

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

3235-0743
Adopted Amendments

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 Securities and Exchange Commission (“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 Act² 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.

On August 23, 2023, the Commission adopted amendments that will require a broker or dealer 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).³ 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Specifically, the de minimis allowance, including the proprietary trading exclusion, has been rescinded, and amended Rule 15b9-1 permits an exemption from Association membership only where a broker or dealer that does not carry customer accounts effects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

¹ 15 U.S.C. 78q(b)(8).

² 15 U.S.C. 78q(b)(9).

³ See Securities Exchange Act Release No. 98202, (August 23, 2023), 88 FR 61850 (September 7, 2023) (“Adopting Release”). See also, Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) (“Re-Proposal”).

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 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 is 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 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 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 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 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 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 amendments exempt certain broker-dealers from the Exchange Act Association membership requirement. As a result, broker-dealers complying with the 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.⁴ 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 approximately 3,500 active brokers and dealers overseen by the Commission and estimates that there are 786 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 786 brokers and dealers, not more than three would be required to become FINRA members as a result of the rule (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 believes that 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 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 supervise those broker-dealers relying on the stock-option order exemption and the ability of broker-dealers subject to the rule to ensure that their trading activities continue to comply with the requirements of the 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

⁴ 15 U.S.C. 78q(d)(1).

the Exchange Act until three years after the date the policies and procedures are replaced with updated policies and procedures.⁵ Accordingly, a broker or dealer would be required to keep the policies and procedures relating to its use of this 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. Rule 15b9-1 requires 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 rule does not require the broker-dealer to report information more often than quarterly. As a result, Rule 15b9-1 is 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 adopting amendments to Rule 15b9-1.

The Commission also considered the comments on the 2022 Re-Proposal.⁶

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collected pursuant 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 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

⁵ See, e.g., 17 CFR 240.17a-4(e)(7).

⁶ See *supra* n.3.

The collection of information does not include Personally Identifiable Information.⁷

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 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 17 non-FINRA brokers or dealers would rely on the 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 Rule 15b9-1.⁸ This figure 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 required by the 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 year⁹ and an aggregate, initial burden of approximately **45.39 hours** per year.¹⁰

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

⁷ 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.

⁸ 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 broker or dealer.

⁹ 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.

¹⁰ This figure is based on the following: (2.67 burden hours per broker or dealer) x (17 brokers and dealers) = 45.39 aggregate initial burden hours per year.

leg of a stock-option order would be approximately 48 hours for each broker or dealer per year.¹¹ 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 procedures as required under Rule 15b9-1 would be **816 hours** per year.¹² As a result, the total industry burden, including the initial burden and the ongoing burden, would be approximately **861.39 hours** per year.¹³

The estimated initial and ongoing burdens associated with 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 3 | 17 | Initial | 1 | 2.67 | 2.67 | 0 | 45.39 |
| Maintaining and Enforcing Written Policies and Procedures | Hourly Information Collection | Not more than 3 | 17 | Ongoing | 1 | 0 | 0 | 48 | 816 |

¹¹ 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 Rule 15b9-1 are much more limited in nature.

¹² This figure is based on the following: (48 burden hours per broker or dealer) x (17 non-FINRA brokers and dealers) = 816 aggregate, ongoing burden hours per year.

¹³ This figure is based on the following: (45.39 aggregate, initial burden hours) + (816 aggregate, ongoing burden hours) = 861.39 total burden hours per year.

| 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 |
|------------------------------|----------------|----------------------------------|-----------------------------|---------------------------|---|--------------------------------------|---|---|--|
| Total Annual Industry Burden | | | | | | | | | 816.39 |

13. Estimate of Total Annual Cost Burden

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

14. Estimate of Cost to the Federal Government

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

15. Explanation of Changes in Burden

The amendments to Rule 15b9-1, as adopted, will increase the burdens from the burden estimates previously submitted to OMB for the 2022 Re-Proposal. The estimated burdens per respondents have not changed from the amounts previously submitted, but the number of respondents has increased because Commission now believes that 17 non-FINRA brokers or dealers will 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 previously filed with OMB, are shown in the table below:

| Name of Information Collection | Previously Proposed Estimated Burden | Final Estimated Burden | Change in Estimated Burden | Reason for the Change |
|--|---|---|--|---|
| Establishing Written Policies and Procedures | 18.67 aggregate initial burden hours per year ¹⁴ | 45.39 aggregate initial burden hours per year | Increase in estimated aggregate initial burden hours of 26.72 per year (i.e., 45.39 – 18.67) | The Commission now estimates that 17 non-FINRA brokers or dealers will be required to establish, maintain and enforce the required policies and procedures rather than the 7 non-FINRA brokers or dealers previously estimated. |

¹⁴ This figure is based on the following: ((8 burden hours per broker or dealer) / (3 years)) x (7 non-FINRA brokers and dealers) = 18.67 aggregate initial burden hours per year.

| | | | | |
|---|---|---|--|---|
| Maintaining and Enforcing Written Policies and Procedures | 336 aggregate, ongoing burden hours per year ¹⁵ | 816 aggregate, ongoing burden hours per year | Increase in estimated aggregate, ongoing burden hours of 480 per year (i.e., 816 – 336) | The Commission now estimates that 17 non-FINRA brokers or dealers will be required to establish, maintain and enforce the required policies and procedures rather than the 7 non-FINRA brokers or dealers previously estimated. |
|---|---|---|--|---|

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.

¹⁵ This figure is based on the following: (48 burden hours per broker or dealer) x (7 non-FINRA brokers or dealers) = **336** aggregate, ongoing burden hours.