

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 31 and Form R31 under the Exchange Act
OMB Control Number 3235-0597

A. Justification

1. Information Collection Necessity

Pursuant to Section 31 of the Securities Exchange Act of 1934 (“Exchange Act”),¹ the Securities and Exchange Commission (“SEC”) is required to collect fees and assessments from national securities exchanges and national securities associations (collectively, “self-regulatory organizations” or “SROs”) based on the volume of their securities transactions. To collect the proper amounts, the SEC in 2004 adopted Rule 31 and Form R31 under the Exchange Act whereby each SRO must report to the SEC the volume of its securities transactions and the SEC, based on those data, calculates the amount of fees and assessments that each SRO owes pursuant to Section 31. Rule 31 and Form R31 require each SRO to provide these data on a monthly basis.

2. Information Collection Purpose and Use

Rule 31 implements the requirements of Section 31 of the Exchange Act by requiring each SRO to provide trade data that, in turn, enable the SEC to calculate accurately the amount of fees and assessments owed by the SRO pursuant to Section 31. Without this rule, the SEC would not be able to satisfy its obligations under Section 31.

3. Consideration Given to Information Technology

Much of the information required on Form R31 consists of data that are already compiled by respondents in electronic form. Therefore, there is only limited scope for information technology to reduce the respondents’ burden.

4. Duplication

The SEC does not believe that Rule 31 and Form R31 require any duplicative filing requirements.

5. Effect on Small Entities

Rule 31 and Form R31 have no effect on any small entity. Currently, Rule 31 and Form R31 impose duties on 24 national securities exchanges, one national securities association, and two registered clearing agencies (which are required to provide certain data in their possession

¹ 15 U.S.C. 78ee.

needed by the SROs to complete Form R31).² Based on past experience, the SEC estimates that three new exchanges will register and become subject to Rule 31 and Form R31 during the authorization period. Of the 27 current and three expected new respondents, none is a small entity.

6. Consequences of Not Conducting Collection

Obtaining monthly data on all sales of securities that are subject to Section 31 enables the SEC to calculate and book on its financial statement a monthly receivable for Section 31 fees and assessments. The SEC believes that it is appropriate to recognize and record, on its financial statement, accounts receivable for Section 31 fees and assessments on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred. Thus, any less frequent collection could render the SEC unable to fulfill its obligations under the Accountability of Tax Dollars Act of 2002 (“Accountability Act”).

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

5 CFR 1320.5(d)(2) states that, unless an agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information that has any one of eight characteristics. Rule 31 has two of these characteristics. Nevertheless, the SEC believes that these characteristics are justified by “statutory requirements or other substantial need.” The eight characteristics are set forth below:

(i) requiring respondents to report information to the agency more often than quarterly;

Under Rule 31, each respondent is required to submit a completed Form R31 on a monthly basis. This permits the SEC to calculate the fees and assessments owed by each SRO every month, even though they are due only twice per year (on or before March 15 and September 30 of each year). The Accountability Act requires the SEC to produce audited financial statements. The SEC believes that it is appropriate to recognize and record, on its financial statement, accounts receivable on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred.

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

² Since the last renewal period, when there was one security futures exchange that reported transactions, that exchange has ceased operation. Therefore, currently, no security futures exchanges report any transaction in security futures on Form R31.

Rule 31 requires each respondent to submit a completed Form R31 in fewer than 30 days after receiving the data that must be reported on the form. However, the SEC believes that this requirement is justified by statutory requirements or other substantial need.

The first billing cycle established under Section 31(e) of the Exchange Act³ is from January 1 to August 31; the due date for fees and assessments incurred in that period is September 30. Thus, the first billing cycle allows only 30 days between the close of the billing period (August 31) and the date on which each SRO must pay fees and assessments based on securities transactions occurring in that period (September 30). For the SEC to bill an SRO the correct amount, issue the bill before the September 30 due date, and give the SRO reasonable time to pay the bill, the SEC must obtain the data on the SRO's securities transactions in fewer than 30 days after August 31.

In addition, requiring each respondent to submit a completed Form R31 in fewer than 30 days after receiving the data to be reported allows the SEC to better carry out its responsibilities under Section 31(j)(2) of the Exchange Act.⁴ Section 31(j)(2) requires the SEC to adjust the rate at which it levies fees on sales of securities if the SEC makes certain findings relating to the estimated volume of securities transactions in the fiscal year by every March 1st. Obtaining data on these transactions in less than 30 days after the respondents receive such data helps the SEC to make determinations regarding fee rate adjustments within the time frame stipulated in Section 31(j)(2).

(iii) requiring respondents to submit more than an original and two copies of any document;

Not applicable

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Not applicable

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable

³ 15 U.S.C. 78ee(e).

⁴ 15 U.S.C. 78ee(j)(2).

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

Not applicable

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Not applicable

8. Consultations Outside the Agency

The required *Federal Register* notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable. The information to be collected on Form R31 is not confidential.

11. Sensitive Questions

The information collection collects basic personally identifiable information that may include the name, job title, and work contact information of the individual completing Form R31 on behalf of the SRO. The agency has determined that neither a privacy impact assessment nor a system of records notice are required in connection with the collection of information.

12. Burden of Information Collection

As stated in item #5, there are currently 27 respondents with obligations under Rule 31: 24 national securities exchanges, one national securities association, and two registered clearing agencies. Of these 27 respondents, 25 are required to file Form R31 on a monthly basis; the two registered clearing agencies are required to provide certain data in their possession needed by the SROs to complete Form R31, although these two entities are not themselves required to complete and submit Form R31. The SEC estimates that the annual compliance burden of Rule 31 on the 27 current respondents collectively will be 432 staff hours, or 36 hours per month. This estimate is derived as follows:

FINRA (the only respondent national securities association)

- concerning FINRA (the one national securities association), the SEC estimates that FINRA will incur a compliance burden of 2 staff hours per month for an annual aggregate of 24 hours;

Two registered clearing agencies

- concerning NSCC (one of the two registered clearing agencies), the SEC estimates that NSCC will incur a compliance burden of 6 staff hours per month for an annual aggregate of 72 hours to provide data to the exchanges for which NSCC currently serves, and is expected to serve over the authorization period, as the designated clearing agency;
- concerning OCC (one of the two registered clearing agencies), the SEC estimates that OCC will incur a compliance burden of 4 staff hours per month for an annual aggregate of 48 hours to provide data to the exchanges for which OCC currently serves, and is expected to serve over the authorization period, as the designated clearing agency;

Existing national securities exchanges

- an exchange's compliance burden will depend on whether it trades NSCC-settled products (*i.e.*, equities), OCC-settled products (*i.e.*, options), or both;
- concerning the existing 8 OCC-only exchanges, the SEC estimates that each will each incur a compliance burden of 0.5 hour per month for an aggregate of 48 hours per year (8 respondents x 12 responses/year x 0.5 hours/response);
- concerning the existing 8 NSCC-only exchanges, the SEC estimates that each will incur a compliance burden of 1.0 hour per month for an aggregate of 96 hours per year (8 respondents x 12 responses/year x 1.0 hour/response);
- concerning the existing 8 dual exchanges, the SEC estimates that each will incur a compliance burden of 1.5 hours per month for an aggregate of 144 hours per year (8 respondents x 12 responses/year x 1.5 hours/response).

The SEC also estimates that three new national securities exchanges will register and become subject to the reporting requirements of Rule 31 over the course of the authorization period (*i.e.*, on average, one new exchange per year). The SEC estimates that one of these exchanges will trade only OCC-settled products, one will trade only NSCC-settled products, and one will be a dual exchange. However, it is not clear exactly when these additional respondents might register as national securities exchanges; therefore, for purposes of estimating their reporting burden, the Commission amortizes evenly the rate at which they are expected to commence activities over the next 3 years (*i.e.*, the Commission expects on average that each new respondent will become active one and a half years into the three-year authorization period). Taking into account such

amortization, the number of annual responses for each new respondent will be only 6 per year instead of 12 per year because each will, on average, be reporting only for 18 out of the 36 months in the authorization period. The estimated total annual burden for the three new respondents will be 18 hours total, derived as follows:

- concerning the one expected OCC-only exchange, the SEC estimates that this exchange will incur a compliance burden of 0.5 hour per response multiplied by 6 responses per year for an annual aggregate of 3 hours;
- concerning the one expected dual exchange, the SEC estimates that this exchange will incur a compliance burden of 1.5 hours per response multiplied by 6 responses per year for an annual aggregate of 9 hours; and
- concerning the one expected NSCC-only exchange, the SEC estimates that this exchange will incur a compliance burden of 1.0 hour per response multiplied by 6 responses per year for an annual aggregate of 6 hours.

Based on the above, the SEC estimates that Rule 31 and Form R31 will cause the 27 existing respondents to incur an annual burden of 432 staff hours, and the three expected new respondents to incur an average annual burden of 18 staff hours, for a total annual burden for all respondents of 450 staff hours.

Below is a chart summarizing the burden calculations related to Rule 31 and Form R31. All burdens are ongoing burdens

| Respondent Type | Number of Respondents | Number of Annual Responses Per Respondent | Time Per Response (Hours) | Total Annual Ongoing Burden (Hours) |
|--|------------------------------|--|----------------------------------|--|
| FINRA | 1 | 12 | 2 | 24 |
| NSCC | 1 | 12 | 6 | 72 |
| OCC | 1 | 12 | 4 | 48 |
| Existing OCC Only Exchanges | 8 | 12 | 0.5 | 48 |
| Existing NSCC Only Exchanges | 8 | 12 | 1 | 96 |
| Existing Dual Exchanges | 8 | 12 | 1.5 | 144 |
| Annual Burden for <u>Existing</u> Respondents: | | | | 432 |
| New OCC Only Exchange | 1 | 6* | .5 | 3 |
| New Dual | 1 | 6* | 1.5 | 9 |

| | | | | |
|--|---|----|---|-------------------|
| Exchange | | | | |
| New NSCC Only Exchange | 1 | 6* | 1 | 6 |
| Annual Burden for <u>New Respondents</u> : | | | | 18 |
| Total Annual Ongoing Burden for All Respondents (Hours) | | | | <u>450</u> |

* As explained above, the SEC estimates that the new exchanges will become active one and a half years into the three-year authorization period, meaning that they will only be filing half of the responses during the three-year authorization period that they otherwise would if they were active for the entire three-year period. Therefore, the number of annual responses per respondent for these three exchanges is reduced to 6 from 12 to account for 18 months of reporting instead of 36.

13. Costs to Respondents

Not applicable. The SEC does not believe that the 27 existing or 3 expected new respondents will have to incur any capital or start-up costs, or any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements imposed by Rule 31 and Form R31.

14. Costs to Federal Government

The SEC estimates that its operational cost to review each Form R31 submission is \$63.86, representing 17 minutes of staff time (5 minutes of clerical time costing \$6.50 plus 12 minutes of economist time costing \$57.36). These figures were derived as follows:

- 5 minutes of clerical work at \$78 an hour (\$1.30 per minute) equals \$6.50; and
- 12 minutes of work by economists at \$287 an hour (\$4.78 per minute) equals \$57.36.

The SEC estimates that it will process 318 submissions per year. These figures were derived as follows:

- 12 submissions from FINRA;
- 96 total submissions from the 8 existing OCC-only exchanges;
- 96 total submissions from the 8 existing NSCC-only exchanges;
- 96 total submissions from the 8 existing dual exchanges;
- 18 submission from the estimated 3 new exchanges;
- as stated in item 12, NSCC and OCC do not file Form R31 but simply provide information to SROs that are required to file Form R31.

The total estimated cost to the SEC equals \$63.86 per submission multiplied by 318 submissions equals \$20,307.48.

15. Changes in Burden

The estimated burden hours in item #12 have increased from 408 hours to 450 hours. This is due to the increase in the number of estimated respondents. The estimated burden hours for each response type did not change. The estimate of zero costs for item #13 did not change.

16. Information Collection Planned for Statistical Purposes

Not applicable. This information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

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 Method

Not applicable. This collection does not involve statistical methods.