

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Regulation Best Execution**

**[Request for New OMB Control Number]**

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 of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> sets forth the statutory framework for a national market system (“NMS”). Section 11A(a)(2) directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of an NMS for securities in accordance with the Congressional findings and objectives set forth in section 11A(a)(1) of the Exchange Act. In Section 11A(a)(1)(C), Congress identified key NMS objectives, including among others, the practicability of brokers executing investors’ orders in the best market.<sup>2</sup>

The Commission believes that the Congressional objectives set forth in Section 11A would be better advanced by enhancing the existing regulatory framework concerning the duty of best execution. The duty of best execution requires broker-dealers to execute customers’ trades at the most favorable terms reasonably available under the circumstances, and customers benefit from broker-dealers’ robust consideration of execution opportunities that may provide customers with the most favorable terms. As such, promoting the best execution of customer orders is of fundamental importance to investors and the markets, and is an important aspect of investor protection. Currently, the Financial Industry Regulatory Authority, Inc. (“FINRA”), a national securities association, and the Municipal Securities Rulemaking Board (“MSRB”) have rules and guidance directly addressing the duty of best execution. While the existing regulatory framework has helped broker-dealers fulfill their duty to their customers, the Commission believes that it could be made more effective. In particular, the Commission believes that customers would benefit from consistently robust best execution practices by broker-dealers, and the execution of retail customer orders by broker-dealers that have certain order handling conflicts of interests warrants heightened attention by those broker-dealers.

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 15 U.S.C. 78k-1(a)(1)(C).

Accordingly, the Commission proposed to amend Regulation NMS under the Exchange Act to add new Rules 1100, 1101, and 1102 (“Regulation Best Execution”).<sup>3</sup> Specifically, the Commission believes that proposed Regulation Best Execution would further the Congressional goals set forth in Exchange Act Section 11A(a)(1)(C)(iv) regarding executing investors’ orders in the best market and reinforce broker-dealer obligations concerning the duty of best execution. In particular, proposed Regulation Best Execution would identify specific factors that must be addressed by a broker-dealer’s policies and procedures on best execution, impose additional requirements for conflicted transactions, and impose best execution-specific review and documentation requirements, all of which should better protect investors by promoting consistently robust order handling and execution practices.

Generally, proposed Rule 1100 would set forth the standard of best execution, requiring a broker-dealer to use reasonable diligence to ascertain the best market for a security, and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.

As discussed in more detail below, proposed Rule 1101 would require that a broker-dealer that engages in any transaction for or with a customer or a customer of another broker-dealer establish, maintain, and enforce written policies and procedures reasonably designed to comply with the proposed best execution standard. These policies and procedures would be required to address: (1) how a broker-dealer will comply with the best execution standard; (2) how the broker-dealer will determine the best market and make routing or execution decisions for customer orders; (3) additional considerations applicable to conflicted transactions with retail customers; and (4) to the extent applicable, the obligations of introducing brokers that meet the definition in proposed Rule 1101(d).

Proposed Rule 1102 would require each broker-dealer to annually assess the design and overall effectiveness of their best execution policies and procedures and prepare an annual report that would be provided to the broker-dealer’s governing body. The Commission believes that these requirements would help ensure the effectiveness of broker-dealers’ best execution policies and procedures that are adopted pursuant to the proposed rules.

Finally, the Commission is also proposing to amend OMB Control No. 3235-0279 (Rule 17a-4 under the Exchange Act)<sup>4</sup> to include record preservation requirements for records made under proposed Regulation Best Execution.<sup>5</sup>

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<sup>3</sup> See Regulation Best Execution, Exchange Act Release No. 96496 (Dec. 14, 2022), 88 FR 5440 (Jan. 27, 2023).

<sup>4</sup> 17 CFR 240.17a-4.

<sup>5</sup> The Commission expects to submit a separate Supporting Statement to amend the existing PRA for Rule 17a-4 (OMB Control No. 3235-0279).

Certain provisions of proposed Rules 1101 and 1102 would create new “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>6</sup> The title for this collection of information is “Regulation Best Execution.”

## **2. Purpose and Use of the Information Collection**

The collections of information required under proposed Rules 1101 and 1102, as discussed in the proposing release, would enable a broker-dealer to comply with its obligations under proposed Regulation Best Execution, allow the broker-dealer to identify any inadequacies and make any revisions to its policies and procedures, including its order handling practices, as appropriate to ensure the broker-dealer’s continued effective compliance with the best execution standard, and create documentation that the Commission and self-regulatory organizations (SROs) could use for purposes of examinations and investigations.

### **a. Required Policies and Procedures and Related Obligations**

Proposed Rule 1101(a)(1) would require that a broker-dealer’s policies and procedures address how it will comply with the best execution standard in proposed Rule 1100. In particular, a broker-dealer’s policies and procedures would be required to address how it will: (1) obtain and assess reasonably accessible information concerning the markets trading the relevant securities; (2) identify markets that may be reasonably likely to provide the most favorable prices for customer orders (“material potential liquidity sources”); and (3) incorporate the material potential liquidity sources into its order handling practices and ensure efficient access to each such material potential liquidity source. The Commission believes this aspect of the proposal would promote consistently robust order handling practices by requiring each broker-dealer to establish a detailed framework to achieve best execution, which involves an analysis of relevant information, an evaluation of the range of liquidity sources, and the identification of and ability to efficiently access liquidity sources.

Proposed Rule 1101(a)(2) would require a broker-dealer’s policies and procedures to address how it will determine the best market and make routing and execution decisions for the customer orders that it receives. In particular, a broker-dealer’s policies and procedures would be required to address how it will: (1) assess reasonably accessible and timely information, including information with respect to the best displayed prices, opportunities for price improvement, and order exposure opportunities that may result in the most favorable price; (2) assess the attributes of customer orders and consider the trading characteristics of the security, the size of the orders, the likelihood of execution, and the accessibility of the market, and any customer instructions in selecting the market most likely to provide the most favorable price; and (3) reasonably balance the likelihood of obtaining a better price with the risk that delay could result in a worse price when determining the number and sequencing of markets to be assessed. The Commission believes that

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<sup>6</sup> 44 U.S.C. 3501 et seq.

by requiring broker-dealers' best execution policies and procedures to explicitly address these factors, the proposed rule would help ensure that broker-dealers have established processes in place for considering these factors and that broker-dealers follow these processes when transacting for or with customers, which should promote consistently robust order handling practices among broker-dealers.

Proposed Rule 1101(b) would require broker-dealers that have certain conflicts of interest to establish additional policies and procedures to better position them to meet the best execution standard in these circumstances. In particular, a broker-dealer's policies and procedures for conflicted transactions would be required to address how it will: (1) obtain and assess information beyond that required by proposed Rule 1101(a)(1)(i) in identifying a broader range of markets beyond the material potential liquidity sources; and (2) evaluate a broader range of markets beyond the material potential liquidity sources. Rule 1101(b) would also require broker-dealers to document their compliance with the best execution standard for conflicted transactions, including all efforts taken to enforce their policies and procedures, and their basis and information relied on for determining that their conflicted transactions would comply with the proposed best execution standard. Such documentation would be required to be done in accordance with written procedures. Additionally, Rule 1101(b) would require broker-dealers to document any arrangements concerning payment for order flow. The Commission believes that these requirements would encourage broker-dealers to exercise additional diligence with respect to conflicted transactions in light of the incentives to handle conflicted transactions in a manner that prioritizes their own interests over their customers' interests and are part of the Commission's ongoing efforts to protect investors when conflicts of interest exist.

Proposed Rule 1101(c) would require broker-dealers to review the execution quality of customer orders at least quarterly, and how such execution quality compares with the execution quality that might have been obtained from other markets, and revise their best execution policies and procedures, including order handling practices, accordingly. The Commission believes that the proposed review requirement would further ensure that broker-dealers evaluate the effectiveness of their current order handling practices and enable broker-dealers to make informed judgments regarding whether their policies and procedures or practices need to be modified.

Proposed Rule 1101(d) would exempt an introducing broker that routes customer orders to an executing broker from separately complying with proposed Rules 1101(a), (b), and (c), so long as the introducing broker establishes, maintains, and enforces policies and procedures that require the introducing broker to regularly review the execution quality obtained from its executing broker, compare it with the execution quality it might have obtained from other executing brokers, and revise its routing practices accordingly. This provision would provide a tailored exemption for broker-dealers that do not make decisions or exercise discretion regarding the manner in which their customer orders are handled and executed, beyond their determinations to engage the services of executing brokers.

Any ongoing collections of information pursuant to proposed Rule 1101, including a

conflicted broker-dealer's documentation of its best execution determinations and its payment for order flow arrangements in accordance with written procedures, a broker-dealer's documentation of the results of its execution quality reviews, and an introducing broker's documentation of its executing broker execution quality reviews, would assist the broker-dealer in its ongoing efforts to transact for or with customers consistent with its best execution policies and procedures, and in turn ensure compliance with the best execution standard. Ongoing collections of information would also assist the Commission and SROs in examinations and investigations by ensuring that appropriate documentation is available to determine whether a broker-dealer is adhering to its best execution policies and procedures and otherwise in compliance with all applicable requirements of proposed Regulation Best Execution.

### **b. Annual Report**

Proposed Rule 1102 would require that a broker-dealer that effects any transaction for or with a customer or a customer of another broker-dealer, at least annually, review and assess the design and overall effectiveness of its best execution policies and procedures, including its order handling practices. The broker-dealer must prepare a written report detailing the results of such review and assessment, including a description of all deficiencies found and any plan to address deficiencies, and the report must be presented to the broker-dealer's board of directors (or equivalent governing body).

The collection of information pursuant to proposed Rule 1102 would provide appropriate documentation of a broker-dealer's continued efforts to comply with the best execution standard and would help to ensure that the broker-dealer's best execution policies and procedures remain effective. In particular, the requirement of proposed Rule 1102 to document the results of a broker-dealer's annual review of its best execution policies and procedures would enable the broker-dealer, including its governing body, to identify any inadequacies and make any changes to the broker-dealer's best execution policies and procedures, including its order handling practices, as appropriate in order to further its compliance with the proposed rules. The collection of information pursuant to proposed Rule 1102 would also create documentation of such compliance that the Commission and SROs could use for purposes of investigations and examinations.

## **3. Consideration Given to Information Technology**

Based on its experience, the Commission believes that some larger broker-dealers already maintain documentation on their transactions that exceeds what would be required under the proposed rules, but the Commission does not know the extent to which other broker-dealers also maintain such documentation. To provide maximum flexibility, proposed Regulation Best Execution does not prescribe how respondents must comply with the requirements to establish and maintain the written policies and procedures required by the rule, however the Commission anticipates that respondents would likely use electronic systems to maintain and update, as appropriate, their written policies and procedures.

#### **4. Duplication**

The Commission believes that broker-dealers generally already have policies and procedures in place to achieve compliance with the best execution rules of FINRA and the MSRB, as applicable, although those policies and procedures differ based on each broker-dealer's business model. While respondents would need to bring their best execution policies and procedures into compliance with the proposed rule, which would impose additional and more specific obligations, the Commission believes that the proposed rule would not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

#### **5. Effects on Small Entities**

The proposed rules would have an effect on small entities. As discussed, the proposed rules would require a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the proposed best execution standard, as well as additional policies and procedures for conflicted transactions and tailored policies and procedures applicable to introducing brokers. The proposed rules would also set forth documentation requirements related to conflicted transactions and execution quality reviews. Moreover, the proposed rules would require a broker-dealer to at least review and assess annually, the design and overall effectiveness of its best execution policies and procedures, including its order handling practices, and prepare a written report.

Commission rules generally define a broker-dealer as a "small entity" for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and is not affiliated with any person (other than a natural person that is not a small entity). The Commission estimates that approximately 3,498 broker-dealers would be subject to proposed Regulation Best Execution and based on FOCUS Report data, approximately 761 of those broker-dealers may be small entities. Each of these small broker-dealers, assuming that they are not introducing brokers (pursuant to proposed Rule 1101(d)), would be responsible for complying with proposed Rules 1101 and 1102. The Commission believes, however, that the requirements are not unduly burdensome for all broker-dealers, including broker-dealers that would be considered small entities.

#### **6. Consequences of Not Conducting Collection**

This collection of information is intended to assist broker-dealers in evaluating the quality of execution they received for their customers and provide a documented process for handling customer orders that a broker-dealer would use to ensure its ongoing compliance with the best execution standard. In addition, the written policies and procedures would assist the Commission and SROs in conducting examinations and investigations for compliance with the proposed rules, including the proposed best execution standard. The Commission believes that without the collection of information, the goals of the Section 11A of the Exchange Act and the proposed rule's intended

benefits would not be achieved.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

#### **8. Consultations Outside the Agency**

The Commission has issued a release soliciting public comment on the “new collection of information” requirements and associated paperwork burdens.<sup>7</sup> A copy of the release is attached. Comments on Commission releases are generally 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 public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website and made available using the following link <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 CFR 1320.11(f).

#### **9. Payment or Gift**

No payment or gift is provided to respondents.

#### **10. Confidentiality**

The Commission would not typically receive information as a result of proposed Regulation Best Execution. To the extent that the Commission receives – through its examination and oversight program, through an investigation, or by some other means – records or disclosures from a broker-dealer that relate to or arise from proposed Regulation Best Execution, such information would be kept confidential, subject to the provisions of applicable law (e.g., Freedom of Information Act, 5 U.S.C. 552).

#### **11. Sensitive Questions**

Not applicable. No questions of a sensitive nature are involved.

#### **12. Burden of Information Collection**

As noted above, the proposed Rules would establish new collections of information. The Commission anticipates that respondents will incur the following recordkeeping burden. The

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<sup>7</sup> See supra note 3 at 88 FR 5549.

Commission estimates the hourly burden of the information collection as summarized below.

**a. Policies and Procedures Required by Rule 1101**

The respondents to this collection of information would be the estimated 3,498 broker-dealers that engage in any transaction for or with a customer or a customer of another broker-dealer. As discussed above, proposed Rule 1101 would establish recordkeeping burdens for broker-dealers. However, certain burdens would be different depending on whether a broker-dealer engages in conflicted transactions as defined in the proposed rule. Generally, proposed Rule 1101 would require that a broker-dealer establish, maintain, and enforce written policies and procedures addressing: (1) how a broker-dealer will comply with the best execution standard; (2) how the broker-dealer will determine the best market and make routing or execution decisions for customer orders; (3) additional considerations applicable to conflicted transactions with retail customers; and (4) to the extent applicable, the obligations of introducing brokers that meet the definition in proposed Rule 1101(d).

Proposed Rule 1101(b) would require broker-dealers that engage in conflicted transactions to document, in accordance with written procedures, their compliance with the best execution standard for conflicted transactions, including all efforts to enforce their best execution policies and procedures for conflicted transactions and the basis and information relied on for their determinations that such conflicted transactions would comply with the best execution standard, as well as to document their payment for order flow arrangements.

Additionally, proposed Rule 1101(c) would require a broker-dealer to, no less frequently than quarterly, review the execution quality of its transactions for or with customers or customers of another broker-dealer and how such execution quality compares with the execution quality the broker-dealer might have obtained from other markets, revise its best execution policies and procedures, including its order handling practices, accordingly, and document the results of this review.

Separately, an introducing broker, as defined in proposed Rule 1101(d), would not have to comply with all of the requirements of proposed Rule 1101, but instead would be required to establish, maintain, and enforce policies and procedures that require the introducing broker to regularly review the execution quality obtained from its executing broker, compare that execution quality with the execution quality it might have obtained from other executing brokers, and revise its order handling practices, accordingly. An introducing broker would additionally be required to document the results of its review.

The Commission believes that broker-dealers generally already have policies and procedures in place to achieve compliance with the best execution rules of FINRA and the MSRB, as applicable. The extent to which a respondent would be burdened by the new collection of information under proposed Rule 1101 would depend on the best execution policies and procedures that have already been established by a respondent as well as the respondent's business model. To



the extent broker-dealers' existing best execution policies and procedures already substantially address the requirements of proposed Rule 1101, these broker-dealers likely would only require limited updates to their policies and procedures to meet the additional obligations specified in the proposed rule. To initially comply with this obligation, the Commission preliminarily believes that broker-dealers would employ a combination of in-house and outside legal and compliance counsel to update existing policies and procedures. The Commission assumes that, for purposes of this analysis, the associated costs and burdens would differ between small and large broker-dealers, as large broker-dealers generally offer more products and services and are more likely to engage in conflicted transactions, and therefore would need to develop a more extensive set of policies and procedures. Based on FOCUS Report data, the Commission estimates that, as of June 30, 2022, approximately 761 broker-dealers are small entities under the Regulatory Flexibility Act. Therefore, the Commission estimates that 2,737 broker-dealers would qualify as large broker-dealers.<sup>8</sup>

Burden for Large Broker-Dealer Policies and Procedures under proposed Rule 1101—Initial and Ongoing Burdens:<sup>9</sup> To comply with the policies and procedures required by proposed Rule 1100, the Commission assumes large broker-dealers would need to update, review, and approve their existing policies and procedures and that large broker-dealers are more likely to need to satisfy the heightened requirements applicable to conflicted transactions. Specifically, the Commission estimates an initial burden of 109 hours per large broker-dealer to review and approve the updated policies and procedures,<sup>10</sup> and an ongoing burden of 25 hours per year to review and update existing policies and procedures.<sup>11</sup> The Commission estimates that there are 2,737 respondents, resulting in an estimated initial burden of 298,333 hours<sup>12</sup> in the first year, for an annualized **initial burden of 99,435 hours**, and an **ongoing burden of 68,425 hours** per year (including the first year).<sup>13</sup>

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<sup>8</sup> This calculation was made as follows: (3,498 total broker-dealers) – (761 small broker-dealers) = 2,737 large broker-dealers.

<sup>9</sup> We are proposing the initial and ongoing burdens as separate information collections in order to more-easily revise the number of respondents for the initial burden in the future.

<sup>10</sup> This estimate would be broken down as follows: 67 hours for in-house legal counsel + 18 hours for in-house compliance counsel to update existing policies and procedures + 12 hours of review for general counsel + 12 hours of review for Chief Compliance Officer = 109 burden hours.

<sup>11</sup> This estimate would be broken down as follows: 9 hours for legal personnel + 8 hours for compliance personnel + 8 hours for business-line personnel = 25 burden hours.

<sup>12</sup> 2,737 respondents x 109 hours = 298,333 hours.

<sup>13</sup> 2,737 respondents x 25 hours = 68,425 hours.

Burden for Small Broker-Dealer Policies and Procedures under proposed Rule 1101 – Initial and Ongoing Burdens: To comply with the policies and procedures required by proposed Rule 1100, the Commission believes small broker-dealers would primarily rely on outside counsel to update existing policies and procedures, and estimates an initial burden of 18 hours per small broker-dealer for in-house compliance personnel to review and approve updated policies and procedures prepared by outside counsel. Separately, the Commission estimates small broker-dealers would incur an ongoing burden of 6 hours per year for an in-house compliance manager to review and approve the updated policies and procedures. The Commission estimates that there are 761 respondents, resulting in an estimated initial burden of 13,698 hours<sup>14</sup> in the first year, for an annualized **initial burden of 4,566 hours**, and an **ongoing burden of 4,566 hours per year**.<sup>15</sup>

Burden for Large Broker-Dealer Regular Review and Documentation under proposed Rule 1101(b) and (c) – Ongoing Burden: The Commission estimates that large broker-dealers would each annually incur an ongoing burden of 100 hours<sup>16</sup> to conduct and document their reviews of execution quality pursuant to proposed Rule 1101(c) and document their efforts to obtain best execution for any conflicted transactions and their payment for order flow arrangements pursuant to proposed Rule 1101(b).<sup>17</sup> As the Commission estimates that there are 2,737 respondents, this would result in an ongoing quarterly burden of 68,425 hours or **an ongoing annual burden of 273,700 hours**.<sup>18</sup>

Burden for Small Broker-Dealer Regular Review and Documentation under proposed Rule 1101 (b) and (c) - Ongoing: The Commission estimates small broker-dealers would incur an ongoing burden of approximately 30 hours per year for in-house business-line personnel to conduct and document their reviews of execution quality and document their efforts to obtain best execution for conflicted transactions and payment for order flow arrangements, and approximately 8 hours per year for in-house compliance personnel to review the execution quality reviews and documentation of efforts to obtain best execution for conflicted transactions and payment for order flow arrangements, totaling an estimated ongoing burden of 38 hours per respondent.<sup>19</sup> As the Commission estimates that there are 761 respondents, this would result in an **ongoing burden of**

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<sup>14</sup> 761 respondents x 18 hours = 13,698 hours.

<sup>15</sup> 761 respondents x 6 hours = 4,566 hours.

<sup>16</sup> While this is an annual estimate, the proposed rule would require not less than quarterly review pursuant to proposed Rule 1101(c), thus 25 hours a quarter (100 hours / 4 quarters).

<sup>17</sup> This estimate would be broken down as follows: 10 hours for legal personnel + 20 hours for compliance personnel + 70 hours for business-line personnel = 100 burden hours.

<sup>18</sup> 2,737 respondents x 100 ongoing burden hours = 273,700 hours.

<sup>19</sup> 30 hours + 8 hours = 38 hours.

**28,918 hours.**<sup>20</sup>

**b. Annual Report Required by Rule 1102**

Proposed Rule 1102 would require that a broker-dealer that effects any transaction for or with a customer or a customer of another broker-dealer, no less frequently than annually, review and assess the design and overall effectiveness of its best execution policies and procedures, including its order handling practices. The broker-dealer would be required to prepare a written report detailing the results of such review and assessment, including a description of all deficiencies found and any plan to address deficiencies, and the report must be presented to the broker-dealer's board of directors (or equivalent governing body).

The Commission believes that a respondent should currently have written compliance procedures reasonably designed to review its business activity. Proposed Rule 1102 would initially require a respondent to update such written compliance procedures to document the method in which the respondent plans to conduct its review and assessment pursuant to proposed Rule 1102.

Burden for Large Broker-Dealer Compliance Procedures under proposed Rule 1102 – Initial and Ongoing Burdens: The Commission estimates that a large broker-dealer would incur an initial burden of 15 hours for in-house legal and in-house compliance counsel to update its existing compliance procedures for reviewing and assessing the design and overall effectiveness of its best execution policies and procedures,<sup>21</sup> a one-time burden of 2 hours for the general counsel, and 1 hour for a Chief Compliance Officer to review and approve the updated compliance procedures, totaling 18 initial burden hours per respondent. Separately, the Commission estimates that large broker-dealers would incur an ongoing burden of 40 hours to conduct and document its annual reviews and assessments,<sup>22</sup> and an internal burden of 8 hours<sup>23</sup> to prepare the annual report for a total ongoing burden of 48 hours per large broker-dealer. As the Commission estimates that there are 2,737 large broker-dealer respondents, resulting in an estimated initial burden of 49,266 hours<sup>24</sup> in the first year, for an **annualized initial burden of 16,422 hours**, and an **ongoing burden of**

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<sup>20</sup> 761 respondents x 38 hours = 28,918 hours.

<sup>21</sup> This estimate would be broken down as follows: 10 hours for in-house legal counsel + 5 hours for in-house compliance counsel to update existing policies and procedures = 15 burden hours.

<sup>22</sup> This estimate would be broken down as follows: 5 hours for legal personnel, + 15 hours for compliance personnel + 20 hours for business-line personnel = 40 hours.

<sup>23</sup> This estimate would be broken down as follows: 4 hours for legal personnel + 4 hours for compliance personnel = 8 hours.

<sup>24</sup> 2,737 respondents x 18 hours = 49,266 hours.

**131,376 hours** per year (including the first year).<sup>25</sup>

**Burden for Small Broker-Dealer Compliance Procedures under proposed Rule 1102 – Initial and Ongoing Burdens:** As the Commission believes small broker-dealers would primarily rely on outside counsel to update existing compliance procedures, Commission estimates an initial burden of 5 hours to review and approve the updated compliance procedures prepared by outside counsel. Separately, the Commission estimates that each small broker-dealer would incur an internal burden of approximately 12 hours for business-line personnel to conduct and document the annual reviews and assessments, and 4 hours per year for in-house compliance personnel to review the reviews and assessments and preparation of the annual report. The Commission further estimates small broker-dealers would incur an internal burden of approximately 2 hours for an in-house compliance manager to review and approve the annual report. As the Commission estimates that there are 761 small broker-dealer respondents, this would result in an estimated initial burden of 3,805 hours<sup>26</sup> in the first year, for an annualized initial burden of 1,263 hours, and an **ongoing burden of 13,698 hours** per year (including the first year).<sup>27</sup>

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<sup>25</sup> 2,737 respondents x 48 hours = 131,376 hours.

<sup>26</sup> 761 respondents x 5 hours = 3,805 hours.

<sup>27</sup> 761 respondents x 18 hours = 13,698 hours.

Name of Information Collection	Type of Burden	A Number of Respondents	B Annual Responses per Respondent	C Initial Burden per Respondent	D Initial Burden Annualized per Respondent	E Ongoing Burden per Respondent	F Annual Burden per Respondent	G Total Annual Burden per Respondent	H Total Industry Burden
					C/3		D+E	F*B	G*A
Large Broker-Dealer Policies and Procedures under proposed Rule 1101 – Initial	Recordkeeping	2,737	1	109	36.33	0	36.33	36.33	99,435
Large Broker-Dealer Policies and Procedures under proposed Rule 1101 – Ongoing	Recordkeeping	2,737	1	0	0	25	25	25	68,425
Small Broker-Dealer Policies and Procedures under proposed Rule 1101 - Initial	Recordkeeping	761	1	18	6	0	6	6	4,566
Small Broker-Dealer Policies and Procedures under proposed Rule 1101 – Ongoing	Recordkeeping	761	1	0	0	6	6	6	4,566
Large Broker-Dealer Regular Review and Documentation under proposed Rule 1101 (b) & (c) - Ongoing	Recordkeeping	2,737	4	0	0	25	25	100	273,700
Small Broker-Dealer Regular Review and Documentation under proposed Rule 1101 (b) & (c) – Ongoing	Recordkeeping	761	4	0	0	9.5	9.5	38	28,918
Large Broker-Dealer Compliance Procedures under proposed Rule 1102 - Initial	Recordkeeping	2,737	1	18	6	0	6	6	16,422
Large Broker-Dealer Compliance Procedures under proposed Rule 1102 – Ongoing	Recordkeeping	2,737	1	0	0	48	48	48	131,376
Small Broker-Dealer Compliance Procedures under proposed Rule 1102 - Initial	Recordkeeping	761	1	5	1.66	18	1.66	1.66	1,263

Name of Information Collection	Type of Burden	A Number of Respondents	B Annual Responses per Respondent	C Initial Burden per Respondent	D Initial Burden Annualized per Respondent	E Ongoing Burden per Respondent	F Annual Burden per Respondent	G Total Annual Burden per Respondent	H Total Industry Burden
Small Broker-Dealer Compliance Procedures under proposed Rule 1102 – Ongoing	Recordkeeping	761	1	0	0	18	18	18	13,698
<b>TOTAL BURDEN FOR ALL RESPONDENTS</b>									<b>642,374</b>

### 13. Costs to Respondents

#### a. Policies and Procedures Required by Rule 1101

As discussed above, proposed Rule 1101 would establish recordkeeping burdens for broker-dealers. The Commission believes that broker-dealers generally already have policies and procedures in place to achieve compliance with the best execution rules of FINRA and the MSRB, as applicable. The extent to which a respondent would be burdened by the proposed collection of information under proposed Rule 1101 would depend on the best execution policies and procedures that have already been established by a respondent as well as the respondent's business model. To the extent broker-dealers' existing best execution policies and procedures already substantially address the requirements of proposed Rule 1101, these broker-dealers likely would only require limited updates to their policies and procedures to meet the additional obligations specified in the proposed rule. To initially comply with this obligation, the Commission preliminarily believes that broker-dealers would employ a combination of in-house and outside legal and compliance counsel to update existing policies and procedures. The Commission assumes that, for purposes of this analysis, the associated costs and burdens would differ between small and large broker-dealers, as large broker-dealers generally offer more products and services and are more likely to engage in conflicted transactions, and therefore would need to develop a more extensive set of policies and procedures.

Costs for Large Broker-Dealer Policies and Procedures under proposed Rule 1101 - Initial: The Commission estimates 16 hours for outside counsel to review the updated policies and procedures on behalf of a large broker-dealer for an initial cost of approximately \$7,936.<sup>28</sup> Because the Commission assumes that large broker-dealers would rely on internal personnel to update their policies and procedures on an ongoing basis, to conduct and document their execution quality reviews, and to document their efforts to obtain best execution for conflicted transactions, the Commission estimates large broker-dealers would not incur additional ongoing costs. Therefore, the Commission estimates that there are 2,737 respondents, resulting in an **annualized cost of \$7,240,277<sup>29</sup>**.

Costs for Small Broker-Dealer Policies and Procedures under proposed Rule 1101- Initial and Ongoing Costs:<sup>30</sup> The Commission believes small broker-dealers would primarily rely on

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<sup>28</sup> The Commission's estimates of the relevant wage rates for outside legal services of \$496/hour take into account staff experience, a variety of sources including general information websites, and adjustments for inflation. This cost estimate is therefore based on the following calculation: (16 hours of review) x (\$496/hour for outside counsel services) = \$7,936 in outside counsel costs.

<sup>29</sup> \$7,936 x 2,737 respondents = \$21,720,832. \$21,720,832 / 3 = \$7,240,277.

<sup>30</sup> We are proposing the initial and ongoing costs as separate information collections in order to more easily revise the number of respondents for the initial burden in the future.

outside counsel to update existing policies and procedures, as small broker-dealers generally have fewer in-house legal and compliance personnel. Moreover, the Commission believes small broker-dealers would be less likely to engage in conflicted transactions subject to the additional procedural obligations of proposed Rule 1101(b) and would be more likely to qualify as introducing brokers and be exempt from complying with proposed Rule 1101(a), (b), and (c), and therefore would need to develop a less extensive set of policies and procedures. The Commission estimates 65 hours of outside legal counsel services would be required to update such small broker-dealers' policies and procedures, for a **total one-time cost of approximately \$32,240 per small broker-dealer**,<sup>31</sup> for an annualized **initial cost of approximately \$8,178,215 million** for all small broker-dealers.<sup>32</sup>

Additionally, the Commission estimates that outside legal counsel would require approximately 11 hours per year to update policies and procedures, for an annual cost of approximately \$5,456 for each small broker-dealer,<sup>33</sup> and 11 hours of outside compliance services per year to update their policies and procedures, for an ongoing cost of approximately \$3,344 per year,<sup>34</sup> totaling an **aggregate ongoing cost of \$8,800** for each small broker-dealer. Therefore, the Commission estimates that there are 761 respondents, resulting in **an ongoing cost of \$6,696,800**.<sup>35</sup>

Costs for Large Broker-Dealer Regular Review and Documentation under proposed Rule 1101(b) and (c): Because the Commission assumes large broker-dealers would rely on internal personnel to update their policies and procedure on an ongoing basis, to conduct and document their execution quality reviews, and to document their efforts to obtain best execution for conflicted transactions, the Commission estimates large broker-dealers would not incur additional ongoing costs.

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<sup>31</sup> This cost estimate is based on the following calculation: (65 hours of review) x (\$496/hour for outside counsel services) = \$32,240 in outside counsel costs.

<sup>32</sup> This cost estimated is based on the following calculation: (\$32,240 for outside attorney costs per small broker-dealer) x (761 small broker-dealers) = \$24.53 million in outside counsel costs / 3 = 8,178,215.

<sup>33</sup> This estimate is based on the following calculation: (11 hours per small broker-dealer) \* (\$496/hour for outside counsel services) = \$5,456 in outside counsel costs.

<sup>34</sup> The Commission believes that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Based on industry sources, Commission staff preliminarily estimates that the costs for these positions in the securities industry are \$264 and \$344 per hour, respectively, for an average of \$304 per hour. This cost estimate is based on the following calculation: (11 hours of review) \* (\$304/hour for outside compliance services) = \$3,344 in outside compliance service costs.

<sup>35</sup> (\$8,800 costs in first year) + \$8,800 in second year + \$8,800 in third year = \$26,400.  
\$26,400 x 761 respondents = \$20,090,400 / 3 = \$6,696,800.



Costs for Small Broker-Dealer Regular Review and Documentation under proposed Rule 1101(b) and (c) – Ongoing Costs: The Commission estimates that small broker-dealers would require 20 hours of outside compliance services per year to conduct and document their reviews of execution quality and document their efforts to obtain best execution for conflicted transactions and payment for order flow arrangements, for an ongoing cost of approximately \$6,080 per year.<sup>36</sup> Therefore, the Commission estimates that there are 761 respondents, resulting in **a cost of \$4,626,880.**<sup>37</sup>

#### **b. Annual Report pursuant to proposed Rule 1102**

As discussed above, proposed Rule 1102 would establish recordkeeping burdens for broker-dealers. Proposed Rule 1102 would require that a broker-dealer that effects any transaction for or with a customer or a customer of another broker-dealer, no less frequently than annually, review and assess the design and overall effectiveness of its best execution policies and procedures, including its order handling practices. The broker-dealer would be required to prepare a written report detailing the results of such review and assessment, including a description of all deficiencies found and any plan to address deficiencies, and the report must be presented to the broker-dealer's board of directors (or equivalent governing body). The Commission believes that a respondent should currently have written compliance procedures reasonably designed to review its business activity. Proposed Rule 1102 would initially require a respondent to update such written compliance procedures to document the method in which the respondent plans to conduct its review and assessment pursuant to proposed Rule 1102.

Costs for Large Broker-Dealer Compliance Procedures under proposed Rule 1102 – Initial Costs: The Commission estimates a cost of approximately \$1,488 for outside counsel to review the updated compliance procedures on behalf of a large broker-dealer,<sup>38</sup> for an initial cost of

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<sup>36</sup> This estimate is based on the following calculation: (\$6,080 in outside compliance costs per small broker-dealer) x (761 small broker-dealers) = \$4,626,880 million in the aggregate, ongoing outside compliance costs.

<sup>37</sup> \$4,626,800 / 4 quarters = \$1,156,720 a quarter.

<sup>38</sup> The Commission's estimates of the relevant wage rates for outside legal services of \$496/hour take into account staff experience, a variety of sources including general information websites, and adjustments for inflation." This cost estimate is therefore based on the following calculation: (3 hours of review) x (\$496/hour for outside counsel services) = \$1,488 in outside counsel costs.

approximately \$4,072,656.<sup>39</sup> Therefore, the Commission estimates that there are 2,737 respondents, resulting in **an annualized cost of \$1,357,552.**<sup>40</sup>

Costs for Small Broker-Dealer Compliance Procedures under proposed Rule 1102 – Initial and Ongoing Costs: The Commission estimates that a small broker-dealer would require an average of 10 hours of outside legal counsel services to update the compliance procedures, for a total one-time cost of approximately \$4,960 per small broker-dealer,<sup>41</sup> for **an annualized initial cost of \$1,257,933.**<sup>42</sup>

Additionally, the Commission estimates that outside counsel would require approximately 5 hours per year to conduct and document its annual reviews and assessments, for an annual cost of approximately \$2,480 for each small broker-dealer,<sup>43</sup> for an estimated aggregate annual ongoing costs of approximately \$1.88 million.<sup>44</sup> The Commission expects that small broker-dealers would require 10 hours of outside compliance services per year to conduct and document its annual reviews and assessments, for an ongoing cost of approximately \$3,040 per small broker-dealer per year.<sup>45</sup> The Commission further estimates that outside counsel would require approximately 3 hours per year to prepare the annual report, for an annual cost of approximately \$1,488 for each small broker-dealer.<sup>46</sup> In addition, the Commission estimates that each small broker-dealer would require 3 hours of outside compliance services per year to prepare the annual report, for an ongoing cost of approximately \$912 per year.<sup>47</sup> Collectively, the Commission estimates ongoing costs of

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<sup>39</sup> This estimate is based on the following calculation: (\$1,488 for outside counsel costs per larger broker-dealer) x (2,737 larger broker-dealers) = \$4,072,656 in costs.

<sup>40</sup>  $\$4,072,656 / 3 = \$1,357,552.$

<sup>41</sup> This cost estimate is based on the following calculation: (10 hours of review) \* (\$496/hour for outside counsel services) = \$4,960 in outside counsel costs.

<sup>42</sup> This cost estimate is based on the following calculation: (\$4,960 for outside attorney costs per small broker-dealer) x (761 small broker-dealers) = \$3,774,560 million in costs / 3 = \$1,257,933.

<sup>43</sup> This estimate is based on the following calculation: (5 hours per small broker-dealer) \* (\$496/hour for outside counsel services) = \$2,480 in outside counsel costs.

<sup>44</sup> This estimate is based on the following calculation: (\$2,480 in outside counsel costs per small broker-dealers) x (761 small broker-dealers) = \$1.88 million in aggregate ongoing costs.

<sup>45</sup> This cost estimate is based on the following calculation: (10 hours per small broker-dealer) x (\$304/hour for outside compliance services) = \$3,040 in outside compliance service costs.

<sup>46</sup> This estimate is based on the following calculation: (3 hours per small broker-dealer) \* (\$496/hour for outside counsel services) = \$1,488 in outside counsel costs.

<sup>47</sup> This cost estimate is based on the following calculation: (3 hours per small broker-dealer) \*

\$7,920.<sup>48</sup> Therefore, the Commission estimates that there are 761 respondents, resulting in **an ongoing cost of \$6,027,120.**<sup>49</sup>

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(\$304/hour for outside compliance services) = \$912 in outside compliance service costs.

<sup>48</sup> This cost estimate is based on the following calculation: \$2,480 outside counsel costs + \$3,040 outside compliance costs + \$1,488 outside counsel costs + \$912 outside compliance costs = \$7,920.

<sup>49</sup> \$7,920 costs in first year) + \$7,920 in second year + \$7,920 in third year = \$23,760.  
\$23,760 x 761 respondents = \$18,081,360 / 3 = \$6,027,120.

<b>Summary of Dollar Costs</b> Name of Information Collection	Type of Burden	A Number of Respondents	B Annual Responses per Respondent	C Initial Cost per Respondent	D Initial Cost Annualized per Respondent	E Ongoing Cost per Respondent	F Annual Cost per Respondent	G Total Annual Cost per Respondent	H Total Industry Cost
					C/3		D+E	F*B	G*A
Large Broker-Dealer Policies and Procedures under proposed Rule 1101 - Initial	Recordkeeping	2,737	1	\$7,936	\$2,645.33	0	\$2,645.33	\$2,645.33	\$7,240,277
Small Broker-Dealer Policies and Procedures under proposed Rule 1101 - Initial	Recordkeeping	761	1	\$32,240	\$10,746.67		\$10,746.67	\$10,746.67	\$8,178,215
Small Broker Dealer Policies and Procedures under proposed Rule 1101 - Ongoing	Recordkeeping	761	1	0	0	\$8,800	\$8,800	\$8,800	\$6,696,800
Small Broker-Dealer Regular Review and Documentation under proposed Rule 1101 (b) & (c) - Ongoing	Recordkeeping	761	4	0	0	\$1,520	\$1,520	\$6,080	\$4,626,880
Large Broker-Dealer Compliance Procedures under proposed Rule 1102 - Initial	Recordkeeping	2,737	1	\$1,488	\$496	0	\$496	\$496	\$1,357,552
Small Broker-Dealer Compliance Procedures under proposed Rule 1102 - Initial	Recordkeeping	761	1	\$4,960	\$1,653	0	\$1,653	\$1,653	\$1,257,933
Small Broker-Dealer Compliance Procedures under proposed Rule 1102 - Ongoing	Recordkeeping	761	1	0	0	\$7920	\$7920	\$7920	\$6,027,120
<b>TOTAL COSTS FOR ALL RESPONDENTS</b>									<b>\$35,385,029</b>

**14. Costs to Federal Government**

Not applicable. Proposed Rules 1101 and 1102 would not create new costs for the Federal Government.

**15. Changes in Burden**

Not applicable. The Commission is proposing Regulation Best Execution, including proposed Rules 1101 and 1102 for the first time.

**16. Information Collection Planned for Statistical Purposes**

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

**17. OMB Expiration Date Display Approval**

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

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements of 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.