

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 13f-2 - Short Position and Short Activity Reporting by Institutional Investment
Managers

OMB Control Number 3235-0804 (Final Rule)

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 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) added Section 13(f)(2) of the Securities Exchange Act of 1934 (“Exchange Act”), which requires the Commission to prescribe rules to make certain short sale data publicly available no less frequently than monthly.¹ Specifically, Section 13(f)(2) provides that the Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period.

Rule 13f-2 is designed to fulfill the requirements of Exchange Act Section 13(f)(2) and provide greater transparency through the publication of certain short sale related data to investors and other market participants by requiring certain Institutional Investment Managers (“Managers”) to report to the Commission, on a monthly basis on Form SHO, certain short position data and short activity data for certain equity securities. More information about the short sale activity and gross short positions of reporting Managers² may promote greater risk management among market participants, and may facilitate capital formation to the extent that greater transparency bolsters confidence in the markets.

In addition to adopting new Rule 13f-2, the Commission adopted an amendment to the national market system (“NMS”) plan governing the consolidated audit trail (“CAT”) to require Industry Members³ that are reporting short sales to indicate whether such Industry Member is

¹ Pub. L. 111-203, § 929X, 124 Stat. 1376, 1870 (July 21, 2010).

² As defined in Section 13(f)(6)(A) of the Exchange Act and for purposes of Rule 13f-2, “institutional investment manager” includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. As such, the term “institutional investment manager” typically can include investment advisers, banks, insurance companies, broker-dealers, pension funds and corporations.

³ An “Industry Member” means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, section 1.1.

asserting use of the bona fide market making exception under Regulation SHO for the “locate” requirement in Rule 203(b)(2)(iii) (“BFMM locate exception”) for the reported short sales.

The Commission believes that Rule 13f-2 and Form SHO will increase transparency regarding short position and short activity data to both market participants and regulators, and that the amendment to CAT, i.e., the BFMM locate exception data reported to the CAT, will provide the Commission with a better understanding of the use of this limited exception, which should help to ensure that the exception is not subject to misuse by brokers or dealers in violation of the Commission’s short selling rules.

Certain provisions of Rule 13f-2 and the amendment to CAT impose “collection of information” requirements within the meaning of the Paperwork Reduction of 1995 (“PRA”). The title for the information collections is “Short Position and Short Activity Reporting by Institutional Investment Managers.”

2. Purpose and Use of the Information Collection

Form SHO and the aggregated data published pursuant to Rule 13f-2 will increase transparency and provide several important benefits to market participants and regulators. Such aggregated information will help inform market participants regarding the overall short sale activity by reporting Managers. The Commission’s regular access to Form SHO data will bolster the Commission’s oversight of short selling, as Rule 13f-2 and Form SHO will improve the utility of information available to the Commission and other regulators. The short sale related information that will be collected under Rule 13f-2 and Form SHO will fill an information gap for market participants and regulators because the short position data reported pursuant to Rule 13f-2 on Form SHO will supplement the short sale information that is currently publicly available from FINRA and the exchanges.

The amendment to CAT will provide valuable data to both the Commission and other regulators regarding the use of the BFMM locate exception to Regulation SHO. Requiring Industry Members to identify short sales for which they are claiming the bona fide market making exception will provide the Commission and other regulators an additional tool to determine whether such activity qualifies for the exception, or instead could be indicative of, for example, proprietary trading instead of bona fide market making activity.

3. Consideration Given to Information Technology

Rule 13f-2 and Form SHO will require the short position and activity disclosures to be filed on the Commission’s EDGAR system using a structured, machine-readable data language. In particular, the rule and form will require Form SHO to be filed on EDGAR in a custom XML-based data language specific to that Form (“custom XML,” here “Form SHO-specific XML”). The XML schema for Form SHO-specific XML will incorporate validations of certain data fields on the Form to help ensure consistent formatting and completeness.⁴ The Commission

⁴ Field validations are restrictions placed on each data element, which would not allow a filer to file a form if there are certain technical errors in critical fields. If a Form SHO were to include, for example, letters

will subsequently aggregate the reported information at the equity security level and release the aggregated data to the public.

The Commission believes the reporting requirements will incrementally augment the various effects of the short position and activity disclosures by enhancing the accessibility, usability, and quality of the Form SHO disclosures (for use by the Commission) and the aggregated security-level disclosures (for use by the public). By requiring a structured machine-readable data language and a centralized filing location (EDGAR) for the disclosures on Form SHO, the Commission will be able to access and download large volumes of Form SHO disclosures in an efficient manner. To the extent that the efficiencies derived from the centralized filing of the Form SHO disclosures facilitate more rapid Commission response to potentially abusive short selling practices, investors could indirectly benefit from the fact that such practices are detected, and possibly addressed, earlier than might otherwise be the case.

4. Duplication

The amendment to CAT presents no potential duplication of information collections, as reporting of use of the BFMM locate exception is not required elsewhere. However, some reporting requirements of Rule 13f-2 may overlap with existing information collections currently required by FINRA. One of the primary data sources for aggregate short selling data is the bimonthly short interest data collected by FINRA.⁵ FINRA collects aggregate short interest information in individual securities on a bimonthly basis as the total number of shares sold short in a given stock as of the middle and end of each month. Then, the exchange that lists the given stock, or FINRA itself in the case of OTC stocks, distributes the collected data.⁶ Some SROs make the historical daily short volume data available to market participants for a fee.⁷

The Commission believes that the short sale related information that will be collected under Rule 13f-2 and Form SHO will fill an information gap for market participants and regulators by providing insights into increases and decreases in reported short positions and that the short

instead of numbers in a field requiring only numbers, it would be flagged as a technical error, at which point the filer would either be unable to file the Form (if completed using the fillable web form provided by EDGAR) or the filing would be rejected (if directly filed in EDGAR in Form SHO-specific XML). To complete the filing, the filer would need to correct the error and re-file.

⁵ See, e.g., Division of Economic and Risk Analysis, Short Sale Position and Transaction Reporting 6–7 (June 5, 2014) (“DERA 417(a)(2) Study”), available at <https://www.sec.gov/files/short-sale-position-and-transactionreporting%2C0.pdf>; see also *Amendments to Regulation SHO*, Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232, 11235 (Mar. 10, 2010).

⁶ See *Short Interest – What It Is, What It Is Not*, FINRA INV’R INSIGHTS (Apr. 12, 2021), available at <http://www.finra.org/investors/insights/short-interest>.

⁷ See, e.g., TAQ Group Short Sale & Short Volume, *New York Stock Exchange*, available at <https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales> (for short sale data relating to all NYSE owned exchanges). See *Short Sale Volume and Transaction Reports from Nasdaq Trader*, available at <https://nasdaqtrader.com/Trader.aspx?id=shortsale> (for short sale data for Nasdaq exchanges); see also *Short Sale Daily Reports, Chicago Board Options Exchange*, (for Cboe exchanges) available at https://www.cboe.com/us/equities/market_statistics/short_sale/.

position data reported pursuant to Rule 13f-2 on Form SHO will supplement the short sale information that is currently publicly available from FINRA and the exchanges. The short sale data reported on Form SHO will include the daily net change in the short position in the security for which information is being reported, and such information is not currently available from FINRA or the exchanges. Moreover, because FINRA’s existing short interest data reports aggregate short positions on a bimonthly basis, those reports do not reflect the timing with which short positions increase or decrease in the two-week period between the two reporting dates. The short sale data reported on Form SHO will help to fill that information gap.

The Commission continues to believe that publication of this additional aggregated information can help to further inform market participants regarding overall short sale activity by Managers with substantial short positions and will provide regulators as well as market participants with important information regarding the timing of increases and decreases in the reported short positions. Finally, compared to other existing reporting regimes, the reporting thresholds in Rule 13f-2 ensure that only substantial, hence more informative, short positions are reported.

5. Effect on Small Entities

The Commission certified in the Adopting Release that Rule 13f-2 and the amendment to CAT will not have a significant economic impact on a substantial number of small entities, as defined under Rule 0-10.⁸

Although section 601(b) of the Regulatory Flexibility Act (“RFA”)⁹ defines the term “small business,” the statute permits agencies to formulate their own definitions. The explanation of the term “small entities” and the definition of the term “small business” in Rule 0-10¹⁰ of the Exchange Act do not explicitly reference Managers. Rule 0-10 does provide, however, that the Commission may “otherwise define” small entities for purposes of a particular rulemaking proceeding. For purposes of Rule 13f-2 and related Form SHO, therefore, the Commission has determined that the definition of the term “small business” found in Rule 0-7(a)¹¹ under the Investment Advisers Act of 1940¹² is more appropriate to the functions of institutional managers such as the Managers with reporting obligations under Rule 13f-2. The Commission believes that the definition will help ensure that all persons or entities that might be Managers subject to reporting requirements under Rule 13f-2 will be included within a category addressed by the Rule 0-7(a) definition.

Therefore, for purposes of Rule 13f-2 and the RFA, a Manager is a small entity if it: (i) has assets under management having a total value of less than \$25 million; (ii) did not have total

⁸ 17 CFR 240.0-10 (“Rule 0-10”).

⁹ 5 U.S.C. 601 *et seq.*

¹⁰ Rule 0-10.

¹¹ 17 CFR 275.0-7(a) (“Rule 0-7(a”).

¹² 15 U.S.C. 80b-1 *et seq.*

assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.¹³

Under Rule 13f-2, Managers are not required to report on Form SHO unless they meet or exceed a specified Reporting Threshold. Managers with a gross short interest position in an equity security of a reporting company issuer¹⁴ will be subject to a two-pronged reporting threshold structure: a monthly average gross short position in the equity security with a U.S. dollar value of \$10 million or more; or a monthly average gross short position as a percentage of shares outstanding in the equity security of 2.5 percent or more (Threshold A). Managers with a gross short interest position in an equity security of a non-reporting company issuer¹⁵ will be subject to a single-pronged reporting threshold structure: a gross short position in the equity security with a U.S. dollar value of \$500,000 or more at the close of regular trading hours on any settlement date during the calendar month (Threshold B). While the parameters of the Reporting Thresholds under Rule 13f-2 relate to the number and dollar value of shares of short positions, rather than assets under management, the Commission nevertheless believes that application of the Reporting Thresholds will result in Rule 13f-2 not applying to a significant number of “small businesses” as defined under Rule 0-7(a).

The amendment to CAT will impose requirements on the CAT NMS Plan Participants (the national securities exchanges registered with the Commission under section 6 of the Exchange Act and FINRA), and broker-dealers that effect short sales utilizing the bona fide market making exception pursuant to Rule 203(b)(2)(iii) of Regulation SHO and report use of the exception to CAT (i.e., Industry Members).

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 is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁶ None of the national securities exchanges registered under section 6 of the Exchange Act that will be subject to the amendments are “small entities”

¹³ Rule 0-7(a). *See generally Reporting Threshold for Institutional Investment Managers*, Exchange Act Release No. 89290 (July 10, 2020), 85 FR 46016, 46031 n.90 (July 31, 2020) (stating that “[r]ecognizing the growth in assets under management at investment advisers since Rule 0-7(a) was adopted, the Commission plans to revisit the definition of a small entity in Rule 0-7(a).”).

¹⁴ “Reporting company issuer” refers to an issuer of securities that is required to file reports pursuant to Exchange Act section 15(d). 15 U.S.C. 78o(d).

¹⁵ “Non-reporting company issuer” refers to an issuer that is not a reporting company issuer as described in footnote 14 above.

¹⁶ *See* 17 CFR 240.0-10(e) (stating that a broker-dealer is a small entity if it has total net capitalization (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d), and it is not affiliated with any person (other than a natural person) that is not a small business or small organization).

for purposes of the RFA. In addition, FINRA is not a “small entity.”¹⁷ Based on Commission knowledge and experience with broker-dealers that identify as market makers, the Commission does not believe that any broker-dealer that effects short sales utilizing the bona fide market making exception pursuant to Rule 203(b)(2)(iii) of Regulation SHO and reports to the CAT will qualify as a small entity pursuant to Exchange Act Rule 0-10(c), because they either exceed \$500,000 in total capital or are affiliated with a person that is not a small entity as defined in Rule 0-10. The Commission believes that it is possible, but unlikely, that in the future a small entity may come within scope of the Amendment to CAT, because such firms are likely to exceed \$500,000 in total capital or be affiliated with a person that is not a small entity.

6. Consequences of Not Conducting Collection

Not conducting the Rule 13f-2 collection will result in a failure by the Commission to fulfill the statutory mandate imposed by Section 929X of the Dodd-Frank Act that is contained in Section 13(f)(2) of the Securities Exchange Act of 1934. Furthermore, not conducting the collections in Rule 13f-2 and the amendment to CAT could result in the public and Commission not benefitting from potential improvements in the transparency of the short sales of securities.

Rule 13f-2 will increase transparency and provide several important benefits to market participants and regulators. Such aggregated information will help inform market participants regarding the overall short sale activity by reporting Managers. More information about the short sale activity and gross short positions of reporting Managers may promote greater risk management among market participants and may facilitate capital formation to the extent that greater transparency bolsters confidence in the markets. The Commission’s regular access to Form SHO data will bolster the Commission’s oversight of short selling, as Rule 13f-2 and Form SHO will improve the utility of information available to the Commission and regulators.

Rule 13f-2, Form SHO, and the CAT amendment may have a positive influence on capital formation if they disincentivize short selling that takes place in connection with securities fraud. For example, in one type of fraud, investors holding convertible debt would engage in a manipulation including short sales of a stock in an attempt to drive down the price artificially in order to convert their debt to equity and cover their short positions at a lower price. To the extent that the rule facilitates better oversight and prosecution of this sort of fraud, it may facilitate capital formation by lowering the risk that convertible debt holders will engage in this sort of fraud. More generally, to the extent that enhanced oversight of short sale activity deters manipulative activity such as short squeezes and associated price bubbles stemming from short squeezes, price efficiency may be enhanced, which in turn, could further promote capital formation.

Rule 13f-2 may also affect capital formation through investor confidence. Some commenters on FINRA’s short interest proposal suggested that short selling, and in particular a lack of short selling disclosure, leads some investors to have less confidence in financial markets. As discussed throughout the Adopting Release, the Commission, however, believes that the data from Form SHO and the amendment to CAT will provide information that is additive to these

¹⁷ See 13 CFR 121.201.

and other data sources and will therefore improve short selling transparency and strengthen investor confidence, which might increase investment activity and, in turn, promote capital formation.

The Commission believes that information regarding use of the BFMM locate exception that will be reported under the amendment to CAT will provide valuable data to both the Commission and other regulators regarding the use of this narrow exception. Requiring Industry Members to identify short sales for which they are claiming the bona fide market making exception will provide the Commission and other regulators an additional tool to determine whether such activity qualifies for the exception, or instead could be indicative of, for example, proprietary trading instead of bona fide market making activity.

Rule 13f-2 and the CAT amendment will enhance the Commission's ability to protect investors and investigate market manipulation by providing a clearer view into the short selling market and improving the Commission's reconstruction of significant market events. Improved identification of manipulative short selling strategies may also serve as a deterrent to would-be manipulators and thus may help prevent manipulation. It will also improve the Commission's observation of short sale activity that potentially poses a systemic risk.

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

The agency is able to demonstrate, in its submission for OMB clearance, that the characteristics of the collection of information are necessary to satisfy statutory requirements or other substantial needs. Therefore, this collection is consistent with the guidelines in 5 CFR 1320.5(d)(2), despite not meeting the specific quarterly reporting frequency parameters described in 5 CFR 1320.5(d)(2)(i).

Section 13(f)(2) of the Securities Exchange Act requires the Commission to prescribe rules to make certain short sale data publicly available no less frequently than monthly. This statutorily prescribed monthly reporting requirement is more frequent than the quarterly frequency described in 5 CFR 1320.5(d)(2)(i). However, any required reporting period for Rule 13f-2 and Form SHO that is less frequent than monthly would fail to fulfill the legislative mandate of Section 13(f)(2) and Dodd-Frank Act Section 929x. Under Rule 13f-2, Managers that meet a specified reporting threshold, will be required to file Form SHO with the Commission within 14 calendar days after the end of the calendar month.

The BFMM locate exception to Regulation SHO was intended to be a "narrow" exception, and the collection of information about its usage will be helpful for the Commission to determine whether it is being used appropriately as such. Industry Members must record and report whether the order is a short sale for which the BFMM locate exception in Rule 203 under Regulation SHO for the reported short sales is being claimed.

The timeliness of information reporting required by Rule 13f-2 is key to providing additional transparency to the market, and the timeliness of information reporting required by the amendment to CAT regarding use of the BFMM locate exception is key so that the Commission can determine where such exception is being used appropriately.

8. Consultations Outside the Agency

The Commission issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens.¹⁸ A copy of the release is attached. Comments were received from industry groups, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through meetings. Any comments received on the Proposing Release are available at <https://www.sec.gov/comments/s7-08-22/s70822.htm>. The Commission considered all comments received prior to publishing the final rule and explained in the Adopting Release how final Rule 13f-2 and the amendment to CAT respond to such comments, in accordance with 5 C.F.R. 1320.11(f). For example, the Commission did not adopt buy to cover reporting, which would have resulted in additional information collections, in response to comments.

9. Payment or Gift

Not applicable.

10. Confidentiality

The Commission does not anticipate disclosing information in Form SHO, other than to the extent the data is included in the Commission’s aggregated disclosures, and the Commission will deem the information included in Form SHO as being subject to a confidential treatment request under Rule 83. Accordingly, the General Instructions to Form SHO provide that all information included in the Form SHO is deemed subject to a confidential treatment request under Rule 83. Pursuant to section 13(f) of the Exchange Act, the Commission may prevent or delay public disclosure of all other information reported on Form SHO in accordance with FOIA, section 13(f)(4) through (5), Rule 83, and any other applicable law.¹⁹

Regarding BFMM locate exception reporting to CAT, the CAT NMS Plan includes policies and procedures designed to ensure the security and confidentiality of all information submitted to the Central Repository, and to ensure that all SROs and their employees, as well as all employees of the Central Repository, shall use appropriate safeguards to ensure the confidentiality of such data. The Commission will receive confidential information pursuant to this collection of information, and such information will be kept confidential, subject to the provisions of applicable law.

11. Sensitive Questions

The Information Collection does not collect information about individuals, but rather only business contact information; therefore, a PIA, SORN, and PAS are not required.

¹⁸ *Short Position and Short Activity Reporting by Institutional Investment Managers*, Exchange Act Release No. 94313 (Feb. 25, 2022), 51 FR 14950 (Mar. 16, 2022).

¹⁹ The Commission will follow Rule 83 procedures in addressing any requests for information reported on Form SHO deemed subject to a confidential treatment request.

12. Burden of Information Collection

The Commission estimated the hourly burden of the information collection as summarized in the chart below.

Summary of Hourly Burdens									
Form SHO and CAT Amendment Information Collections	Type of Burden	Number of Entities Impacted	Annual Responses per Entity	Initial Hourly Burden per Entity	Initial Hourly Burden per Entity (Annualized)	Ongoing Hourly Burden per Entity per Response	Total Annual Hourly Burden Per Entity	Total Industry Annual Burden for initial, one-time burdens (Non-Annualized)	Total Industry Annual Hourly Burden (Annualized)
Form SHO: Initial Technology Projects	Reporting	1,000	-	325	108.33*	-	108	325,000	108,333.33*
Form SHO: Filings in EDGAR	Reporting	1,000	12	-	-	20	20	-	240,000
Form SHO: Use of Structured XML-Based Data Language	Reporting	1,000	12	-	-	2	2	-	24,000
Form SHO: Amended Filings	Reporting	35	12	-	-	20	20	-	8,400
Form SHO: Use of Structured XML-Based Data Language for Amended Filings	Reporting	35	12	-	-	2	2	-	840
CAT: Central Repository - Short Sale Data	Record-keeping	25	-	5.2	1.73*	-	1.73	130	43.33*
CAT: Reporting of Bona Fide Market Making Exception – Insourcers	Third Party Disclosure	58	-	260	86.67*	-	86.67	15,080	5,026.67*
CAT: Reporting of Bona Fide Market Making Exception – Outsourcers	Third Party Disclosure	42	-	10	3.33*	-	3.33	420	140*
TOTAL ANNUALIZED HOURLY BURDEN FOR ALL RESPONDENTS: 386,783.33									

* Initial, one-time hourly burden annualized over a three-year PRA period

As described in more detail below, new Rule 13f-2 and the amendment to CAT related to BFMM locate exception reporting result in eight new information collections. The first five burdens relate to Rule 13f-2 and its required preparation and filing of a Form SHO in EDGAR for short positions that meet certain thresholds held by Managers; and the final three burdens relate to the amendment to CAT for BFMM locate exception reporting.

1. Burdens for Institutional Investment Managers Under Rule 13f-2 and the Related Form SHO

Rule 13f-2 and Form SHO require Managers that trigger a Reporting Threshold to file monthly via EDGAR, on Form SHO, certain short position and short activity data. Under Section 13(f)(6)(A) of the Exchange Act and for purposes of Rule 13f-2, Managers include any person, other than a natural person, investing in or buying and selling securities for its own account, and any person (including a natural person) exercising investment discretion with respect to the

account of any other person. As such, the term “institutional investment manager” typically can include investment advisers, banks, insurance companies, broker-dealers, pension funds and corporations. The Commission estimates that, each month, approximately 1,000 Managers will hold short positions that trigger a Reporting Threshold for at least one security, and therefore be required to file a Form SHO.

a. Form SHO: Initial Technology Projects

The Commission believes that each of the estimated 1,000 Managers holding a short position that triggers a Reporting Threshold will incur an initial technology-related burden of 325 hours to update its current systems to capture the required information, and automate and facilitate the completion and filing of Form SHO. Therefore, it is estimated that the total initial, one-time implementation burden²⁰ to the industry would be 325,000 hours, which will result in an annual industry burden over a 3-year period of **108,333.33 hours**.

b. Form SHO: Filings in EDGAR

The Commission estimates that the burden associated with preparing and filing Form SHO in EDGAR will be approximately 20 hours per filing. The Commission estimates that each of the estimated 1,000 Managers holding a short position that triggers a Reporting Threshold will spend 20 hours preparing and filing one Form SHO in EDGAR. Therefore, it is estimated that the total annual industry burden to comply with the reporting requirements of Rule 13f-2 will be **240,000 hours**.²¹

c. Form SHO: Use of Structured XML-Based Data Language

The Commission anticipates that most Managers will file Form SHO directly in the structured XML-based data language for Form SHO, rather than using the fillable web form provided by EDGAR. The Commission believes that Managers that file Form SHO using a structured XML-based data language will incur an additional burden of 2 hours of work by a programmer.²² Therefore, it is estimated that the total annual industry burden to file Form SHO directly in a structured XML-based data language will be **24,000 hours**.²³

²⁰ This is a one-time burden, not an ongoing annual industry burden.

²¹ 20 hours per filing × 1,000 filings each month × 12 months = 240,000 annual burden hours.

²² The 2-hour estimated burden is consistent with similar estimates for the use of structured XML data formats for the filing of Form N-CR and Form 24F-2. *See Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A*, Exchange Act Release No. 34-97876 (July 12, 2023), 88 FR 51404, 51514 (Aug. 3, 2023); see also Securities Offering Reform for Closed-End Investment Companies, Exchange Act Release No. 88606 (Apr. 8, 2020), 85 FR 33290, 33329 n.439 (June 1, 2020) (stating that “[w]e assume that the burden of tagging Form 24F-2 in a structured XML format would be 2 hours for each filing.”).

²³ 2 hours per filing × 1,000 filings each month × 12 months = 24,000 burden hours.

d. Form SHO: Amended Filing

The Commission estimates that approximately 3.5% of the Managers that file Form SHO each month will also file an amended Form SHO, resulting in an additional burden for an estimated 35 Managers each month.²⁴ The additional burden could take up to the original 20 hours to process and file, as it will require the filing of an entirely new Form SHO. Therefore, it is estimated that the total annual industry burden to file amended Form SHOs will be **8,400 hours**.²⁵

e. Form SHO: Use of Structured XML-Based Data Language for Amended Filing

The Commission estimates that an additional 2 hours of work by a programmer per filing will apply to Managers filing an amended Form SHO directly in a structured XML-based data language. Therefore, it is estimated that the total annual industry burden to file amended Form SHOs directly in a structured XML-based data language will be **840 hours**.²⁶

2. Burdens for CAT NMS Plan Participants and Industry Members Under the Amendment to CAT for BFMM Locate Exception Reporting

The amendment to the CAT NMS Plan requires CAT NMS Plan Participants to update their Compliance Rules to require reporting by Industry Members of whether an original receipt or origination of an order to sell an equity security is a short sale for which a market maker is claiming the bona fide market making exception to the locate requirement in Rule 203(b)(2)(iii) of Regulation SHO.

The Amendment to CAT will require the CAT NMS Plan Participants to engage the CAT Plan Processor to modify the Central Repository to accept and process the new BFMM locate exception information on order receipt and origination reports. The Commission believes that certain Industry Members will have initial, onetime burdens and costs relating to the amendment to CAT, to update systems and processes as necessary to capture and report use of the BFMM locate exception to CAT.

The Commission believes that other Paperwork Reduction Act burdens that will apply to the CAT NMS Plan Participants, including ongoing burdens and external expenses for the CAT Plan Processor's acceptance and processing of the new data elements, are already accounted for in the existing Paperwork Reduction Act estimate that applies for Rule 613 and the CAT NMS Plan

²⁴ The estimate of 3.5% of Regulation SHO filers that are anticipated to file an amended Form SHO is based on the frequency of recent filings of amended Form 13F. For the reporting period of Dec. 31, 2022, there were 6,924 holdings reports for Form 13F-HR submitted, 244 of which were amended. ($244 \div 6,924 = 3.5\%$).

²⁵ 20 hours per amended Form SHO filing x 35 managers each month x 12 months = 8,400 burden hours.

²⁶ 2 hours per amended filing x 35 managers each month x 12 months = 840 burden hours.

Approval Order, submitted under OMB number 3235-0671.²⁷ The prior Paperwork Reduction Act analysis incorporates any other potential Paperwork Reduction Act burdens for the CAT NMS Plan Participants because the existing Paperwork Reduction Act analysis accounts for initial and ongoing costs for, among other things, operating and maintaining the Central Repository, including the cost of systems and connectivity upgrades or changes necessary to receive and consolidate the reported order and execution information from CAT NMS Plan Participants and their members, the cost to store data and make it available to regulators, the cost of monitoring the required validation parameters, and management of the Central Repository.²⁸ In addition, the Commission anticipates that each exchange and national securities association will file one Form 19b-4 filing to implement updated Compliance Rules. While such filings may impose certain costs on the exchanges, those burdens are already accounted for in the comprehensive Paperwork Reduction Act Information Collection submission for Form 19b-4.²⁹

The Amendment to CAT will impose an ongoing annual burden relating to, among other things, personnel time to monitor each broker-dealer's reporting of the required data and the maintenance of the systems to report the required data and implementing changes to trading systems that might result in additional reports to the Central Repository. However, the Commission believes that the ongoing burden imposed by the Amendment to CAT related to reporting to the CAT is already accounted for in the existing information collections burdens associated with Rule 613 and the CAT NMS Plan Approval Order submitted under OMB number 3235-0671.³⁰ Specifically, the CAT NMS Plan Approval Order takes into account requirements on broker-dealer members to comply with the CAT NMS Plan, including the requirement to maintain the systems necessary to collect and transmit information to the Central Repository,³¹ provides aggregate burden hour and external cost estimates for the broker-dealer data collection and reporting requirement of Rule 613, and did not quantify the burden hours or external cost estimates for each individual component comprising the broker-dealer's data collection and reporting responsibility.³² The Amendment to CAT will not require any Industry Member to submit new reports to the CAT, but to add limited additional information to existing reports in certain circumstances for certain Industry Members. The Commission does not believe

²⁷ See Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84911-43 (Nov. 23, 2016) ("CAT NMS Plan Approval Order"). See also OMB Control No. 3235-0671, 85 FR 37721 (June 23, 2020) (notice of submission of request for approval of extension).

²⁸ See CAT NMS Plan Approval Order, 81 FR at 84918.

²⁹ See OMB Control No. 3235-0045 (Aug. 19, 2016), 81 FR 57946 (Aug. 24, 2016) (Request to OMB for Extension of Rule 19b-4 and Form 19b-4 PRA).

³⁰ See CAT NMS Plan Approval Order, 81 FR at 84911-43. While there is no recordkeeping requirement related to reporting use of the BFMM locate exception, brokers or dealers should be prepared to monitor for compliance with conditions and maintain records documenting such compliance. See Regulation SHO Adopting Release, 48011 n.27 ("As with any rule, broker-dealers relying on [an] exception should be prepared to monitor for compliance with its conditions, and maintain records documenting such compliance."). There would be a minimal additional ongoing burden for such brokers or dealers to record that they have determined such eligibility for each transaction reported to CAT.

³¹ See, e.g., CAT NMS Plan Approval Order, 81 FR, at 84930.

³² See CAT NMS Plan Approval Order, 81 FR, at 84930.

that the amendment to CAT related to BFMM locate exception reporting will alter the estimates of ongoing burden and external costs in the existing Paperwork Reduction Act Analysis and the ongoing burden associated with these new collection requirements are accounted for in the existing Paperwork Reduction Act Analysis.

a. CAT: Central Repository - Short Sale Data

The respondents for the Amendment to CAT include the 25 CAT NMS Plan Participants (the 24 national securities exchanges and one national securities association (FINRA))³³, and the Participants' broker-dealer members, that is, Industry Members. The amendment to CAT will require the CAT NMS Plan Participants to engage the CAT Plan Processor to modify the Central Repository to accept and process the new BFMM locate exception information on order receipt and origination reports. The Commission estimates that the 25 CAT NMS Plan Participants will incur an initial, onetime burden of 5.2 hours per Participant of staff time required to supervise and implement the changes necessary for the CAT Plan Processor to accept and process the new data elements. Therefore, it is estimated that the 25 CAT NMS Plan Participants will incur an initial, aggregate, one-time industry burden of 130 hours, which will result in an annualized industry burden of 43.33 hours.³⁴

b. CAT: Reporting of Bona Fide Market Making Exception – Insourcers

The Commission understands that there are currently 3,501 registered broker-dealers.³⁵ Based on an analysis of data reported to the CAT in May 2023, and specifically the identification of all unique CAT Reporters that were identified as equity market makers (including different classes of market makers such as “designated” or “lead” market makers, and secondary liquidity providers), the Commission estimates that approximately 100 broker-dealers will be required to report, for the original receipt or origination of an order to sell an equity security, whether the order is a short sale effected by a market maker in connection with bona fide market making activities in the security for which the exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed. With regard to the obligation to report BFMM locate exception information to the CAT, the amendment to CAT will only impose additional burdens on Industry Members that trade equity securities and rely upon or plan to rely upon the BFMM locate exception. The Commission believes that it is appropriate to divide the 100 Industry Members, i.e., the CAT reporters listed as equity market makers in CAT as of May 2023, that will be required to report

³³ The Participants are: BOX Options Exchange LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange Inc.; Long-Term Stock Exchange, Inc.; MEMX, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; MIAX Emerald, 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 MKT LLC; and NYSE Arca, Inc., NYSE Chicago Stock Exchange, Inc., NYSE National, Inc.

³⁴ 25 CAT NMS Plan Participants x 5.2 hour per CAT NMS Plan Participant ÷ 3-year period = 43.33 burden hours.

³⁵ This is based on FOCUS quarterly filings for 2023 Q1.

this information into two categories: (i) Industry Members that report directly to the CAT; and (ii) Industry Members that use third-party reporting agents for CAT reporting.

The Commission estimates that of the 100 Industry Members that will be required to report this information, 58 Industry Members will be reporting this information directly to the CAT. The Commission estimates that each of the 58 insourcing Industry Members will incur an initial, average one-time burden of 260 hours.³⁶ Therefore, it is estimated that, for software and hardware to facilitate reporting of the new data elements to CAT, the 58 insourcing Industry Members that report directly to the CAT will incur an initial, aggregate, one-time burden of 15,080 hours, which will result in an annual industry burden of **5,026.67 hours**.³⁷

c. CAT: Reporting of Bona Fide Market Making Exception – Outsourcers

The Commission estimates that, of the 100 Industry Members that will be required to report this information, 42 Industry Members will be reporting this information through third-party reporting agents. The Commission estimates that each of the 42 Industry Members will incur an initial, average one-time burden of 10 hours.³⁸ Therefore, it is estimated that, for software and hardware to facilitate reporting use of the BFMM locate exception to CAT, the 42 outsourcing Industry Members that use third-party reporting agents to report to the CAT will incur an initial, aggregate, one-time burden of 420 hours, which would result in an annual industry burden of **140 hours**.³⁹

³⁶ The Commission is basing this figure on the estimated burden and external costs for a broker-dealer that handles orders subject to customer specific disclosures required by Rule 606(b)(3) to update their systems to capture the data and produce a report to comply with Rule 606. *See Disclosure of Order Handling Information*, Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338, 58383 (Nov. 19, 2018). The Commission believes that this is a reasonable proxy for estimating the burdens and costs associated with updating data capture systems for reporting purposes here because in both rulemakings broker-dealers were required to update in-house data reported for pre-existing reporting obligations.

³⁷ 58 insourcing Industry Members x 260 burden hours = 15,080 total industry burden hours. 15,080 hours ÷ 3-year period = 5,026.67 hours.

³⁸ The Commission believes that the estimated burden and external costs for outsourcing Industry Members is reasonable because the burden on individual Industry Members should be significantly lower than insourcing Industry Members because of the difference in how these firms report to the CAT. Outsourcing Industry Members will not be required to change internal CAT reporting systems, but instead will be responsible for making any updates necessary for CAT reporting agents to report this information to the CAT. The outsourcing Industry Members will have external costs associated with paying CAT reporting agents for any additional fees relating to the change, but because CAT reporting agents can report on behalf of numerous outsourcing Industry Members at the same time, the costs of any updates to their systems can be distributed amongst outsourcing Industry Members.

³⁹ 42 outsourcing Industry Members x 10 burden hours = 420 total industry burden hours. 420 hours ÷ 3-year period = 140 hours.

3. Costs for Managers Under Rule 13f-2 and Form SHO (Monetized Hourly Burdens)⁴⁰

Rule 13f-2 and Form SHO – Summary of Costs (Monetized Hourly Burdens)							
Rule 13f-2 and Form SHO Information Collections	Type of Burden	Number of Entities Impacted	Initial Cost per Entity (one-time cost)	Initial Cost per Entity (Annualized)	Ongoing Cost per Entity (Annualized)	Total Industry Cost, for initial, one-time costs (Non-Annualized)	Total Industry Cost (Annualized)
Form SHO Initial Technology Projects	Recordkeeping	1,000	\$118,950	\$39,650	-	\$118,950,000	\$39,650,000
Form SHO Filings	Recordkeeping	1,000	-	-	\$60,326.40	-	\$60,326,400
Use of Structured XML-Based Data Language in Form SHO Filings	Recordkeeping	1,000	-	-	\$9,264	-	\$9,264,000
Amended Form SHO Filings	Recordkeeping	35	-	-	\$60,326.40	-	\$2,111,424
Use of Structured XML-Based Data Language in Amended Form SHO Filings	Recordkeeping	35	-	-	\$9,264	-	\$324,240
TOTAL COSTS FOR ALL RESPONDENTS ANNUALIZED:						\$111,676,064	

a. Form SHO Initial Technology Projects

While Managers most likely have other existing reporting obligations, the Commission recognizes that Managers may need to update their systems to ensure timely and accurate filing of the specific information required under Form SHO. The Commission believes that Managers could incur an initial technology-related burden of 325 hours, at an hourly estimated wage rate of \$366,⁴¹ for an estimated total cost of \$118,950 per Manager,⁴² to update their current systems to capture the required information and automate and facilitate the completion and filing of Form SHO. Thus, the Commission estimates that Managers will spend approximately 325,000 hours

⁴⁰ These are included for information purposes only and have not been submitted on the ROCIS system for approval.

⁴¹ The Commission estimates that, of a total estimated burden of 325 hours, approximately 195 hours will most likely be performed by compliance professionals and 130 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, we anticipate that it will be performed equally by a compliance manager at a cost of \$360 per hour and a senior risk management specialist at a cost of \$416 per hour. Of the work performed by programmers, we anticipate that it will be performed equally by a senior programmer at a cost of \$386 per hour and a programmer analyst at a cost of \$280 per hour. $((\$360 \text{ per hour} \times 0.5) + (\$416 \text{ per hour} \times 0.5)) \times 195 \text{ hours} + ((\$386 \text{ per hour} \times 0.5) + (\$280 \text{ per hour} \times 0.5)) \times 130 \text{ hours} \div 325 = \366 . See *Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting*, Release No. IA-6297 (May 3, 2023), 88 FR 38146, 38195 (June 12, 2023). See also SIFMA Report.

⁴² $325 \text{ initial technology-related burden hours} \times \$366 \text{ per hour} = \$118,950$.

and \$118,950,000 as a one-time, initial, aggregate cost related to Form SHO initial technology projects.⁴³ Annualized over the 3-year PRA period, this would be \$39,650,000 per year.

b. Filing Form SHO

The Commission continues to estimate that the burden associated with preparing and filing Form SHO in EDGAR will be approximately 20 hours per filing. Accordingly, the Commission estimates that the burden associated with preparing and filing Form SHO across all managers collectively is approximately 240,000 hours per year.⁴⁴ The Commission believes that the hourly cost of internal expertise required for each filing will be \$251.36, which includes a blended calculation of the estimated hourly rate for a compliance attorney, senior programmer, and in-house compliance clerk, an increase from the Proposing Release's estimated \$217.55 to account for inflation.⁴⁵ The estimated annual burden hours and cost to the industry for filing Form SHO is 240,000 hours and \$60,326,400.⁴⁶ The Commission, however, recognizes that advances in technology over time could result in Managers spending less time preparing and filing Form SHO than is estimated above.⁴⁷

⁴³ \$118,950 per Manager Form SHO initial technology costs x 1,000 Managers = \$118,950,000.

⁴⁴ 20 hours per filing x 1,000 filings by Managers each month x 12 months = 240,000 hours.

⁴⁵ The \$251.36 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$425), a senior programmer (\$386) and in-house compliance clerk (\$82). \$251.36 is based on the following calculation: $((\$425) + (((\$386 + \$82) \div 2) \times 10)) \div 11 = \251.36 . The estimated proportion of compliance attorney (1/11th) to senior programmer and in-house compliance clerk (10/11th) time burden is based on commenter input and computation of the estimated burden for the filing of Form 13F-HR. *See Electronic Submission of Applications for Orders*, Exchange Act Release No. 93518 (Nov. 4, 2021), 86 FR 64839 (Nov. 19, 2021) at 64860-61 (“Electronic Submission of Applications for Orders”). The \$425 per hour and \$386 per hour figures for a compliance attorney and a senior programmer, respectively, are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association’s Office Salaries in the Securities Industry 2013 (“SIFMA Report”), modified by Commission staff to account for an 1800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The \$82 per hour figure for a compliance clerk is based on salary information from the SIFMA Report, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead. *See also Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting*, Release No. IA-6297, 88 FR 38146, 38195-98 (June 12, 2023).

⁴⁶ 20 hours per filing x 1,000 filings by Managers each month x 12 months x \$251.36 per hour = \$60,326,400.

⁴⁷ *See Electronic Submission of Applications for Orders*, 86 FR at 64859 (stating that “[c]ommenters stated that the advances in technology have made the process of completing and filing Form 13F highly automated, reducing the time and external costs to managers in complying with this requirement.”).

c. Use of Structured XML-Based Data Language in Form SHO Filings

The Commission also anticipates that most Managers will file Form SHO directly in the structured XML-based data language for Form SHO,⁴⁸ rather than using the fillable web form provided by EDGAR, resulting in some limited additional costs for each filing. The Commission believes that Managers that file Form SHO using a structured XML-based data language could incur an additional burden of 2 hours of work by a programmer,⁴⁹ at an estimated cost of \$772.⁵⁰ The Commission further estimates that Managers will collectively spend up to approximately 24,000 hours and \$9,264,000 per year to file Form SHO directly in a structured XML-based data language.⁵¹

d. Amended Form SHO Filings

The Commission estimates that approximately 3.5 percent of the Managers that file Form SHO each month will also file an amended Form SHO, resulting in an additional burden and cost for an estimated 35 Managers each month.⁵² The additional burden could take up to the original 20 hours to process and file, as it will require the filing of an entirely new Form SHO. The associated wage rate for filing the amended Form SHO is consistent with the cost of expertise required to file the original Form SHO, estimated to be \$251.36 per hour. Thus, the Commission estimates that Managers will spend approximately 8,400 hours and \$2,111,424 per year to file amendments to Form SHO.⁵³

⁴⁸ Most Managers will be familiar with other EDGAR Form-specific XML data languages, the use of which is required for the filing (by Managers that exercise investment discretion with respect to accounts holding 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million) of Form 13F. *See* Frequently Asked Questions About 13F, *available at* <https://www.sec.gov/divisions/investment/13ffaq.htm>. The Commission estimates that all of the 1,000 Managers estimated to file Form SHO each month will do so directly using the structured XML-based data language rather than the fillable web form provided by EDGAR.

⁴⁹ The 2-hour estimated burden is consistent with similar estimates for the use of structured XML data formats for the filing of Form N-CR and Form 24F-2. *See Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A*, Exchange Act Release No. 34-97876 (July 12, 2023), 88 FR 51404, 51514 (Aug. 3, 2023); *see also Securities Offering Reform for Closed-End Investment Companies*, Exchange Act Release No. 88606 (Apr. 8, 2020), 85 FR 33290, 33329 n.439 (June 1, 2020) (stating that “[w]e assume that the burden of tagging Form 24F-2 in a structured XML format would be 2 hours for each filing.”).

⁵⁰ The \$386 per hour figure for a senior programmer is based on salary information from the SIFMA Report. 2 hours x \$386 = \$772.

⁵¹ 2 hours per filing x \$386 per hour x 1,000 filings each month x 12 months = \$9,264,000.

⁵² The estimate of 3.5% of Regulation SHO filers that are anticipated to file an amended Form SHO is based on the frequency of recent filings of amended Form 13F. For the reporting period of Dec. 31, 2022, there were 6,924 holdings reports for Form 13F-HR submitted, 244 of which were amended. (244 ÷ 6,924 = 3.5%).

⁵³ The Commission estimates that there will be 420 Form SHO amendments filed annually: 3.5% estimated Regulation SHO filers that are anticipated to file an amended Form SHO x 12,000 Form SHO reports

e. Use of Structured XML-Based Data Language in Amended Form SHO Filings

The Commission also estimates that each amended Form SHO will be filed directly using a structured XML-based data language, resulting in a corresponding additional burden of 2 hours of work by a programmer per amended Form SHO filing. Thus, the Commission estimates that Managers will spend approximately 840 hours and \$324,240 per year to file amendments to Form SHO directly in a structured XML-based data language.⁵⁴

13. Costs to Respondents

Costs for CAT NMS Plan Participants Under the Amendment to CAT for BFMM Locate Exception Reporting

BFMM Locate Exception Reporting to CAT - Summary of Costs						
CAT BFMM Locate Exception Reporting Information Collections	Type of Burden	Number of Entities Impacted	Initial Cost per Entity (one-time cost)	Initial Cost per Entity (Annualized)	Total Industry Cost, for initial, one-time costs (Non-Annualized)	Total Industry Cost (Annualized)
CAT: Central Repository - Short Sale Data	Recordkeeping	25	\$4,552	\$1,517.33*	\$113,800	\$37,933.33*
CAT: Reporting of Bona Fide Market Making Exception – Insourcers	Third Party Disclosure	58	\$15,000	\$5,000*	\$870,000	\$290,000*
CAT: Reporting of Bona Fide Market Making Exception – Outsourcers	Third Party Disclosure	42	\$1,000	\$333.33*	\$42,000	\$14,000*
TOTAL COSTS FOR ALL RESPONDENTS ANNUALIZED:					\$341,933.33	

* Initial, one-time cost annualized over 3-year PRA Period

a. CAT: Central Repository - Short Sale Data

The 25 CAT NMS Plan Participants will face costs associated with the amendment to CAT, as they will be required to engage the CAT Plan Processor to modify the Central Repository to accept and process new short sale data elements on order receipt and origination reports. The Commission estimates that it will take the CAT Plan Processor staff 300 hours to implement the changes necessary for it to accept and process the new short sale data elements.⁵⁵ Therefore, it is estimated that, to compensate the CAT Plan Processor for its implementation of the necessary

processed and filed annually. *See supra* note 24. 420 Form SHO amendments x 20 hours x \$251.36 wage rate = \$2,111,424.

⁵⁴ 420 Form SHO amendments x 2 hours x \$386 wage rate = \$324,240.

⁵⁵ The estimated 300 hours of CAT Plan Processor staff time include 200 hours by a Senior Programmer, 40 hours by a Senior Database Administrator, 40 hours for a Senior Business Analyst and 20 hours for an Attorney.

changes, the 25 CAT NMS Plan Participants will each incur an initial, aggregate, one-time, external cost of \$113,800, which will result in **an annualized industry burden of \$37,933.33**.⁵⁶

b. CAT: Reporting of Bona Fide Market Making Exception – Insourcers

The Commission estimates that, of the 100 Industry Members that will be required to report this information, 58 Industry Members will be reporting this information directly to the CAT. Therefore, it is estimated that, for software and hardware to facilitate reporting of the BFMM locate exception information to CAT, the 58 insourcing Industry Members that report directly to the CAT will each incur an initial, one-time external expense of \$15,000,⁵⁷ for an initial, aggregate, one-time external industry expense of \$870,000, which will result in **an annualized burden of \$290,000**.⁵⁸

c. CAT: Reporting of Bona Fide Market Making Exception – Outsourcers

The Commission estimates that, of the 100 Industry Members that will be required to report this information, 42 Industry Members will be reporting this information through third-party reporting agents. Therefore, it is estimated that, for software and hardware to facilitate reporting of the BFMM locate exception information to CAT, the 42 outsourcing Industry Members that use third-party reporting agents to report to the CAT will each incur an initial, average one-time external expense of approximately \$1,000,⁵⁹ for an initial, aggregate, one-time external industry expense of \$42,000, which will result in **an annualized industry burden of \$14,000**.⁶⁰

⁵⁶ The Commission estimates that the initial, one-time external expense for CAT NMS Plan Participants will be $\$113,800 = (\text{Senior Programmer for 200 hours at } \$386 \text{ an hour} = \$77,200) + (\text{Senior Database Administrator for 40 hours at } \$379 \text{ an hour} = \$15,160) + (\text{Senior Business Analyst for 40 hours at } \$305 \text{ an hour} = \$12,200) + (\text{Attorney for 20 hours at } \$462 \text{ an hour} = \$9,240)$. Total industry expense annualized over 3-year PRA Period = $\$113,800 \div 3 = \$37,933.33$.

⁵⁷ The Commission is basing this figure on the estimated burden and external costs for a broker-dealer that handles orders subject to customer specific disclosures required by Rule 606(b)(3) to update their systems to capture the data and produce a report to comply with Rule 606. *See Disclosure of Order Handling Information*, Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338, 58383 (Nov. 19, 2018). The Commission believes that this is a reasonable proxy for estimating the burdens and costs associated with updating data capture systems for reporting purposes here because in both rulemakings broker-dealers were required to update in-house data reported for pre-existing reporting obligations.

⁵⁸ $58 \text{ insourcing Industry Members} \times \$15,000 \text{ external expense} = \$870,000 \text{ total industry expense}$. Total industry expense annualized over 3-year PRA Period = $\$870,000 \div 3 = \$290,000$.

⁵⁹ The Commission believes that the estimated burden and external costs for outsourcing Industry Members is reasonable because the burden on individual Industry Members should be significantly lower than insourcing Industry Members because of the difference in how these firms report to the CAT.

⁶⁰ $42 \text{ outsourcing Industry Members} \times \$1,000 \text{ external expense} = \$42,000 \text{ total industry expense}$. Total industry expense annualized over 3-year PRA Period = $\$42,000 \div 3 = \$14,000$.

14. Cost to Federal Government

The Federal government will not incur any new costs in connection with these collections of information. Existing resources, including those allocated to EDGAR and CAT, will be used to accommodate the reporting requirements and any associated disclosures of information.

15. Changes in Burden

There are changes to the burden and cost estimates from the Proposing Release to the Adopting Release. The Commission is not adopting Proposed Rule 205 or the proposed amendment to CAT to require “buy to cover” reporting, which reduces the overall burdens and costs from those that were included in the Proposing Release. The estimated hourly burdens for Form SHO reporting are consistent with the Proposing Release. The hourly burden estimates are consistent for the amendment to CAT related to BFMM locate exception reporting, but the aggregate number of burden hours is lower overall because, as explained in the Adopting Release, there were 104 CAT reporters listed as equity market makers in CAT in November 2021, and 100 CAT reporters listed as equity market makers in CAT in May 2023. The changes are described in the chart below.

Changes in Burden Estimates				
Information Collection Requirement	Annual Industry Burden for Adopted Amendment	Annual Industry Burden for Proposed Amendment	Change in Burden	Reason for Change
CAT: Central Repository - Short Sale Data	43.33 hours	43.33 hours	No change	N/A
CAT: Reporting of Bona Fide Market Making Exception – Insourcers	5,026.67 hours	5,200 hours	-173.33	Decrease in estimated number of insourcers
CAT: Reporting of Bona Fide Market Making Exception – Outsourcers	140 hours	146.67 hours	-6.67	Decrease in estimated number of outsourcers
Rule 205 “Buy to Cover”: Initial System Updates	0	215,586	-215,586	Not adopted
Rule 205 “Buy to Cover”: Order Marking	0	4,668,750	-4,668,750	Not adopted
CAT: Reporting of Buy to cover Information for Orders – Insourcers	0	10,920	-10,920	Not adopted
CAT: Reporting of Buy to cover Information for Orders – Outsourcers	0	3,640	-3,640	Not adopted

Changes in Cost Estimates				
Information Collection Requirement	Annual Industry Cost for Adopted Amendment	Annual Industry Cost for Proposed Amendment	Change in Cost	Reason for Change
CAT: Central Repository - Short Sale Data	\$37,933.33	\$33,840	\$4,093.33	Increase in wage rate to account for inflation
CAT: Reporting of Bona Fide Market Making Exception – Insourcers	\$290,000	\$300,000	-\$10,000	Decrease in estimated number of insourcers
CAT: Reporting of Bona Fide Market Making Exception – Outsourcers	\$14,000	\$14,666.67	-\$666.67	Decrease in estimated number of outsourcers
CAT: Reporting of Buy to cover Information for Orders – Insourcers	\$0	\$630,000	-\$630,000	Not adopted
CAT: Reporting of Buy to cover Information for Orders – Outsourcers	\$0	\$364,000	-\$364,000	Not adopted

16. Information Collection Planned for Statistical Purposes

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

17. OMB Expiration Date Display Approval

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the 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. The OMB control number will be displayed.

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.