

SUPPORTING STATEMENT
Paperwork Reduction Act Information Collection Submission for Rule 608

OMB Control Number 3235-0500

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Necessity of Information Collection

Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the “Act”) enables the Securities and Exchange Commission (the “Commission”) to act, in furtherance of its statutory directive to facilitate the establishment of a national market system for securities,¹ “by rule or by order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof”² This section, however, does not specify any procedures for filing or amending national market system plans (“NMS Plans”).

The Commission adopted Rule 11Aa3-2 to establish such procedures.³ This rule was later re-numbered as Rule 608 with the adoption of Regulation NMS,⁴ and was amended in August 2020 to modify certain processes set forth within the rule,⁵ but the information collection requirements of the rule have remained the same:

- a. New NMS Plans. Self-regulatory organizations (“SROs”) filing a new NMS Plan must submit the text of the NMS Plan to the Commission, along with a statement of purpose,⁶ and, if applicable, specified supporting materials. Such materials may include: (1) a copy of all governing or constituent documents;⁷ (2) a description of the manner in which the NMS Plan, and any facility or procedure

¹ See 15 U.S.C. 78k-1(a)(2).

² See 15 U.S.C. 78k-1(a)(3)(B).

³ See Securities Exchange Act Release No. 17580 (Feb. 26, 1981), 46 FR 15866 (Mar. 10, 1981).

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37570 (June 29, 2005).

⁵ See Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470 (Oct. 15, 2020) (“2020 Rule 608 Amendment”).

⁶ See 17 CFR 242.608(a)(1).

⁷ See 17 CFR 242.608(a)(4)(i).

contemplated by the NMS Plan, will be implemented;⁸ (3) a listing of all significant phases of development and implementation contemplated by the NMS Plan, including a projected completion date for each phase;⁹ (4) an analysis of the competitive impact of implementing the NMS Plan and any facility or procedure contemplated by the NMS Plan;¹⁰ (5) a description of any written agreements or understandings between or among plan participants or sponsors relating to interpretations of the NMS Plan or conditions for becoming a plan participant or sponsor;¹¹ and (6) a description of the manner in which any facility contemplated by the NMS Plan shall be operated.¹² Participants or sponsors to the NMS Plan must ensure that a current and complete version of the NMS Plan is posted on a designated website or a plan website after being notified by the Commission that the NMS Plan is effective. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan.¹³

- b. NMS Plan Amendments. SROs proposing to amend an existing NMS Plan must submit the text of the amendment to the Commission, along with a statement of purpose,¹⁴ and, if applicable, the supporting materials described above,¹⁵ as well as a statement that the amendment has been approved by the plan participants or sponsors in accordance with the terms of the NMS Plan.¹⁶ Participants or sponsors to the NMS Plan must ensure that any proposed amendments are posted to a designated website or a plan website after filing the amendments with the Commission and that those websites are updated to reflect the current status of the amendment and the NMS Plan. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan.¹⁷
- c. Plan Processor Selections. To the extent that a plan processor is required for any facility contemplated by a NMS Plan, the plan participants or sponsors must file with the Commission a statement identifying the plan processor selected, describing the material terms under which the plan processor is to serve, and

⁸ See 17 CFR 242.608(a)(4)(ii)(A).

⁹ See 17 CFR 242.608(a)(4)(ii)(B).

¹⁰ See 17 CFR 242.608(a)(4)(ii)(C).

¹¹ See 17 CFR 242.608(a)(4)(ii)(D).

¹² See 17 CFR 242.608(a)(5).

¹³ See 17 CFR 242.608(a)(8)(i).

¹⁴ See 17 CFR 242.608(a)(1).

¹⁵ See notes 6-12 and associated text supra for a description of these supporting materials.

¹⁶ See 17 CFR 242.608(a)(4)(ii)(E).

¹⁷ See 17 CFR 242.608(a)(8)(i)-(ii).

indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered, and the reasons for the selection of the plan processor.¹⁸

These information collection requirements were previously submitted and approved in connection with Rule 11Aa3-2 under OMB Control Number 3235-0500. Commission staff inadvertently and mistakenly discontinued this OMB Control Number on December 10, 2007, following the re-numbering of Rule 11Aa3-2 as Rule 608. Accordingly, the Commission requested, on an emergency basis, a reinstatement of the previously approved information collection requirements associated with OMB Control Number 3235-0500. That reinstatement was granted on May 28, 2020.

2. Purpose and Use of the Information Collection

The information collected pursuant to Rule 608 is necessary to further the above-described statutory directive to facilitate the establishment of a national market system for securities.¹⁹ The collected information enables the Commission to determine whether to authorize the creation or amendment of NMS Plans. It also enables the Commission to better monitor and regulate existing NMS Plans and the SROs that are participants or sponsors to such NMS Plans. These functions would be much more difficult without the information collected pursuant to Rule 608.

3. Consideration Given to Improved Information Technology

Rule 608 uses information technology to lessen the burden on the SROs that are participants or sponsors to NMS Plans. Rule 608 was amended in 2020 to, among other things, require NMS Plans and NMS Plan amendments to be filed by email,²⁰ lessening the need for any additional copying or scanning. In addition, much of the information collected pursuant to Rule 608 is posted electronically on a website. The Commission further notes that it does not prohibit the SROs from using any kind of information technology to facilitate the collection and/or preparation of the information required by Rule 608.

4. Duplication

Rule 608 will not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

¹⁸ See 17 CFR 242.608(a)(6).

¹⁹ See notes 1-2 and associated text *supra*. The above-described collections of information also ensure that affected market participants have access, via a public and designated website or a plan website, to a current and updated version of any effective NMS Plans.

²⁰ See 2020 Rule 608 Amendment, 85 FR at 65478.

5. Effects on Small Entities

Rule 608 does not affect small entities. Rule 608 only imposes requirements on self-regulatory organizations that are national securities exchanges and national securities associations. 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.²¹ None of the national securities exchanges subject to the amendments fall within this definition, and national securities associations similarly do not qualify as a "small entity."²²

6. Consequences of Not Conducting Collection

The information collected pursuant to Rule 608 is necessary to further the above-described statutory directive to facilitate the establishment of a national market system for securities.²³ If the Commission did not collect this information, it would be more difficult for the Commission to determine whether to approve the creation or amendment of NMS Plans. It would also be more difficult for the Commission to monitor and regulate existing NMS Plans and the SROs that are participants or sponsors to such NMS Plans. Moreover, the information collected pursuant to Rule 608 cannot be collected less frequently. The information submitted with each NMS Plan, amendment, or selection of a plan processor is only submitted once.

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

The SROs are required by law to retain the records and information that are collected pursuant to Rule 608 for a period of not less than 5 years, the first 2 years in an easily accessible place.²⁴ Rule 608 does not affect this existing requirement.

There are no other special circumstances, and this collection is otherwise consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

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

9. Payment or Gift

²¹ See 17 CFR 240.0-10(e).

²² See 13 CFR 121.201.

²³ See notes 1-2 and associated text supra. The above-described collections of information also ensure that affected market participants have access, via a public and designated website or a plan website, to a current and updated version of any effective NMS Plans.

²⁴ See 17 CFR 240.17a-1(b).

No payment or gift is provided to respondents.

10. Confidentiality

The text of the NMS Plans and any amendments will not be confidential but published on a designated website or a plan website. To the extent that Rule 608 requires the SROs to submit confidential information to the Commission, that information will be kept confidential subject to the provisions of applicable law.²⁵

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, Rule 608 establishes the following information collection requirements in connection with (1) New NMS Plans, (2) NMS Plan Amendments, and (3) Plan Processor Selections. The Commission estimates that 25 SROs²⁶ incur the following reporting and/or third-party disclosure burdens:

Summary of Hourly Burdens								
Name of Information Collection	Number of Entities Impacted	Small Business Entities Affected	Type of Burden	Ongoing or Initial Burden	Annual Responses per Entity	Approximate Burden per Entity per Response	Approximate Annual Burden Per Entity	Approximate Annual Industry Burden
New NMS Plan	25	0	3 rd -Party Discl.	Ongoing	1	5	5	125

²⁵ See, e.g., 5 U.S.C. 552 et seq.; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

²⁶ Currently, the following SROs are participants to a NMS Plan: BOX Exchange, LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAIX Emerald, LLC, MIAIX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

			Reporting	Ongoing	1 ²⁷	170	34	850
NMS Plan Amendments	25	0	3 rd -Party Discl.	Ongoing	13	0.38	5	124
			Reporting	Ongoing	13	34	442	11,050
Plan Processor Selections	25	0	Reporting	Ongoing	1 ²⁸	34	11.33	283
TOTAL ANNUAL INDUSTRY BURDEN								12,432

These burdens are discussed further below.

a. New NMS Plans

The Commission estimates that the SROs would incur, on average, an ongoing third-party disclosure burden of approximately 5 hours per year to keep a current and complete version of the NMS Plan posted on a designated website or a plan website, and to provide a link to the current version of the NMS Plan on its own website. **This would result in an average aggregate annual burden of approximately 125 hours.**²⁹

Although the burdens involved with the creation of a new NMS Plan can and will vary, the Commission estimates that each SRO would incur, on average, a burden of approximately 170 hours to create and submit to the Commission a new NMS Plan, along with a statement of purpose, and if, applicable, any of the specified supporting materials. The Commission believes that a new NMS Plan would only be created approximately once every five years. Accordingly, the Commission estimates that the creation and submission of a new NMS Plan and any related materials would result, on average, in **an annual ongoing burden of approximately 34 hours per SRO³⁰ and an aggregate annual burden of approximately 850 hours.**³¹

b. NMS Plan Amendments

Although the burdens involved with the development of a NMS Plan amendment can and will vary, the Commission estimates that each SRO would incur, on average, a reporting burden of approximately 34 hours to create and submit to the Commission an NMS Plan amendment and any

²⁷ The Commission estimates that a response would only be required once every five years. The annual burdens included in this chart and detailed below therefore reflect burdens that are annualized over five years. See notes 30-31 and associated text infra.

²⁸ The Commission estimates that a response would only be required once every three years. The annual burdens included in this chart and detailed below therefore reflect burdens that are annualized over three years. See notes 36-37 and associated text infra.

²⁹ 5 burden hours * 25 Participants = 125 burden hours.

³⁰ 170 burden hours / 5 = 34 burden hours per year.

³¹ 34 burden hours * 25 Participants = 850 burden hours.

supporting materials. Because the Commission believes that approximately 13 NMS Plan amendments will be submitted each year, the Commission estimates that the creation and submission of NMS Plan amendments and any related materials would result, on average, in **an ongoing burden of approximately 442 hours a year per SRO³² and an aggregate burden of approximately 11,050 hours per year.**³³

The Commission further estimates that the SROs would incur, on average, an ongoing third-party disclosure burden of approximately 0.38 hours to post any pending NMS Plan amendments to a designated website or a plan website and to update such websites to reflect the current status of the amendment and the NMS Plan. **This would result, on average, in an annual burden of approximately 5 hours per SRO³⁴ and an aggregate annual burden of approximately 124 hours.**³⁵

c. Plan Processor Selections

Although the burdens involved with the selection of a plan processor can and will vary, the Commission estimates that each SRO would incur, on average, a reporting burden of approximately 34 hours to submit to the Commission a statement identifying the plan processor selected and supporting materials. The Commission further estimates that one plan processor will be selected every three years. Accordingly, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result, on average, in **an ongoing annual burden of approximately 11.33 hours per SRO³⁶ and an aggregate annual burden of approximately 283 hours.**³⁷

The above estimates result in a **total annual industry burden of approximately 12,432 hours.**

13. Costs to Respondents

The Commission estimates that 25 SROs³⁸ will incur the following costs in connection with the collections of information required by Rule 608:

Summary of Approximate Cost Burdens
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³² 34 burden hours * 13 NMS Plan amendments = 442 burden hours per SRO per year.

³³ 442 burden hours per SRO per year * 25 SROs = 11,050 burden hours.

³⁴ 0.38 burden hours * 13 NMS Plan amendments = 4.94 burden hours per SRO per year.

³⁵ 4.94 burden hours * 25 Participants = 123.5 burden hours rounded up to 124. A previous submission by the Commission stated the aggregate burden as 125 hours due to rounding errors.

³⁶ 34 burden hours / 3 years = 11.33 burden hours per SRO per year.

³⁷ 11.33 burden hours per SRO per year * 25 SROs = 283.33 hours rounded down to 233.

³⁸ See note 26 supra.

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 Industry Cost
New NMS Plans	25	0	Reporting	Ongoing	1	\$30,000 ³⁹	\$6,000	\$150,000
NMS Plan Amendments	25	0	Reporting	Ongoing	13	\$1,000	\$13,000	\$325,000
Plan Processor Selections	25	0	Reporting	Ongoing	1	\$1,000 ⁴⁰	\$333.33	\$8,333
TOTAL ANNUAL INDUSTRY COST								\$483,333

These burdens are described in more detail below.

a. New NMS Plans

Although the costs involved with the creation of a new NMS Plan can and will vary, the Commission estimates that each SRO would incur, on average, reporting costs of approximately \$30,000 in external public relations, legal, and consulting costs related to the development of a new NMS Plan and any related supporting materials. The Commission believes that a new NMS Plan would only be created approximately once every five years. Accordingly, the Commission estimates that the creation of a new NMS Plan and any related materials would result, on average, in **ongoing annual costs of approximately \$6,000 per SRO⁴¹ and aggregate annual costs of approximately \$150,000.⁴²**

b. NMS Plan Amendments

Although the costs involved with the creation of a NMS Plan amendment can and will vary, the Commission estimates that each SRO would incur, on average, reporting costs of approximately \$1,000 in external public relations, legal, and consulting costs related to the creation and submission of a new NMS Plan and any related supporting materials. Because the Commission estimates that 13 NMS Plan amendments would be filed each year, the Commission estimates that the creation and submission of a NMS Plan amendment and any related materials would result, on average, in **ongoing annual costs of approximately \$13,000 per SRO⁴³ and aggregate annual costs of approximately \$325,000.⁴⁴**

³⁹ See note 27 *supra*; see also notes 41-42 and associated text *infra*.

⁴⁰ See note 28 *supra*; see also notes 45-46 and associated text *infra*.

⁴¹ \$30,000 / 5 = \$6,000 per SRO per year.

⁴² \$6,000 per SRO per year * 25 SROs = \$150,000.

⁴³ \$1,000 * 13 NMS Plan amendments = \$13,000 per SRO per year.

⁴⁴ \$13,000 per year * 25 SROs = \$325,000.

c. Plan Processor Selections

The Commission estimates that each SRO would incur, on average, reporting costs of approximately \$1,000 in external legal and consulting costs related to the preparation and submission of materials related to the selection of a plan processor. The Commission further estimates that a plan processor would be selected approximately once every three years. Accordingly, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result, on average, in **ongoing annual costs of approximately \$333.33 per SRO⁴⁵ and aggregate annual costs of approximately \$8,333.⁴⁶**

The above estimates result in a **total annual industry cost of approximately \$483,333.**

14. Cost to Federal Government

The federal government will not incur a cost in connection with these collections of information.

15. Changes in Burden

Not applicable. The Commission has not revised its burden or cost estimates since its last submission of an information collection request for Rule 608.

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 omit the 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.

⁴⁵ \$1,000 / 3 years = \$333.33 per SRO per year.

⁴⁶ \$333.33 per SRO per year * 25 SROs = \$8,333.33 rounded down to \$8,333.