

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection
Submission for CAT Implementation Plan and Quarterly Progress Reports**

OMB Control No. 3235-0774

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 plan governing the consolidated audit trail (“the CAT NMS Plan”) was originally filed with the Commission in 2015 to comply with the requirements of Rule 613.¹ The Commission adopted Rule 613 to improve the completeness, accuracy, accessibility, and timeliness of existing audit trail systems.² Rule 613 directed each national securities exchange and national securities association (collectively, the “Participants”) to create the CAT NMS Plan,³ and this plan was approved by the Commission on November 15, 2016.⁴ The consolidated audit trail (the “CAT”) was intended to create a system that provides regulators with more timely access to a sufficiently comprehensive set of trading data, enabling regulators to more efficiently and effectively reconstruct market events, monitor market behavior, and identify and investigate misconduct.⁵

To address multiple delays to the implementation of the CAT, on September 9, 2019, the Commission proposed to amend the CAT NMS Plan to increase the operational transparency and financial accountability of the Participants.⁶ Pursuant to the statutory authority provided by the Exchange Act,⁷ including Sections 11A(a)(3)(B),⁸ 17(a),⁹ 19(b),¹⁰ and 23(a)¹¹ thereof, and

¹ See 17 CFR 242.613; See also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45722 (August 1, 2012) (“Rule 613 Adopting Release”).

² See id.

³ Id.

⁴ See Securities Exchange Act Release No. 78318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order” or “CAT NMS Plan”).

⁵ See Rule 613 Adopting Release, supra note 2, at 45723, 45730-33.

⁶ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7-13-19) (“Proposing Release”).

⁷ See 15 U.S.C. 78a.

⁸ See 15 U.S.C. 78k-1(a)(3)(B).

⁹ See 15 U.S.C. 78q(a).

¹⁰ See 15 U.S.C. 78s(b).

¹¹ See 15 U.S.C. 78w(a).

pursuant to Rule 608(a)(2) and (b)(2),¹² the Commission adopted these amendments, with certain modifications, on May 15, 2020, with an effective date of June 22, 2020.¹³

The amendments, as adopted, required two new collections of information:

- a. Implementation Plan. The amendments require the Participants, within 30 calendar days following the effective date of the amendments, to prepare, file with the Commission, and make publicly available on a website a complete CAT implementation plan (“Implementation Plan”) that includes a detailed timeline for achieving various implementation milestones.
- b. Quarterly Progress Reports. The amendments require the Participants, within 30 calendar days after the end of each calendar quarter, to prepare, file with the Commission, and make publicly available on a website a complete report (the “Quarterly Progress Report”) that provides a detailed and up-to-date description of the progress made by the Participants toward each of the milestones identified in the Implementation Plan.

Subsequent to the adoption of the amendments, the Commission believes one of the information collections has been completed. The Implementation Plan was filed on July 22, 2020.

The Quarterly Progress Report information collection continues. Each Quarterly Progress Report must be approved by at least a Supermajority Vote¹⁴ of the Operating Committee¹⁵ before such documents are filed with the Commission or made publicly available on a website. However, if any Quarterly Progress Report is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee, each Participant whose Operating Committee member did not vote to approve the Quarterly Progress Report must make publicly available on a website, a statement identifying itself and explaining why the member did not vote to approve the Quarterly Progress Report. These statements shall

¹² See 17 CFR 242.608(a)(2), (b)(2).

¹³ See Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (File No. S7-13-19) (“Adopting Release”).

¹⁴ Section 1.1 of the CAT NMS Plan defines a “Supermajority Vote” as an “affirmative vote of at least two-thirds of all of the members of the Operating Committee or any Subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the Operating Committee or any Subcommittee, as applicable . . . ; provided that if two-thirds of all such members authorized to cast a vote is not a whole number then that number shall be rounded up to the nearest whole number.”

¹⁵ The Operating Committee is the governing body established by the CAT NMS Plan. Each Participant has one voting member (and an alternate voting member) representing it on the Operating Committee, although one individual may serve as the voting of the Operating Committee for multiple affiliated Participants. See CAT NMS Plan, supra note 4, at Section 4.2(a).

be made publicly available by each dissenting Participant on its website or collectively by all Participants on the CAT NMS Plan website. Prior to the Operating Committee's vote, the Quarterly Progress Reports must also be submitted by the Operating Committee to the Chief Executive Officer ("CEO"), President, or an equivalently situated senior officer ("senior management") of each Participant.

The Commission believes that the remaining collections of information are necessary to ensure that the CAT implementation proceeds transparently, without further delay, and in accordance with Rule 613 and the CAT NMS Plan. Without these collections of information, the Commission believes that market participants may find it difficult to monitor the status of CAT implementation, which may affect how market participants stage their resources and otherwise plan for CAT implementation and eventual data reporting to the CAT. The Commission also believes that the above-described measures will lend credibility to the timelines presented by the Participants, as well as promote senior management attention and promote accountability with respect to CAT implementation.

2. Purpose and Use of the Information Collection

The Commission believes that the Quarterly Progress Reports required by the amendments will provide up-to-date, critical information to the Commission, other regulators, and market participants regarding the intended goals and deadlines of the Participants. Access to this information will help the Commission and market participants to monitor the progress of CAT implementation. Requiring the Participants to publish the Quarterly Progress Reports may also prevent further delays by keeping the Participants accountable to the public and to the Commission, thus incentivizing the Participants to proceed expeditiously towards implementation of the CAT. In addition, the Commission believes that requiring that the Operating Committee approve each Quarterly Progress Report by at least a Supermajority Vote will lend credibility to the timelines and information presented by the Participants in these documents. Finally, the Commission believes that requiring the Operating Committee to submit the Quarterly Progress Reports to the CEO, President, or an equivalently situated senior officer prior to the Operating Committee's vote will promote senior management attention and promote accountability with respect to CAT implementation.

3. Consideration Given to Improved Information Technology

The amendments use information technology to lessen the burden on the Participants. The Quarterly Progress Reports are to be publicly posted on websites and may be submitted electronically to the Commission. The Commission further notes that it does not prohibit the Participants from using any kind of information technology to facilitate the collection and/or preparation of the information required by the amendments.

4. Duplication

The amendments do not require the collection of duplicate information that is otherwise available in a similar form.

The Participants have voluntarily published some documents containing information regarding certain CAT implementation milestones. Some of this information is similar to that which might be provided in the Quarterly Progress Reports. However, the information would not necessarily be presented in the same form in the Quarterly Progress Reports. Also, additional detail may be provided in and the Quarterly Progress Reports that is not currently made available to the public in the documents published by the Participants.

5. Effects on Small Entities

The Commission does not believe that the requirements under the amendments would affect small entities.¹⁶ The amendments only impose requirements on national securities exchanges and FINRA. With respect to the national securities exchanges, the Commission's definition of a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 of Regulation NMS and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁷ None of the national securities exchanges subject to the amendments fall within this definition, and FINRA similarly does not qualify as a "small entity."¹⁸

6. Consequences of Not Conducting Collection

The information required by the amendments should enhance operational transparency and increase the financial accountability of the Participants, which may incentivize the timely implementation of the CAT.

The Participants' progress towards implementing the CAT has suffered multiple setbacks and delays. If the Commission does not collect the information required by the proposed amendment, the Commission believes that the CAT may not be implemented in a timely manner, thus further delaying the ability of the Commission, other regulators, and market participants to realize the regulatory benefits of the CAT. In addition, market participants may continue to find it difficult to monitor the status of CAT implementation, which may affect how market participants stage their resources and otherwise plan for CAT implementation and eventual data reporting to the CAT.

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

The Participants are required by law to retain the records and information that would be collected pursuant to the proposed amendment for a period of not less than 5 years, the first 2 years in an easily accessible place.¹⁹ The amendments do not affect this existing requirement.

¹⁶ See Adopting Release, supra note 13, at Part V.

¹⁷ See 17 CFR 240.0-10(e).

¹⁸ See 13 CFR 121.201.

¹⁹ See 17 CFR 240.17a-1(b).

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

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

Neither the Implementation Plan nor the Quarterly Progress Reports will be confidential. Rather, each will be publicly posted by the Participants on a public website.

11. Sensitive Questions

The Information Collection does not collect information about individuals, therefore, a PIA, SORN, and PAS are not required.

12. Burden of Information Collection

As noted above, the amendments established two new collections of information: (1) Implementation Plan and (2) Quarterly Progress Reports. The one-time information collection associated with the Information Plan was completed by the Participants, so the Commission believes that the annual burden for that information collections is 0 hours. The Commission anticipates that the Participants will incur the following third-party disclosure burdens on the remaining information collection.

Summary of Approximate Hour Burden									
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Burden per Entity per Response	Annual Burden Per Entity	Annual Total Responses	Annual Industry Burden
Implementation Plan	25	0	3 rd -Party Disclosure	Initial One-Time	0	0	0	0	0
Quarterly Progress Reports	25	0	3 rd -Party Disclosure	Ongoing	4	72	288	100	7,200
TOTAL ANNUAL INDUSTRY HOUR BURDEN									7,200

These burdens are described in more detail below.

a. Implementation Plan

The respondents to this collection of information were the Participants. The one-time information collection associated with the Information Plan was completed by the Participants, so the Commission believes that the annual burden for that information collections is 0 hours .

b. Quarterly Progress Reports

The respondents to this quarterly collection of information would be the Participants. Within 30 calendar days after the end of each calendar quarter, the Participants must prepare, file with the Commission, and make publicly available on a website a complete report that provides a detailed and up-to-date description of the progress made by the Participants toward each of the implementation milestones identified in the Implementation Plan.

The Commission estimates that the Quarterly Progress Report would result in an ongoing third-party disclosure burden of approximately 288 hours per respondent per year,²⁰ or approximately 7,200 hours per year for the industry.²¹ This burden is discussed in more detail immediately below.

The Commission estimates that each Participant would incur, for each Quarterly Progress Report, an average ongoing burden of approximately 58 hours to confer with other Participants, to draft a Quarterly Progress Report, to ensure that the Operating Committee submits each Quarterly Progress Report to the CEO, President, or an equivalently situated senior officer of each Participant, and to vote as to whether to approve each Quarterly Progress Report. To account for the possibility that a Quarterly Progress Report may be approved only by a Supermajority Vote, and not by a unanimous vote, the Commission estimates that each Participant will incur, on average, an ongoing burden of approximately 4.8 hours in connection with the proposed rule's requirement that each Participant whose Operating Committee member does not vote to approve a Quarterly Progress Report must file an explanatory statement. In addition, the Commission estimates that each Participant would incur, on average, an ongoing burden of approximately 9.2 hours to ensure that each Quarterly Progress Report, and any explanatory statement (if applicable), is filed with the Commission and made publicly available on a website.

c. Total Industry Hour Burden

The total estimated industry hour burden is **7,200 hours per year.**²²

²⁰ 58 hours +4.8 hours + 9.2 hours = 72 hours per Quarterly Progress Report. 72 hours per Quarterly Progress Report * 4 reports a year = 288 hours per respondent per year.

²¹ 288 hours per respondent per year * 25 Participants = 7,200 hours per year for the industry.

²² 0 hours + 7,200 hours = 7,200 hours.

13. Costs to Respondents

The Commission believes that respondents will incur costs in connection with the Quarterly Progress Reports. The Commission anticipates that the Participants would incur the following third-party disclosure burden.

Summary of Approximate Cost Burden									
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Cost	Ongoing or Initial Cost	Annual Responses per Entity	Cost per Entity per Response	Annual Cost Per Entity	Annual Total Responses	Annual Industry Cost
Implementation Plan	25	0	3 rd -Party Disclosure	Initial One-Time	0	\$0	\$0	0	\$0
Quarterly Progress Reports	25	0	3 rd -Party Disclosure	Ongoing	4	\$8,000	\$32,000	100	\$800,000
TOTAL ANNUAL INDUSTRY COST BURDEN									\$800,000

These burdens are described in more detail below.

a. Implementation Plan

The respondents to this collection of information were the Participants. The one-time information collection associated with the Implementation Plan was completed by the Participants, so the Commission believes that there will be no further costs associated with the Implementation Plan.

b. Quarterly Progress Reports

The respondents to this quarterly collection of information would be the Participants. Within 30 calendar days after the end of each calendar quarter, the Participants must prepare, file with the Commission, and make publicly available on a website a complete report that provides a detailed and up-to-date description of the progress made by the Participants toward each of the implementation milestones identified in the Implementation Plan.

The Commission estimates that each Participant would incur, for each Quarterly Progress Report, an ongoing third-party disclosure cost of approximately \$8,000,²³ on average, in external

²³ In the CAT NMS Plan Approval Order, the Commission estimated, based on information provided by the Participants, that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs. See CAT NMS Plan Approval Order, *supra* note 4, at n.3287. In the Adopting Release, the Commission noted that the estimated burden for the Implementation Plan should be one-twelfth the amount estimated for the development of the CAT NMS Plan, because the Participants would only have 30 calendar days from the effective date of this amendment to prepare the Implementation Plan and because preparation of the Implementation Plan was a much less complex project. See Adopting Release, *supra*, note 13, at 31388. Accordingly, the Commission estimated that the Participants will expend approximately \$200,000 in aggregate, and \$8,333.33 per Participant, in external public relations, legal, and consulting costs related to the

public relations, legal, and consulting costs related to the development of the Quarterly Progress Report. **This estimate would result in a cost of approximately \$32,000 per year per respondent²⁴ and approximately \$800,000 per year for the industry.²⁵**

c. Total Industry Cost Burden

The total estimated industry cost burden is **\$800,000 per year.**²⁶

14. Cost to Federal Government

The federal government would not incur a cost in connection with the collection of this information.

15. Changes in Burden

The Commission has revised its burden estimates for the collections of information, as summarized in this chart:

Name of Information Collection	Annual Industry Burden Hours and Cost	Annual Industry Burden Hours and Cost Previously Reviewed	Change in Burden Hours and Cost	Reason for Change
Implementation Plan	0 0	600 \$66,667	(600) \$(66,667)	One time information Collection completed.
Quarterly Progress Reports	7,200 \$800,000	7,200 \$800,000	0 \$0	N/A

The burdens estimated in the Adopting Release were calculated by reference to 24 Participants who needed to complete both the Implementation Plan and the Quarterly Progress Reports; since the issue of that release, however, the Implementation Plan was completed and an additional Participant has been added to the CAT NMS Plan. Because the initial one-time Implementation Plan has been completed, the Commission estimates that there will be no further burden associated with that collection. The addition of a Participant has decreased the burden per

preparation of the Implementation Plan. *Id.* The Commission estimated that the cost to prepare the quarterly reports would be approximately the same, or \$200,000. *Id.* at 31389. Because the aggregate cost remains the same, but there are now 25 Participants instead of 24, the annual cost per Participant is \$32,000 and the cost per Quarterly Report is \$8,000.

²⁴ \$8,000 * 4 Quarterly Progress Reports = \$32,000 per year per respondent.

²⁵ \$32,000 per year per respondent * 25 Participants = \$800,000per year for the industry.

²⁶ \$0 + \$800,000 = \$800,000.00.

Participant, because the work is divided among 25 Participants instead of 24, but the aggregate ongoing burden remains unchanged.

16. Information Collection Planned for Statistical Purposes

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

17. OMB Expiration Date Display Approval

The Commission is not seeking approval to not display the OMB approval expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.