SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 15b9-1 – Exemption for Certain Exchange Members

3235-0743
Proposed Revision (Re-proposal)

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 for the Information Collection

Section 15(b)(8) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] requires any broker or dealer registered with the Commission to become a member of a registered national securities association ("Association") unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. This statutory provision sets forth a complementary self-regulatory organization ("SRO") oversight structure pursuant to which exchange SROs historically have overseen their own exchanges and The Financial Industry Regulatory Authority, Inc. ("FINRA") (the only Association currently) historically has overseen cross-exchange and off-exchange securities trading activity. Section 15(b)(9) of the Exchange Act[2] provides the Commission with authority to exempt any broker or dealer from Section 15(b)(8), if that exemption is consistent with the public interest and the protection of investors.

Pursuant to the authority conferred by Section 15(b)(9), Rule 15b9-1 currently provides that any broker or dealer required by Section 15(b)(8) to become a member of an Association shall be exempt from such requirement if it is a member of a national securities exchange, carries no customer accounts, and has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000 (this $1,000 gross income allowance is referred to as the "de minimis allowance").[3] In addition, the de minimis allowance does not apply to income derived from transactions for a registered dealer's own account with or through another registered broker or dealer (referred to as the "proprietary trading exclusion").[4] Accordingly, a registered dealer

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1 15 U.S.C. 78o(b)(8).

2 15 U.S.C. 78o(b)(9).

3 17 CFR 240.15b9-1(a).

4 17 CFR 240.15b9-1(b). The current rule also states that the de minimis allowance does not apply to income derived from transactions through the Intermarket Trading System ("ITS"), and defines the term "Intermarket Trading System" for purposes of the rule. 17 CFR 240.15b9-1(b)(2) and (c). ITS was a national market system plan for the purpose of avoiding trade-throughs, among other things. It was eliminated in 2007 because it was superseded by Regulation NMS. Rule 15b9-1's references to ITS are now obsolete.

currently can rely on Rule 15b9-1 to remain exempt from Association membership while engaging in unlimited proprietary trading of securities on any national securities exchange of which it is not a member or in the off-exchange (over-the-counter) market, so long as it is a member of a national securities exchange, carries no customer accounts, and its proprietary trading is conducted with or through another registered broker-dealer.

The Commission adopted Rule 15b9-1 over four decades ago to address the limited proprietary trading activities of regional, exchange-based specialists and floor brokers that were conducted off the (typically single) exchange of which they were a member and that were ancillary to their floor-based business (the rule did not have any collection of information requirements when it was adopted). Since then, the securities markets have transformed from being floor-based to being mostly electronic, and registered dealers have emerged that engage in significant, computer-based, proprietary, off-member-exchange securities trading, including in the U.S. Treasury securities market.

The Commission previously proposed to amend Rule 15b9-1 in March 2015.[5] The Commission did not adopt the 2015 Proposal but remains concerned that Rule 15b9-1 undermines the effectiveness of the complementary SRO regulatory structure as envisioned by Congress in Section 15(b)(8). There also have been new regulatory developments with respect to the U.S. Treasury securities markets since the 2015 Proposal. FINRA established TRACE reporting for U.S. Treasury securities transactions after the 2015 Proposal.

Accordingly, the Commission re-proposed amendments to Rule 15b9-1[6] that are similar to the 2015 Proposal, but modified in certain respects in light of further consideration of what set of circumstances would continue to be appropriate for an exemption from Association membership in today's market, which consideration is informed by comments on the 2015 Proposal.[7] As a general matter, the result under this proposal would be the same as under the 2015 Proposal: consistent with Section 15(b)(8), a broker or dealer would be required to join an Association if it effects transactions in securities elsewhere than on an exchange to which it belongs as a member, unless it can rely upon one of the amended rule's narrow, contemporary-market-appropriate exceptions from Section 15(b)(8). Conversely, a broker or dealer would not need to become a member of an Association if it effects securities transactions only on an exchange of which it is a member.

Specifically, under this proposal, the de minimis allowance, including the proprietary trading exclusion, would be rescinded, and amended Rule 15b9-1 would permit an exemption from Association membership only where a broker or dealer that does not carry customer

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5 See Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) ("2015 Proposing Release or 2015 Proposal").

6 See Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) ("Re-Proposal").

7 Comments received in response to the 2015 Proposal are available at https://www.sec.gov/comments/s7-05-15/s70515.shtml.

accounts effects securities transactions otherwise than on a national securities exchange of which it is a member that: (1) result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (2) are solely for the purpose of executing the stock leg of a stock-option order ("stock-option order exemption").

For purposes of relying on the stock-option order exemption provided by proposed Rule 15b9-1(c)(2), a broker or dealer must establish, maintain and enforce written policies and procedures reasonably designed to ensure and demonstrate that such transactions are solely for the purpose of executing the stock leg of a stock-option order. The broker or dealer also would be required to preserve a copy of its policies and procedures in a manner consistent with 17 CFR 240.17a-4 until three years after the date the policies and procedures are replaced with updated policies and procedures. These proposed requirements associated with the stock-option order exemption constitute "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").

2. Purpose of the Information Collection

Options exchanges define the term "stock-option order" in their rules. For purposes of relying on the exemption provided by proposed Rule 15b9-1(c)(2), a broker or dealer should adhere to the stock-option order definition of the options exchange where the stock-option order is handled and of which the broker or dealer is a member. Specifically, the broker or dealer could rely on that definition to determine whether, for purposes of amended Rule 15b9-1(c)(2), an order is in fact a stock-option order and a stock order is in fact the stock leg of a stock-option order. Indeed, in addition to the Commission, the options exchange of which the broker or dealer is a member and where the stock-option order is handled would be able to enforce compliance with the stock-option order exemption.

The Commission believes that the exchange's oversight capabilities will be enhanced, consistent with the public interest and protection of investors, by requiring written policies and procedures in connection with the stock-option exemption in proposed paragraph (c)(2) of the amended rule. This requirement would help facilitate exchange SRO supervision of brokers and dealers relying on the stock-option order exemption because it would provide an efficient and effective way for the relevant options exchange to assess compliance with the proposed exemption. In the context of routine examinations of its members, the options exchange generally would review the adequacy of its members' written policies and procedures and assess whether its members' off-member-exchange transactions comply with those written policies and procedures as well as the terms of the exemption itself, as set forth in amended Rule 15b9-1. Moreover, the Commission believes that requiring brokers and dealers to develop written policies and procedures would provide sufficient flexibility to accommodate potentially varying business models of brokers and dealers that effect stock-option orders and may seek to rely on this exemption.

3. Role of Improved Information Technology

The policies and procedures required by the proposed amendments to Rule 15b9-1 do not

require the use of information technology in the collection of information. However, the Commission anticipates that brokers or dealers relying on the stock-option order exemption would utilize information technology in the monitoring of their trading activity, as may exchange SROs in ensuring compliance with the policies and procedures required by the rule.

4. Efforts to Identify Duplication

The proposed rule amendments would exempt certain broker-dealers from the Exchange Act Association membership requirement. As a result, broker-dealers complying with the proposed rule could avoid potentially duplicative regulation by an Association and one or more exchange SROs.

In addition, with respect to a broker or dealer that is a member of more than one SRO ("common member"), Exchange Act Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with the applicable statutes, rules, and regulations, or to perform other specified regulatory functions.[8] Without this relief, the statutory obligation of each SRO would result in duplicative examinations and oversight of common members. Exchanges have entered into 17d-2 plans that allocate to FINRA examination and enforcement responsibility relating to compliance by common members with Federal securities laws, Commission rules, and common exchange and FINRA rules, allowing the exchanges to focus on trading on their own markets. Most exchanges and FINRA also have entered into regulatory services agreements, which are privately negotiated agreements between two SROs whereby one SRO agrees to perform regulatory services on behalf of another SRO in exchange for compensation.

5. Effect on Small Entities

The Commission examined recent FOCUS data for the 3,528 active brokers and dealers overseen by the Commission, including 3,454 brokers and dealers that are FINRA members and estimates that there are 740 brokers and dealers that have net capital of $500,000 or less and are not affiliates of larger organizations and would be considered small entities. The Commission estimates that of these 740 brokers and dealers, not more than four would be required to become FINRA members as a result of the proposed rule changes (unless they could rely on and comply with an exemption in the amended rule, such as the stock-option order exemption and its attendant information collection requirements). As a result, the Commission preliminarily believes that the proposed amendments to Rule 15b9-1 would not, if adopted, have a significant economic impact on a substantial number of small entities.

6. Consequences of Less Frequent Collection

The Commission preliminarily believes that the collection of information less frequently than the initial creation of the policies and procedures (i.e., not requiring the creation of policies and procedures) is not possible as it would frustrate both the ability of an options exchange to

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[8] 15 U.S.C. 78q(d)(1).

supervise those broker-dealers relying on the proposed stock-option order exemption and the ability of broker-dealers subject to the proposed rule to ensure that their trading activities continue to comply with the requirements of the proposed rule.

A broker or dealer seeking to rely on the stock-option order exemption would be required to preserve a copy of its policies and procedures in a manner consistent with Rule 17a-4 under the Exchange Act until three years after the date the policies and procedures are replaced with updated policies and procedures.[9] Accordingly, a broker or dealer would be required to keep the policies and procedures relating to its use of this proposed exemption as part of its books and records while they are in effect, and for three years after they are updated.

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

5 CFR 1320.5(d)(2) requires an agency to demonstrate, in its submission for OMB clearance, that the reporting of information more often than quarterly is necessary to satisfy statutory requirements or other substantial need. The proposed amendments to Rule 15b9-1 would require a broker-dealer relying on the stock-option order exemption to establish, maintain and enforce written policies and procedures reasonably designed to ensure and demonstrate that the stock legs of stock-option orders are solely for the purpose of executing the stock leg of a stock-option order. The proposed rules do not require the broker-dealer to report information more often than quarterly. As a result, the proposed amendments to Rule 15b9-1 are not inconsistent with the guidelines of 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

The Commission has consulted with FINRA and the other members of the Inter-Agency Working Group on Treasury Market Surveillance members, including the U.S. Department of the Treasury, the Federal Reserve Board of Governors, the Federal Reserve Bank of New York, and the Commodity Futures Trading Commission about the use of TRACE for U.S. Treasury securities data in the proposed amendments to Rule 15b9-1.

As noted above, the Commission has also considered the comments on the 2015 Proposal.[10] The 2015 Proposal did not include the stock-order exemption that is set forth in the Re-Proposal, but several commenters suggested that the Commission should add such an exemption to amended Rule 15b9-1.

Conversely, the 2015 Proposal included a proposed exemption that is not included in the Re-Proposal. The 2015 Proposal would have provided (but the Re-Proposal does not provide) an exemption from Association membership for a dealer that is an exchange member, carries no customer accounts, conducts business on the floor of a national securities exchange, and effects transactions off the exchange, for the dealer's own account with or through another registered broker or dealer, that are solely for the purpose of hedging the risks of its floor-based activity

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9 See, e.g., 17 CFR 240.17a-4(e)(7).

10 See supra n. 7.

("floor member hedging exemption"). A dealer relying on the floor member hedging exemption would have been required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure and demonstrate that its hedging transactions reduce or otherwise mitigate the risks of the financial exposure that the dealer incurs as a result of its floor-based activity. Compliance with these requirements would have constituted "collection of information requirements" within the meaning of the PRA.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collected pursuant to the proposed amendments to Rule 15b9-1 would not be widely available as it is information related to the internal operations of those broker-dealers complying with the proposed stock-option order exemption. To the extent that the Commission receives confidential information pursuant to Rule 15b9-1, such information will be kept confidential, subject to the provisions of the Freedom of Information Act.

11. Sensitive Questions

The collection of information will not include Personally Identifiable Information.[11]

12. Estimate of Hourly Information Collection Burden

The Commission estimates that the total initial reporting burden for those broker-dealers that may rely upon the stock-option order exemption provided for under the proposed amendments to Rule 15b9-1 would be approximately 18.67 hours per year (annualized over a three-year period) and the total ongoing reporting burden would be approximately 336 hours per year. The Commission estimates that 7 non-FINRA brokers or dealers would rely on the proposed stock-option order exemption. This burden is broken down in more detail below.

Establishing Policies and Procedures

The Commission estimates that it would take a broker or dealer approximately 8 hours to establish written policies and procedures as required under amended Rule 15b9-1.[12] This figure

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[11] The term "Personally Identifiable Information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

[12] This figure is based on the following: (Compliance Manager at 5 hours) + (Compliance Attorney at 2.5 hours) + (Director of Compliance at 0.5 hour) = 8 burden hours per

is based on the estimated number of hours to develop a set of written policies and procedures, including review and approval by appropriate legal personnel. The Commission notes that the policies and procedures proposed in the amended rule are limited to those transactions that are solely for the purpose of executing the stock leg of a stock-option order.

Annualized over a three-year period, this amounts to an initial burden of approximately **2.67 hours** per broker or dealer, per year[13] and an aggregate, initial burden of approximately **18.67 hours** per year.[14]

Maintaining and Enforcing Policies and Procedures

The Commission estimates that the ongoing burden of maintaining and enforcing such policies and procedures, and ensuring that such policies and procedures are reasonably designed to ensure and demonstrate that such transactions are solely for the purpose of executing the stock leg of a stock-option order would be approximately 48 hours for each broker or dealer per year.[15] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls, performing necessary testing and monitoring of stock-leg transactions as they relate to the broker's or dealer's activities and maintaining copies of the policies and procedures for the period of time required by the amended rule.

Based on an estimated annual burden of 48 hours per broker or dealer, the Commission estimates that the aggregate, ongoing burden to maintain and enforce written policies and

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broker or dealer.

13 This figure is based on the following: (8 burden hours per broker or dealer) / (3 years) = 2.67 initial burden hours per broker or dealer, per year.

14 This figure is based on the following: (2.67 burden hours per broker or dealer) x (7 brokers and dealers) = 18.67 aggregate initial burden hours per year.

15 This figure is based on the following: (Compliance Manager at 30 hours) + (Compliance Attorney at 12 hours) + (Director of Compliance at 6 hours) = 48 burden hours per broker or dealer. In estimating these burden hours, the Commission also examined the estimated initial and ongoing burden hours imposed on registered security-based swap dealers under Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information. See Exchange Act Release No. 74244 (February 11, 2015) 80 FR 14564, 14683 (March 19, 2015) ("Regulation SBSR"). Regulation SBSR requires registered security-based swap dealers to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations. Id. The estimated initial and ongoing compliance burden on registered security-based swap dealers under Regulation SBSR were 216 burden hours and 120 burden hours, respectively. Id. The policies and procedures under the proposed amendments to Rule 15b9-1 are much more limited in nature.

procedures as required under amended Rule 15b9-1 would be **336 hours** per year.[16] As a result, the total industry burden, including the initial burden and the ongoing burden, would be approximately **354.67 hours** per year.[17]

The estimated initial and ongoing burdens associated with amended Rule 15b9-1 are shown in the table below:

Collection of Information	Type of Burden	Small Business Entities Affected	Total Number of Respondents	Ongoing or Initial Burden	Total Number of Responses Per Year Per Respondent	Initial Burden Per Response Per Year	Annualized Burden Per Year Per Respondent	Ongoing Burden Per Response Per Year Per Respondent	Total Burden Hours For All Respondents
Establishing Written Policies and Procedures	Hourly Information Collection	Not more than 4	7	Initial	1	2.67	2.67	0	18.67
Maintaining and Enforcing Written Policies and Procedures	Hourly Information Collection	Not more than 4	7	Ongoing	1	0	0	48	336
								Total Annual Industry Burden	354.67

13. Estimate of Total Annual Cost Burden

The Commission does not believe there are any cost burdens for the proposed amendments.

14. Estimate of Cost to the Federal Government

The Commission does not believe there are any costs to the Federal Government related to the proposed amendments to Rule 15b9-1.

15. Explanation of Changes in Burden

The Commission previously proposed amendments to Rule 15b9-1 in 2015. As is discussed above, this current proposal differs in several respects to the 2015 Proposal. As a result of the changes made between the 2015 Proposal and this proposal, the burdens associated with the rule have changed. In addition, due to industry contraction and consolidation, compared to 2015, today there are both (i) fewer registered broker-dealers overall, and (ii) fewer registered broker-dealers that are not FINRA members and that potentially could rely on Rule 15b9-1 and

16 This figure is based on the following: (48 burden hours per broker or dealer) x (7 brokers and dealers) = 336 aggregate, ongoing burden hours per year.

17 This figure is based on the following: (18.67 aggregate, initial burden hours) + (336 aggregate, ongoing burden hours) = 354.67 total burden hours per year.

be subject to the collection of information requirements associated with the proposed stock-option order exemption.

A summary of the changes in the estimated burdens as compared to the 2015 Proposal are shown in the table below:

Name of Information Collection	Previously Proposed Estimated Burden	Re-Proposed Estimated Burden	Change in Estimated Burden	Reason for the Change
Establishing Written Policies and Procedures	**533.33** aggregate initial burden hours per year[18]	**18.67** aggregate initial burden hours per year	Decrease in estimated aggregate initial burden hours of **514.67** per year (i.e., 533.33 – 18.67)	Industry contraction and consolidation, as well as differences in activities addressed by the floor member hedging exemption as compared to the stock-option order exemption, resulting in a smaller estimate in the number of firms that could rely on the relevant exemption and a decrease in the estimated time to establish, maintain and enforce the required policies and procedures.
Maintaining and Enforcing Written Policies and Procedures	**9,600** aggregate, ongoing burden hours per year[19]	**336** aggregate, ongoing burden hours per year	Decrease in estimated aggregate, ongoing burden hours of **9,264** per year (i.e., 9,600 – 336)	Industry contraction and consolidation, as well as differences in activities addressed by the floor member hedging exemption as compared to the stock-option order exemption, resulting in a smaller estimate in the number of firms that could rely on the relevant exemption and a decrease in the estimated time to establish, maintain and enforce the required policies and procedures.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

[18] This figure is based on the following: (16 burden hours per dealer) / (3 years) = 5.33 initial burden hours per dealer annualized over a three-year period; (5.33 initial burden hours per dealer) x (100 dealers) = 533.33 aggregate, initial burden hours.

[19] This figure is based on the following: (96 burden hours per dealer) x (100 dealers) = **9,600** aggregate, ongoing burden hours.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.