Commission facilitate the establishment of a national market system for securities² by requiring disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year and the information collection requirements of that rule were submitted and approved under OMB Control Number 3235-0435. When Rule 11Ac1-3 was re-numbered as Rule 607 with the adoption of Regulation NMS, the information collection requirements of the rule remained the same.³ 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 11Ac1-3 as Rule 607 – an error that was only recently discovered.

¹ See 15 U.S.C. 78k-1.

² See Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994).

³ 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 3235-0435. This emergency reinstatement would prevent the disruption of normal collection efforts pursuant to Rule 607, which are still in force. The information collected pursuant to Rule 607 is necessary to further the above-described statutory directive to facilitate the establishment of a national market system for securities. The purpose of the rule is to ensure that customers are adequately apprised of the broker-dealer's order routing practices with respect to the customer's order, in furtherance of the Commission's statutory mandate to protect investors. In the absence of these provisions, customers may not be informed fully of the firm's order routing practices. Emergency reinstatement would also enable the Commission to better monitor and regulate existing market participants that are subject to Rule 607. 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 607.

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If you have any questions about this matter, please feel free to contact Molly Kim or Daniel Gray in the Division of Trading and Markets.