

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**the Market Data Infrastructure Relating to Competing Consolidators' Systems Integrity**  
**Requirements**

**New Information Collection Request**

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

The national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system (“NMS”) stocks (“NMS information”) has been an essential element in the success of the U.S. securities markets. Congress recognized the importance of market information to the U.S. securities markets with the enactment of Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and the Commission has adopted rules under Regulation NMS that govern the provision of market information in the national market system.<sup>2</sup>

On February 14, 2020, the Commission proposed to update and modernize the national market system for the collection, consolidation, and dissemination of NMS information by, among other things, amending Regulation NMS.<sup>3</sup> Specifically, the Commission proposed to expand the content of the information with respect to quotations for and transactions in NMS stocks that must be made available under Regulation NMS and introduce a decentralized

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<sup>1</sup> Section 11A(a)(2) of the Exchange Act (15 U.S.C. 78k-1(a)(2)) directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act (15 U.S.C. 78k-1(a)(1)). Among the findings and objectives in Section 11A(a)(1) are that “[n]ew data processing and communications techniques create the opportunity for more efficient and effective market operations” and “[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities . . . .” 15 U.S.C. 78k-1(a)(1)(B) and 15 U.S.C. 78k-1(a)(1)(C), respectively.

<sup>2</sup> See 17 CFR 242.600, 601, 602, and 603.

<sup>3</sup> See Securities Exchange Act Release No. 34-88216 (February 14, 2020), 85 FR 16726 (Mar. 24, 2020) (File No. S7-03-20) (“Infrastructure Proposing Release”).

consolidation model whereby “competing consolidators” would assume responsibility for the collection, consolidation, and dissemination functions currently performed by the exclusive Securities Information Processors (“SIPs”). Among other things, the Commission proposed to expand the definition of “SCI entity” under Regulation SCI to include competing consolidators, so that all competing consolidators would be subject to Regulation SCI.<sup>4</sup>

Pursuant to the statutory authority provided by the Exchange Act,<sup>5</sup> including Sections 3(b),<sup>6</sup> 5,<sup>7</sup> 6,<sup>8</sup> 11A,<sup>9</sup> and 23(a)<sup>10</sup> thereof, the Commission adopted the amendments, with certain modifications, on December 9, 2020.<sup>11</sup> Specifically, while the Commission had proposed to apply the requirements of Regulation SCI to all competing consolidators, the Commission adopted a definition of “SCI competing consolidator” that will subject competing consolidators to Regulation SCI, after a transition period, if they are above a specified consolidated market data gross revenue threshold.<sup>12</sup>

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<sup>4</sup> The Commission adopted Regulation SCI in November 2014 to strengthen the technology infrastructure of the U.S. securities markets, reduce the occurrence of systems issues in those markets, improve their resiliency when technological issues arise, and establish an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems. Regulation SCI requires SCI entities to have written policies and procedures reasonably designed to ensure that their key automated systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets; take appropriate corrective action when systems issues occur; provide certain notifications and reports to the Commission regarding systems problems and systems changes; inform members and participants about systems issues; conduct business continuity and disaster recovery testing and penetration testing; conduct annual reviews of their automated systems; and make and keep certain books and records. See Securities and Exchange Act Release No. 34-73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (“SCI Adopting Release”).

<sup>5</sup> See 15 U.S.C. 78a.

<sup>6</sup> 15 U.S.C. 78c.

<sup>7</sup> 15 U.S.C. 78e.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 15 U.S.C. 78w(a).

<sup>11</sup> See Securities Exchange Act Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (File No. S7-03-20) (“Infrastructure Adopting Release”).

<sup>12</sup> See Rule 1000 of Regulation SCI (definition of “SCI competing consolidator”). The modification from the Proposal to subject only certain competing consolidators, rather than all competing consolidators, to Regulation SCI was based on the Commission’s

For those competing consolidators that do not meet the consolidated market data gross revenue threshold in the definition of “SCI competing consolidator,” a more tailored set of resiliency requirements substantially similar to certain of the key provisions in Regulation SCI will apply. These requirements are set forth in paragraph (d)(9) of Rule 614. These rules impose “collection of information” requirements within the meaning of the PRA.

The Commission believes that the requirements of Rule 614(d)(9) will help ensure that the automated systems of competing consolidators that do not meet the definition of “SCI competing consolidator” have adequate levels of capacity, integrity, resiliency, availability, and security to maintain operational capability, while at the same time allowing competing consolidators to grow their business, taking into consideration their functions, potential risks, and the costs and burdens associated with the various requirements of Regulation SCI.

In the Infrastructure Proposal, the Commission estimated that there would be 12 entities that may register to become competing consolidators, all of which would be SCI entities. Based on comments regarding the number of entities that could decide to perform the functions of a competing consolidator, the Commission adjusted its estimate downwards to eight such entities at the time of adoption. Further, in light of the the revenue threshold that the Commission adopted in the definition of “SCI competing consolidator,” the Commission estimated that seven competing consolidators will meet this definition and be subject to the requirements of Regulation SCI.<sup>13</sup> Accordingly, the Commission estimated that one competing consolidator will not meet the revenue threshold test in the definition and will instead be subject to the streamlined requirements of Rule 614(d)(9).<sup>14</sup>

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recognition of the more limited role that certain competing consolidators may play in the securities markets and commenter concerns regarding the costs and potential barriers to entry that could result from requiring compliance with all of the requirements of Regulation SCI for all competing consolidators.

<sup>13</sup> See Revision of a Currently Approved Collection: Regulation SCI and Form SCI; ICR Reference No. 202104-3235-009; OMB Control No. 3235-0703 (April 15, 2021) available at: [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202104-3235-009](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202104-3235-009) (“2021 SCI PRA Supporting Statement”).

<sup>14</sup> As noted above, for a one-year transition period, the seven other competing consolidators will be temporarily subject to the requirements of Rule 619(d)(9). However, the Commission estimates that these entities will meet the threshold test and become subject to the full requirements of Regulation SCI following this transition period. As described below, the requirements under Rule 614(d)(9) are substantially similar to a subset of the requirements of Regulation SCI. In this regard, in the Infrastructure Adopting Release, the Commission estimated that the initial and ongoing burdens for compliance with Rule 614(d)(9) would be approximately 33% of the burdens estimated for all of the requirements of Regulation SCI. See Infrastructure Adopting Release, 86 FR at 18725. Because these seven competing consolidators would only be subject to Rule 614(d)(9) for

## Procedural Background

As described above and below in Item 8, while the Commission initially proposed to apply all the requirements of Regulation SCI to competing consolidators, commenters expressed concern about the costs associated with Regulation SCI, asserting that it could be a barrier to entry and deter entities from seeking to become competing consolidators. In response, the Commission adopted a new rule for competing consolidators that do not meet a revenue threshold – Rule 614(d)(9) – that will impose obligations that are substantially similar to certain Regulation SCI requirements. Rule 614(d)(9) was not part of the Commission’s original proposed rule in the Infrastructure Proposing Release, but rather was developed and adopted in response to comments received thereon, and is largely based on certain of the key provisions of Regulation SCI.

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

As described in detail below in Section 12, Rule 614(d)(9) imposes requirements on certain competing consolidators that are based on, and substantially similar to, corresponding key provisions of Regulation SCI that currently apply to SCI entities.

#### a. Policies and Procedures Required by Rule 614(d)(9)(ii)

Paragraph (d)(9)(ii) of Rule 614 requires competing consolidators to establish, maintain, and enforce written policies and procedures reasonably designed to ensure: that their systems involved in the collection, consolidation, and dissemination of consolidated market data have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the competing consolidator’s operational capability and promote the maintenance of fair and orderly markets; and the prompt, accurate, and reliable dissemination of consolidated market data.<sup>15</sup> Competing consolidators will also be required to periodically review the effectiveness of the policies and procedures required by paragraph (d)(9)(ii)(B) of Rule 614, and take prompt action to remedy deficiencies in such policies and procedures. Paragraph (ii)(C) of Rule 614(d)(9) will require competing consolidators to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible personnel, the designation and documentation of responsible personnel, and escalation procedures to quickly inform responsible personnel of potential systems disruptions and systems intrusions; and periodically review the effectiveness of the policies and procedures, and take prompt action to

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a temporary period of time and they have already been included in the burden estimates for full compliance with all of the requirements of Regulation SCI, they have not been included in the reduced burden estimates for Rule 614(d)(9) in this Supporting Statement, as their inclusion in the estimated burdens for Rule 614(d)(9) would result in an overestimation of burdens for these seven competing consolidators. See 2021 SCI PRA Supporting Statement, supra note 13.

<sup>15</sup> See Rule 614(d)(9)(ii)(A)(1) of Regulation NMS.

remedy deficiencies.<sup>16</sup>

Paragraph (d)(9)(ii) of Rule 614 should help to advance the goal of promoting Commission review and oversight of market data infrastructure by requiring a competing consolidator to have policies and procedures that are reasonably designed to ensure its operational capability, including the ability to maintain effective operations; minimize or eliminate the effect of performance degradations; and help ensure the prompt, accurate, and reliable dissemination of consolidated market data. Because a competing consolidator's operational capability can have the potential to impact market participants who rely on such competing consolidators for market data, the Commission believes that these policies and procedures will help promote the maintenance of fair and orderly markets.

The requirement in paragraph (ii)(C) of Rule 614(d)(9) to establish policies and procedures that include the designation and documentation of responsible personnel should help make it clear to all employees of the competing consolidator who the designated responsible personnel are for purposes of the escalation procedures and so that Commission staff can easily identify such responsible personnel in the course of its inspections and examinations and other interactions with competing consolidators. The Commission also believes that escalation procedures to quickly inform responsible personnel of potential systems disruptions and systems intrusions helps ensure that the appropriate person(s) are provided notice of potential systems issues so that any appropriate actions can be taken in accordance with the requirements of Rule 614(d)(9) without unnecessary delay.

b. Corrective Action Required by Rule 614(d)(9)(iii)(A)

Under paragraph (d)(9)(iii)(A) of Rule 614, competing consolidators will be required to, upon responsible personnel having a reasonable basis to conclude that a systems disruption or systems intrusion of systems involved in the collection, consolidation, and dissemination of consolidated market data has occurred, begin to take appropriate corrective action.<sup>17</sup> Rule 614(d)(9)(iii)(A) should help facilitate competing consolidators' responses to systems disruptions and systems intrusions, including taking appropriate steps necessary to remedy the problem or problems causing such event and mitigate the negative effects of the event, if any, on market participants and the securities markets more broadly.

c. Dissemination of Information Required by Rule 614(d)(9)(iii)(B)

Rule 614(d)(9)(iii)(B) will require that promptly upon responsible personnel having a reasonable basis to conclude that a systems disruption (other than a de minimis system disruption) has occurred, a competing consolidator will be required to publicly disseminate information relating to the event; when known, promptly publicly disseminate additional

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<sup>16</sup> See Rule 614(d)(9)(ii)(B) of Regulation NMS.

<sup>17</sup> See Rule 614(d)(9)(iii)(A) of Regulation NMS.

information relating to the event; and until resolved, provide regular updates with respect to such information.<sup>18</sup>

Rule 614(d)(9)(iii)(B) should help to advance the Commission's goal of promoting fair and orderly markets by publicly disseminating information about systems disruptions, allowing market participants to use such information to evaluate the event's impact on their trading and other activities and develop an appropriate response, as well as to evaluate the performance of various competing consolidators.

d. Systems Disruptions and Systems Intrusions Notice Required by Rule 614(d)(9)(iii)(C)

Rule 614(d)(9)(iii)(C) provides for a framework for reporting of systems disruptions and systems intrusions, which ensures the Commission's review and oversight of market data infrastructure and fosters cooperation between the Commission and competing consolidators in responding to such events. The Commission also believes that the aggregated data from the reporting of systems disruptions and systems intrusions, in combination with filings from SCI competing consolidators under Regulation SCI, enhances its ability to comprehensively analyze the nature and types of various systems issues and identify more effectively areas of persistent or recurring problems across the systems of all competing consolidators.

e. BC/DR Testing Required by Rule 614(d)(9)(iv)

Rule 614(d)(9)(iv) will require competing consolidators to participate in the industry- or sector-wide coordinated testing of BC/DR plans required of SCI entities pursuant to paragraph (c) of Rule 1004 of Regulation SCI. Rule 614(d)(9)(iv) should assist the Commission in maintaining fair and orderly markets in a BC/DR scenario following a wide-scale disruption.

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

The amendments use information technology to lessen the burden on the respondents. Form CC will be electronically filed with the Commission and publicly posted on the Commission's and competing consolidators' websites. Rule 614(d)(9) requires competing consolidators to submit notifications of systems disruptions and systems intrusions to the Commission electronically on Form CC. Rule 614(d)(9) is designed to streamline the reporting processes and make the processes efficient by specifying the information required to be provided and requiring competing consolidators to electronically file Form CC. Competing consolidators submit Form CC through the EDFS, which is also used by SCI entities to file notifications on Form SCI and by SCI SROs to file Form 19b-4 filings.

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<sup>18</sup> See Rule 614(d)(9)(iii)(B) of Regulation NMS.

#### **4. Duplication**

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

#### **5. Effect on Small Entities**

The Commission believes that the requirements under the amendments will not affect small entities.<sup>19</sup> The amendments impose requirements on entities that act as competing consolidators. The Commission believes that no competing consolidators will be small entities.

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

The collection of information is designed to ensure that competing consolidators operate with adequate capacity, integrity, resiliency, availability, and security. Any less frequent collection would deprive the Commission and the public of timely information regarding the occurrence and resolution of systems issues at competing consolidators.

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

Rule 614(d)(9) requires respondents to report information to the agency more often than quarterly. The rule requires the provision of notifications involving systems disruptions and systems intrusions (with exceptions for certain de minimis events), either to the Commission or to a third party. Depending on the frequency of such systems issues, SCI entities may be required to provide information to the Commission or disseminate information to the public more than once per quarter. However, the Commission believes that timely and comprehensive reporting of such systems issues to the Commission enhance its oversight of U.S. securities market infrastructure and foster cooperation between the Commission and competing consolidators in responding to such events. For example, timely receipt of information regarding a systems disruption or systems intrusion helps the Commission and its staff to quickly assess the nature and scope of that event, and potentially assist the competing consolidator in identifying the appropriate response. Further, the Commission believes the timely dissemination of information about certain systems disruptions to the public helps market participants to quickly assess the nature and scope of those events and whether and how they were affected by the events, and make appropriate decisions based on those assessments.

Finally, information submitted to the Commission under Rule 614(d)(9) could include proprietary trade secret or other confidential information. However, if a confidential treatment request is properly made for systems intrusions, the Commission will keep the information collected pursuant to Form CC confidential to the extent permitted by law.<sup>20</sup>

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<sup>19</sup> See Infrastructure Adopting Release, *supra* note 11, at Part VI.

<sup>20</sup> See, e.g., 15 U.S.C. 78x (governing the public availability of information obtained by the Commission); 5 U.S.C. 552 *et seq.* (Freedom of Information Act); 17 CFR 240.24b-2.

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 published a proposing release with respect to the Infrastructure Proposal soliciting comments on the proposed amendments' requirements and associated paperwork burdens.<sup>21</sup> Comments on Commission releases are generally received from industry groups, investors, and other market participants. In addition, the Commission and staff participated in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking were posted on the Commission's public website and made available through [www.sec.gov/rules/proposed.shtml](http://www.sec.gov/rules/proposed.shtml). The Commission considered all comments received prior to publishing the final rule, and explained in the Infrastructure Adopting Release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

Specifically, the Commission solicited comment on applying Regulation SCI to all competing consolidators.<sup>22</sup> Some commenters expressed concern that the costs of SCI compliance would be a barrier to entry and could deter entities from seeking to become competing consolidators. Similarly, several commenters, although not citing Regulation SCI specifically, expressed general skepticism about the ability to attract new entrants to register as competing consolidators, citing among other factors, potential lack of economic incentives. As noted above, in response to these comments, the Commission determined to adopt a definition of "SCI competing consolidator" to apply the requirements of Regulation SCI only to those competing consolidators who meet the consolidated market data gross revenue threshold set forth in the definition. The Commission adopted Rule 614(d)(9) for those competing consolidators that do not satisfy the definition because they are below the SCI competing consolidator threshold. The provisions of Rule 614(d)(9) will subject competing consolidators that are not SCI competing consolidators to certain, but not all, obligations that are similar to those that apply to SCI entities.

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

The Commission expects that the written policies and procedures, processes, criteria, standards, or other written documents developed or revised by competing consolidators pursuant to Rule 614(d)(9) will be retained by competing consolidators in accordance with, and for the

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<sup>21</sup> See Infrastructure Proposing Release, supra note 3.

<sup>22</sup> See id.



periods specified in, applicable recordkeeping requirements. Should such documents be made available for examination or inspection by the Commission and its representatives, they would be kept confidential subject to the provisions of applicable law. In addition, the information submitted to the Commission that is filed on Form CC is public, except where confidential treatment is requested for information pertaining to systems intrusions. The information publicly disseminated by competing consolidators pursuant to Rule 614(d)(9)(iii)(B) is not confidential.

## **11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include name, telephone and fax number, email address, user ID and job title. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act, since the information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the SRO Rule Tracking/Electronic Form Filing System (SRTS/EFFS), in connection with this collection of information. The SRTS/EFFS PIA, published on September 30, 2013, is also available at <https://www.sec.gov/privacy>.

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

The respondents to the collection of information described below will be the one entity that the Commission estimates may act as a competing consolidator and will fall below the revenue threshold test in the definition of “SCI competing consolidator” as described above.

### **a. Policies and Procedures Required by Rule 614(d)(9)(ii)(A) and (B)**

Rule 614(d)(9)(ii)(A) and (B) establishes recordkeeping burdens for competing consolidators.

Rule 614(d)(9)(ii)(A)(1) requires a competing consolidator to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems involved in the collection and consolidation of consolidated market data, and dissemination of consolidated market data products have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the competing consolidator’s operational capability and promote the maintenance of fair and orderly markets; and the prompt, accurate, and reliable dissemination of consolidated market data products.<sup>23</sup> Rule 614(d)(9)(ii)(B) requires competing consolidators

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<sup>23</sup> These requirements in paragraph (ii)(A)(1) of Rule 614(d)(9) are substantially similar to the policies and procedure provisions in Rule 1001(a) of Regulation SCI and accordingly, these burden estimates are based on the Commission’s estimates for that rule. See 2021 SCI PRA Supporting Statement, supra note 13. This rule does not follow the Regulation SCI approach of specifying minimum elements that are required for the operational

to periodically review the effectiveness of these policies and procedures and take prompt action to remedy deficiencies in such policies and procedures.<sup>24</sup>

A competing consolidator will require an average of 560 burden hours initially to develop and draft the policies and procedures required by 614(d)(9)(ii)(A)(1), or a **186.67 hour initial, one time burden as annualized over the three year period.**<sup>25</sup> The Commission estimates that

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capability policies and procedures of SCI entities, but paragraph (ii)(A)(1) of Rule 614(d)(9) incorporates a provision similar to the minimum element of Rule 1001(a)(2)(vi) of Regulation SCI for policies and procedures relating to market data.

<sup>24</sup> Rule 614(d)(9)(ii)(B) is substantially similar to Rule 1001(a)(3) of Regulation SCI and accordingly, these burden estimates are based on the Commission's estimates for that rule. See 2021 SCI PRA Supporting Statement, supra note 13.

<sup>25</sup> As noted above, this initial burden estimate is based on the burden estimates for substantially similar provisions in Regulation SCI Rule 1001(a). See supra note 24. Specifically, this initial burden estimate includes 400 hours, which is 75% of the 534 initial burden estimated for Rule 1001(a) of Regulation SCI (other than subparagraph (a)(2)(vi)). It also includes 160 hours as estimated for corresponding Rule 1001(a)(2)(vi) of Regulation SCI for policies and procedures relating to market data, for a total average initial burden of 560 hours (400 hours + 160 hours = 560 hours). As the Commission stated in the Infrastructure Adopting Release, "[Rule 614(d)(9)(ii)] does not follow the Regulation SCI approach of requiring minimum elements that are required for the operational capability policies and procedures of SCI entities. For competing consolidators that do not meet the definition of SCI competing consolidator and pose less risk to the markets . . . , the Commission believes it is appropriate to take a more flexible approach for the required policies and procedures under 17 CFR 242.614(d)(9)(ii) (Rule 614(d)(9)(ii)). The rule affords these competing consolidators the flexibility to design and tailor their policies and procedures based on their own assessment of their policies and procedures obligations relating to capacity, integrity, resiliency, availability, and security in paragraph (ii)(A)(1). Importantly, paragraph (ii)(A)(1) of Rule 614(d)(9) incorporates into the general policies and procedures provision the requirement that a competing consolidator's policies and procedures be reasonably designed to ensure the 'prompt, accurate, and reliable dissemination of consolidated market data products.'" (footnotes omitted). See Infrastructure Adopting Release, supra note 11. Accordingly, the Commission believes a competing consolidator will have 75% of the estimated initial burdens of a new SCI entity subject to Rule 1001(a) of Regulation SCI and, given its role as provider of consolidated market data feeds, the full estimated burden of Rule 1001(a)(2)(vi) of Regulation SCI relating to market data policies and procedures. The total initial estimated burden for Rule 1001(a) of Regulation SCI, including subparagraph (a)(2)(vi), is 694 hours. The estimated total burden for a competing consolidator to comply with 614(d)(9)(ii) is 560. This represents approximately 80% of the total burden for the similar requirements of Regulation SCI.

a competing consolidator will require an average of **210 hours annually to review and update such policies and procedures** required by Rule 614(d)(9)(ii)(B).<sup>26</sup>

b. Policies and Procedures Required by Rule 614(d)(9)(ii)(C)

Rule 614(d)(9)(ii)(C) establishes recordkeeping burdens for competing consolidators.

Rule 614(d)(9)(ii)(C) requires a competing consolidator to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible personnel, the designation and documentation of responsible personnel, and escalation procedures to quickly inform responsible personnel of potential systems disruptions and systems intrusions; and periodically review the effectiveness of the policies and procedures, and take prompt action to remedy deficiencies.<sup>27</sup>

The Commission estimates that a competing consolidator will require 114 hours initially to establish the criteria for identifying responsible personnel and the escalation procedures, or a **38 hour initial, one time burden as annualized over the three year period**. The Commission also estimates that, on average, a competing consolidator will require **39 hours annually to review and update the criteria and the escalation procedures**.

c. Mandate Participation in Certain Testing Required by Rule 614(d)(9)(iv)

Rule 614(d)(9)(iv) establishes recordkeeping burdens for competing consolidators.

Rule 614(d)(9)(iv) requires a competing consolidator to participate in industry- or sector-wide coordinated testing of business recovery and disaster recovery plans required of SCI entities pursuant to Rule 1004(c) of Regulation SCI. The Commission estimates that the requirement under Rule 614(d)(9)(iv) (i.e., participation in testing on an industry- or sector-wide basis) will initially require 270 hours for a competing consolidator, or a **90 hour initial, one time burden as annualized over the three year period**.<sup>28</sup> Further, the Commission estimates

<sup>26</sup> As noted above, this ongoing burden estimate is based on the burden estimates for substantially similar provisions in Regulation SCI Rule 1001(a) (other than subparagraph (a)(2)(vi)). *See id.* Specifically, this ongoing burden estimate includes 65 hours, which is 75% of the 87 ongoing burden hours estimated for Rule 1001(a). It also includes 145 hours as estimated for corresponding Rule 1001(a)(2)(vi) of Regulation SCI for policies and procedures relating to market data, for an total average ongoing burden of 210 hours (65 hours + 145 hours = 210 hours).

<sup>27</sup> Rule 614(d)(9)(ii)(C) is substantially similar to Rule 1001(c) of Regulation SCI and accordingly, these burden estimates are based on the Commission's estimates for that rule. *See* 2021 SCI PRA Supporting Statement, *supra* note 13.

<sup>28</sup> Paragraph (iv) of Rule 614(d)(9) is substantially similar to the provisions in Rule 1004(c) of Regulation SCI and accordingly, these burden estimates are based on the

that the requirements under Rules 614(d)(9)(iv) will require **135 hours annually for each competing consolidator.**

- d. Systems Intrusion and Disruption Notifications and Updates Required by Rule 614(d)(9)(iii)(C)

Rule 614(d)(9)(iii)(C) establishes reporting burdens for competing consolidators.

Rule 614(d)(9)(iii)(C) requires a competing consolidator, concurrent with public dissemination of information relating to a systems disruption pursuant to Rule 614(d)(9)(iii)(B), or promptly upon any responsible personnel having a reasonable basis to conclude that systems intrusion (other than a systems disruption or intrusion that has had, or the competing consolidator reasonably estimates would have, no or a de minimis impact on the competing consolidator's operations or on market participants) has occurred, to notify the Commission promptly, and to provide updates of such event until resolved. Notifications relating to systems disruptions and systems intrusions must be submitted to the Commission on Form CC.

Based on experience with a similar Commission notification requirement under Regulation SCI,<sup>29</sup> the Commission staff estimates that a competing consolidator will submit, on average, 4 notifications per year pursuant to Rule 614(d)(9)(iii)(C).<sup>30</sup> The Commission estimates that each notification under Rule 614(d)(9)(iii)(C) will require 24 hours for a competing

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Commission's estimates for that rule. The Commission estimated a total burden of 360 hours for paragraphs (a) and (c) of the Rule 1004 of Regulation SCI, noting that this estimate included 90 hours to comply with Rule 1004(a) and 270 hours to comply with Rule 1004(c). See SCI Adopting Release 79 FR at n.1493, *supra* note 4.

<sup>29</sup> Rule 1002(b) of Regulation SCI similarly requires Commission notification of certain systems issues. Rule 1002(b) contains a detailed framework for Commission notification, including prescribed timelines to provide the Commission with initial notifications, updates, and final reports regarding SCI events. See 17 CFR 242.1002(b) (Rule 1002(b) of Regulation SCI). Paragraph (iii)(C) of Rule 614(d)(9) is based on this Regulation SCI Commission notification requirement, but is streamlined and does not require adherence to such a detailed framework. Therefore, the burden estimates for Rule 614(d)(9)(iii)(C) are based on the Commission's estimates for similar requirements of Rule 1002(b)(2)-(3) of Regulation SCI. See 2021 SCI PRA Supporting Statement, *supra* note 13.

<sup>30</sup> The Commission estimated an average of 5 notifications per year under Rule 1002 of Regulation SCI. Rule 1002 requires reporting of systems disruptions, systems intrusions, and systems compliance issues, whereas Rule 614(d)(9)(iii)(C) does not require system compliance notifications. Therefore, the Commission has adjusted the estimate from 5 to 4 notifications for Rule 614(d)(9)(iii)(C).

consolidator.<sup>31</sup> Thus, the Commission estimates that a competing consolidator will require an average of **96 hours annually to comply with the notification requirement of Rule 614(d)(9)(iii)(C)**.<sup>32</sup>

Rule 614(d)(9)(iii)(C) also requires a competing consolidator to provide updates to the Commission of systems disruptions and systems intrusions until resolved. The Commission estimates that, based on past experience with a similar requirement in Regulation SCI, a competing consolidator will submit 2 updates each year.<sup>33</sup> The Commission estimates that each update will require 6 hours. The Commission estimates that a competing consolidator will require an average of **12 hours annually to comply with the update requirement of Rule 614(d)(9)(iii)(C)**.<sup>34</sup>

This would result in a total estimated annual burden of 108 hours for compliance with Rule 614(d)(9)(iii)(C).<sup>35</sup>

e. Dissemination of Information and Updates Required by Rule 614(d)(9)(iii)(B)

Rule 614(d)(9)(iii)(B) establishes third party disclosure burdens for competing consolidators.

Rule 614(d)(9)(iii)(B) requires a competing consolidator, promptly after any responsible personnel has a reasonable basis to conclude that a systems disruption (other than a system disruption that has had, or the competing consolidator reasonably estimates would have, no or a de minimis impact on the competing consolidator's operations or on market participants) has occurred, to disseminate publicly information relating to the event (including the system(s) affected and a summary description); and, when known, promptly publicly disseminate additional information relating to the event (including a detailed description, an assessment of those potentially affected, a description of the progress of corrective action, and when the event has been or is expected to be resolved); and until resolved, provide regular updates with respect to such information.<sup>36</sup>

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<sup>31</sup> See supra note 29. This burden estimate is based on Rule 1002(b)(2) of Regulation SCI.

<sup>32</sup> 4 written notifications each year × 24 hours per notification = 96 hours.

<sup>33</sup> See supra note 29. This burden estimate is based on Rule 1002(b)(3) of Regulation SCI.

<sup>34</sup> 2 updates each year × 6 hours per notification = 12 hours.

<sup>35</sup> 1 respondent \* (96 hours ongoing burden for initial notifications + 12 hours ongoing burden for updates) = 108 hours.

<sup>36</sup> These requirements in paragraph (iii)(B) of Rule 614(d)(9) are broadly similar to the information dissemination provisions in Rule 1002(c) of Regulation SCI and accordingly, these burden estimates are based on the Commission's estimates for that rule. Unlike in Regulation SCI, the dissemination of information requirement in paragraph (iii)(B) of

The Commission estimates that, based on past experience with a similar requirement in Regulation SCI, a competing consolidator will disseminate information regarding 2 systems disruptions each year under Rule 614(d)(9)(iii)(B).<sup>37</sup> The Commission estimates that each information dissemination for a systems disruption under Rule 614(d)(9)(iii)(B) will require 7 hours. The total annual third party disclosure burden to comply with the **information dissemination requirement for systems disruptions under Rule 614(d)(9)(iii)(B) will be 14 hours annually for a competing consolidator.**<sup>38</sup>

The Commission estimates that a competing consolidator will disseminate 3 updates for each systems disruption under Rule 614(d)(9)(iii)(B), or 6 updates each year.<sup>39</sup> The Commission estimates that each update under Rule 614(d)(9)(iii)(B) will require 13 hours. Thus, the total annual third party disclosure burden for a competing consolidator to comply with the **update dissemination requirement of Rule 614(d)(9)(iii)(B) will be 78 hours annually.**<sup>40</sup>

This will result in a total estimated annual third party disclosure burden of 92 hours for a competing consolidator to comply with the requirements of Rule 614(d)(9)(iii)(B).<sup>41</sup>

f. Corrective Action Required by Rule 614(d)(9)(iii)(A)

Rule 614(d)(9)(iii)(A) establishes recordkeeping burdens for all SCI entities.

Rule 614(d)(9)(iii)(A) requires each competing consolidator, upon responsible personnel having a reasonable basis to conclude that a systems disruption or systems intrusion has occurred, begin to take appropriate corrective action which must include, at a minimum, mitigating potential harm to investors and market integrity resulting from the event and devoting

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Rule 614(d)(9) is not limited to dissemination to “members or participants,” as is the case for SCI entities in Rule 1002(c) of Regulation SCI. Instead, competing consolidators are required to “publicly” disseminate this information. In addition, the public dissemination requirement in paragraph (iii)(B) of Rule 614(d)(9) only applies to systems disruptions.

<sup>37</sup> See *id.* The Commission estimated an average of 3 information disseminations regarding certain SCI events per respondent per year under Rule 1002(c)(i) of Regulation SCI. Rule 1002(c)(1)(i) requires disseminating information regarding systems disruptions and systems compliance issues, whereas Rule 614(d)(9)(iii)(B) does not require dissemination of information regarding system compliance issues.

<sup>38</sup> 2 public dissemination notices x 7 hours per notice = 14 hours.

<sup>39</sup> 2 systems disruptions x 3 updates = 6 updates.

<sup>40</sup> 6 updates each year x 13 hours per update = 78 hours.

<sup>41</sup> 1 respondent \* (14 hours ongoing burden + 78 hours ongoing burden) = 92 hours. See *supra* notes 38 and 40.

adequate resources to remedy the event as soon as reasonably practicable.<sup>42</sup>

The Commission estimates that the initial recordkeeping burden to implement such a process will be 114 hours for a competing consolidator, or a **38 hour initial, one time burden as annualized over the three year period.** The Commission also estimates that the ongoing recordkeeping burden to review such process will be **39 hours annually for a competing consolidator.**

g. Identification of De Minimis Events

Identification of de minimis events establishes recordkeeping burdens for all SCI entities.

Rule 614(d)(9) requires competing consolidators to identify certain types of events. Specifically, Rules 614(d)(9)(iii)(B) and (C) provide certain exceptions from the Commission notification and information dissemination requirements for systems disruptions and systems intrusions that had, or the competing consolidator reasonably estimates would have, no or a de minimis impact on the competing consolidator's operations or on market participants. Therefore, when these events occur, an SCI entity needs to determine whether they are de minimis events. The Commission believes that the identification of de minimis events will impose an initial one-time implementation burden on competing consolidators in developing processes to quickly and correctly identify the nature of an event. The identification of these events may also impose periodic burdens on competing consolidators in reviewing and updating the processes.

The Commission estimates that a competing consolidator will require 66 hours initially to establish the criteria for identifying de minimis events, or a **22 hour initial, one time burden as annualized over the three year period.**<sup>43</sup> The Commission estimates that a competing consolidator will require **13 hours annually to review and update such criteria.**

h. Summary of Hourly Burdens

The table below summarizes the Commission's estimate of the total hourly burden of compliance for competing consolidators under Rule 614(d)(9).

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<sup>42</sup> Rule 614(d)(9)(iii)(A) mirrors the corrective action obligations of Rule 1002(a) of Regulation SCI and accordingly, these burden estimates are based on the Commission's estimates for that rule. See 2021 SCI PRA Supporting Statement, supra note 13.

<sup>43</sup> Regulation SCI similarly requires SCI entities to identify certain types of events and accordingly, these burden estimates are based on the Commission's estimates for Regulation SCI. See 2021 SCI PRA Supporting Statement, supra note 13. However, Regulation SCI requires, in addition to the identification of de minimis events, the identification of critical SCI systems and major SCI events. As such, the Commission estimates that the burden for competing consolidators complying with Rule 614(d)(9) would be 1/3 of the estimated burdens for the similar requirements of Regulation SCI.

<b>Nature of Information Collection Burden</b>	<b>Annualized Aggregate Hourly Burden Estimate</b>
Policies and procedures required by Rule 614(d)(9)(ii)(A) – initial burden	186.67 (Recordkeeping)
Policies and procedures required by Rule 614(d)(9)(ii)(B) – ongoing burden	210 (Recordkeeping)
Policies and procedures required by Rule 614(d)(9)(ii)(C) – initial burden	38 (Recordkeeping)
Policies and procedures required by Rule 614(d)(9)(ii)(C) – ongoing burden	39 (Recordkeeping)
Mandate participation in certain testing required by Rule 614(d)(9)(iv) – initial burden	90 (Recordkeeping)
Mandate participation in certain testing required by Rule 614(d)(9)(iv)– ongoing burden	135 (Recordkeeping)
Systems intrusion and disruption notifications required by Rule 614(d)(9)(iii)(C) – ongoing burden	96 (Reporting)
Systems intrusion and disruption updates required by Rule 614(d)(9)(iii)(C) – ongoing burden	12 (Reporting)
Dissemination of information required by Rule 614(d)(9)(iii)(B) – ongoing burden	14 (Third Party Disclosure)
Dissemination of updates required by Rule 614(d)(9)(iii)(B) – ongoing burden	78 (Third Party Disclosure)
Corrective action required by Rule 614(d)(9)(iii)(A) – initial burden	38 (Recordkeeping)



Nature of Information Collection Burden	Annualized Aggregate Hourly Burden Estimate
Corrective action required by Rule 614(d)(9)(iii)(A) – ongoing burden	39 (Recordkeeping)
Identification of de minimis events – initial burden	22 (Recordkeeping)
Identification of de minimis events – ongoing burden	13 (Recordkeeping)

### 13. Costs to Respondents

#### a. Policies and Procedures Required by Rule 614(d)(9)(ii)(A)

Rule 614(d)(9)(ii)(A) imposes recordkeeping costs for competing consolidators. In establishing, maintaining, and enforcing the policies and procedures required by Rule 614(d)(9)(ii)(A), the Commission believes that a competing consolidator will seek outside legal and/or consulting services in the initial preparation of such policies and procedures. The total recordkeeping cost of seeking outside legal and/or consulting services will be \$37,600, or **\$12,533.33 initial, one time burden as annualized over the three year approval period.**<sup>44</sup>

#### b. Policies and Procedures Required by Rule 614(d)(9)(ii)(C)

The Commission does not expect competing consolidators to incur any external PRA costs in connection with the policies and procedures required under Rule 614(d)(9)(ii)(C).

#### c. Mandate Participation in Certain Testing Required by Rule 614(d)(9)(iv)

The Commission does not expect competing consolidators to incur any external PRA costs in connection with the testing required under Rule 614(d)(9)(iv).<sup>45</sup>

<sup>44</sup> The Commission believes that recordkeeping costs required by Rule 614(9)(ii)(A) would be approximately 80% of the costs of the corresponding policies and procedures requirement for a new SCI entity under Rule 1001(a) of Regulation SCI, which the Commission estimated as \$47,000. See 2021 SCI PRA Supporting Statement, supra note 13.

<sup>45</sup> For purposes of Regulation SCI, only plan processors are estimated to incur external PRA costs under Rule 614(d)(9)(iv). Competing consolidators would therefore have no external cost burden under this rule. See 2021 SCI PRA Supporting Statement, supra note 13.

d. Systems Intrusion and Disruption Notifications and Updates Required by Rule 614(d)(9)(iii)(C)

Rule 614(d)(9)(iii)(C) imposes reporting costs for competing consolidators. The Commission estimates that while competing consolidators will handle internally most of the work associated with Rule 614(d)(9)(iii)(C), competing consolidators will seek outside legal advice in the preparation of certain Commission notifications. The cost per reporting requirement will be \$276.19.<sup>46</sup>

The total annual reporting cost of seeking outside legal advice will be **\$1,104.76 annually per competing consolidator for SCI event notifications.**<sup>47</sup>

The total annual reporting cost of seeking outside legal advice will be **\$552.38 annually per competing consolidator for SCI event updates.**<sup>48</sup>

e. Dissemination of Information and Updates Required by Rule 614(d)(9)(iii)(B)

Rule 614(d)(9)(iii)(B) imposes third party disclosure costs for competing consolidators. The Commission believes competing consolidators will seek outside legal advice in the preparation of the information and update dissemination under Rule 614(d)(9)(iii)(B). The cost per reporting requirement will be \$255.38.<sup>49</sup>

The total annual reporting cost of seeking outside legal advice will be **\$510.76 annually per competing consolidator for information dissemination.**<sup>50</sup>

The total annual reporting cost of seeking outside legal advice will be **\$1,532.28 annually per competing consolidator for update dissemination.**<sup>51</sup>

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<sup>46</sup> See Extension without change of a currently approved collection: Regulation SCI and Form SCI; ICR Reference No. 201807-3235-001; OMB Control No. 3235-0703 (September 26, 2018) available at: [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201807-3235-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201807-3235-001) (“2018 SCI PRA Supporting Statement”).

<sup>47</sup> \$276.19 per requirement \* 4 requirements = \$1,104.76 per competing consolidator.

<sup>48</sup> \$276.19 per requirement \* 2 requirements = \$552.38 per competing consolidator.

<sup>49</sup> See 2018 SCI PRA Supporting Statement, *supra* note 46.

<sup>50</sup> \$255.38 per requirement \* 2 requirements = \$510.76 per competing consolidator.

<sup>51</sup> \$255.38 per requirement \* 6 requirements = \$1,532.28 per competing consolidator.

## f. Corrective Action Required by Rule 614(d)(9)(iii)(A)

The Commission does not expect competing consolidators to incur any external PRA costs in connection with the requirement to take corrective actions under Rule 614(d)(9)(iii)(A).

## g. Identification of De Minimis events

The Commission does not expect competing consolidators to incur any external PRA costs in connection with the identification of de minimis events.

## h. Summary of Cost Burdens

The table below summarizes the Commission's estimate of the total cost burden for competing consolidators under Rule 614(d)(9).

<b>Nature of Information Collection Burden</b>	<b>Annualized Aggregate Burden Estimate in Dollars</b>
Policies and procedures required by Rule 614(d)(9)(ii)(A) – initial burden	\$12,533.33 (Recordkeeping)
Systems intrusion and disruption notifications required by Rule 614(d)(9)(iii)(C) – ongoing burden	\$1,104.76 (Sum Total) (Reporting)
Systems intrusion and disruption updates required by Rule 614(d)(9)(iii)(C) – ongoing burden	\$552.38 (Sum Total) (Reporting)
Dissemination of information required by Rule 614(d)(9)(iii)(B) – ongoing burden	\$510.76 (Sum Total) (Third Party Disclosure)
Dissemination of updates required by Rule 614(d)(9)(iii)(B) – ongoing burden	\$1,532.28 (Sum Total) (Third Party Disclosure)

#### **14. Costs to Federal Government**

As indicated in the 2021 Market Data Infrastructure PRA Supporting Statement, the Commission estimated it will cost the federal government \$630,927 in order to build out the current Form CC in the EFFS/SRTS system.<sup>52</sup>

#### **15. Changes in Burden**

The Commission did not propose to adopt Rule 614(d)(9), thus there are no adjustments to the estimated burdens for compliance with this new rule. However, as described above, the Commission originally proposed to apply all of the requirements of Regulation SCI to all competing consolidators, and the estimated burdens for those competing consolidators subject to the requirements of Regulation SCI can be found in the 2021 SCI PRA Supporting Statement.<sup>53</sup>

#### **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 requesting authorization to omit the expiration date on the electronic version of the Form CC, although the OMB control number will be displayed. Including the expiration date on the electronic version of this 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.<sup>54</sup>

#### **18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

### **B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.

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<sup>52</sup> See New collection (Request for a new OMB Control Number): Market Data Infrastructure; ICR Reference No. 202103-3235-009; OMB Control No. 3235-0778 (April 26, 2021) available at: [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202103-3235-009](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202103-3235-009) ("2021 Market Data Infrastructure PRA Supporting Statement").

<sup>53</sup> See 2021 SCI PRA Supporting Statement, *supra* note 13. See *supra* note 14 and accompanying text.

<sup>54</sup> See *supra* note 52.