

SUPPORTING STATEMENT
Paperwork Reduction Act Information Collection Submission for Rule 607

OMB Control Number 3235-0435
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 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 securities.² Rule 11Ac1-3 requires 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. This rule was later re-numbered as Rule 607 with the adoption of Regulation NMS, but the information collection requirements of the rule remained the same:³

- a. Customer Account Statements. Under Rule 607, no broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any NMS stock or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Exchange Act⁴, unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following⁵:

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).

⁴ 15 U.S.C. 78q-2.

⁵ See 17 CFR 242.607.

- i. the broker's or dealer's policies regarding receipt of payment for order flow from any broker or dealer, national securities exchange, national securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received⁶; and
 - ii. the broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid and national best offer.⁷
- b. Exemptions. The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.⁸

Although described in more detail in this submission, these information collection requirements were previously submitted and approved in connection with Rule 11Ac1-3 under OMB Control Number 3235-0435. Commission staff inadvertently and mistakenly discontinued this OMB Control Number on October 31, 2006, following the re-numbering of Rule 11Ac1-3 as Rule 607, even though the information collection requirements imposed by Rule 607 remained in place and unchanged from those imposed by Rule 11Ac1-3. Accordingly, the Commission is requesting, on an emergency basis, a reinstatement of the previously approved information collection requirements associated with OMB Control Number 3235-0435.

2. Purpose and Use of the Information Collection

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.⁹ 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.

⁶ See 17 CFR 242.607(a)(1).

⁷ See 17 CFR 242.607(a)(2).

⁸ See 17 CFR 242.607(b).

⁹ See notes 1 and 2 and associated text supra.

3. Consideration Given to Improved Information Technology

Many broker-dealer firms utilize automated systems that generate confirmations and account statements for transactions automatically. Assuming a firm generally follows the same order routing practices for most customer orders, technology may permit the added requirements of Rule 607 to be implemented electronically. There are no technological or legal obstacles to reducing the burden.

4. Duplication

The Commission has sought to effect the new requirements concerning disclosure of payment for order flow through existing channels; specifically, the account statements already are required by the rules of the self-regulatory organizations. This reduces the likelihood of duplicative reporting.

5. Effects on Small Entities

The Commission believes that Rule 607 impacts small businesses proportionately with other entities. No methods are used to minimize the burden on small businesses.

6. Consequences of Not Conducting Collection

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.¹⁰ As stated above, 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.

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

Brokers and dealers are required by law to retain the records and information that are collected pursuant to Rule 607 for a period of not less than 3 years, the first 2 years in an easily accessible place.¹¹ Rule 607 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,

¹⁰ See notes 1 and 2 and associated text supra.

¹¹ See 17 CFR 240.17a-4(b).

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.

9. Payment or Gift

Not applicable. No payment or gift is provided to respondents.

10. Confidentiality

Not Applicable. The information is disseminated to the public for the benefit of public investors.

11. Sensitive Questions

Not applicable. No information of a sensitive nature, including Personally Identifiable Information (PII), is required under this collection of information.

12. Burden of Information Collection

Rule 607 requires disclosure of a broker dealer's practices concerning payment for order flow. The disclosures are required to be made on each new customer account and on a yearly basis thereafter, on the annual statement provided to all customers. The staff estimates that there are 3,643 active broker-dealers registered with the Commission.¹² Broker-dealers must send out the disclosures required by Rule 607 to all existing customers and to all new customers on an annual basis. We estimate that there are currently 161,644,654 existing customer accounts and an average of 21,867,147 new customer accounts opened each year. Thus we estimate a total of 183,511,801 total annual responses will be made to comply with this rule. Based on our current estimate of 3,643 registered broker-dealers, and by calculating the number of responses/hour per broker-dealer using the estimates and data from the 2004 PRA submission for Rule 607 and applying this methodology to the 2019 Focus Reports data, the staff estimates that the average number of hours necessary for each respondent to comply with Rule 607 is estimated to be 39.714

¹² This estimate is based on 2019 Focus Reports received by the Commission.

hours annually.¹³ **This would result in an average aggregated annual burden of 144,678.102 hours.**¹⁴

Name of Information Collection	Number of Respondents	Type of Burden	Number of Annual Responses Per Respondent	Burden Per Response (Seconds)	Annual Burden Per Respondent (Hours)	Total Annual Industry Burden (Hours)
Rule 607	3,643	3 rd Party Disclosure	50,736.3107	.00078839 hours	39.714	144,678.102

13. Costs to Respondents

The Commission does not estimate any costs to respondents.

14. Cost to Federal Government

Not applicable.

15. Changes in Burden

The increase in the estimated annual hour burden is attributable to a significant increase in the number of public customer accounts, which is partially offset by a decrease in the total number of respondents due to consolidation in the industry. The total number of respondents (3,643) reflects the estimated number of active brokers and dealers.

There is a change in the total number of hours per respondent, annual responses, and annual hours requested. The explanation for these changes are due to the availability of more accurate data to calculate the average number of responses per day. There is a decrease in the number of respondents from 6,752 to 3,643, as well as an increase in the number of public customer accounts requiring responses pursuant to Rule 607, from 119,900,000 to 183,511,801.

¹³ Using the estimates in the 2004 PRA, we calculated the number of responses per broker-dealer as follows: $119,900,000 \text{ responses} / 6,752 \text{ broker-dealers} = 17,757.7041 \text{ responses/broker-dealer}$. Then we determined the responses per hour: $17,757.7041 / 14 \text{ hours (response time/broker-dealer)} = 1,268.40724 \text{ responses/hour}$ for each broker-dealer. Finally, we applied this same responses per hour estimate to the new data we received from the 2019 Focus Reports: $183,511,801 \text{ (new number of total responses)} / 3,643 \text{ (new number of broker-dealers)} / 1,268.40724 \text{ (rate of responses/hour for each broker-dealer)} = 39.714227 \text{ annual burden hours}$.

¹⁴ $39.714 \text{ burden hours} * 3,643 \text{ Participants} = 144,678.102 \text{ burden hours}$.

Since its last submission of an information collection request for Rule 607, the Commission has revised its burden 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	144,678.102	94,528	50,150.102 Hours	Change in Agency Estimate

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.