

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 19b-5 and Form PILOT
OMB Control 3235-0507

A. Justification

1. Necessity of Information Collection

The Securities Exchange Act of 1934, as amended (“Exchange Act”),¹ sets forth a scheme of self-regulation under which national securities exchanges, national securities associations, and registered clearing agencies have primary responsibility for regulating their members or participants. Under this scheme, the role of the Securities and Exchange Commission (“SEC”) is primarily one of oversight; the Exchange Act charges the SEC with the responsibility for assuring that each of these self-regulatory organizations (“SROs”) complies with and advances the policies of the Exchange Act. As part of its oversight responsibilities, the SEC is required to review changes in the rules of each SRO.

Section 19(b) of the Exchange Act² requires an SRO to file with the SEC a copy of any proposed amendment to its constitution, articles of incorporation, bylaws, rules, or similar instrument or any interpretation of these instruments (collectively, “rule changes”). The SEC is required to publish notice of any such filing, and when required, to approve the rule change or institute proceedings to determine whether the rule change should be disapproved. Rule 19b-4 under the Exchange Act³ implements the requirements of Section 19(b) of the Act by requiring an SRO to file its rule changes on Form 19b-4 and by clarifying which actions by an SRO must be filed pursuant to Section 19(b). The SEC adopted Rule 19b-4 in 1975 pursuant to Sections 2, 3C, 6, 11A, 15A, 15B, 17, 17A, and 19 of the Exchange Act and Section 806 of the Payment, Clearing and Settlement Supervision Act.

Rule 19b-5 under the Exchange Act⁴ provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Exchange Act to an SRO wishing to establish and operate a pilot trading system. An SRO that seeks to establish a pilot trading system must file a Form PILOT with the SEC. Certain provisions of Rule 19b-5 and Form PILOT contain collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.⁵ Rule 19b-5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the SEC. During operation of the pilot trading system, the SRO must submit quarterly reports of the system’s operation to the SEC on Form PILOT, as well as timely amendments on Form PILOT describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by

¹ 15 U.S.C. 78a et seq.

² 15 U.S.C. 78s(b).

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-5.

⁵ 44 U.S.C. 3501 et seq.

Rule 19b-5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Exchange Act⁶ in order to obtain permanent approval of the trading system from the SEC.

2. Purpose and Use of the Information Collection

The purpose of Rule 19b-5 is to provide a temporary exemption from the rule-filing requirements that would otherwise apply to an SRO wishing to operate a pilot trading system. In the absence of this exemption, an SRO would be required to submit a proposed rule change to the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder in order to operate any new trading system. Section 19(b) of the Exchange Act generally requires an SRO to file with the SEC copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Once a proposed rule change has been filed, the SEC must publish notice of its receipt and allow an opportunity for the public to comment on it. A proposed rule change may not take effect unless it is approved by the SEC or is otherwise permitted to become effective under Section 19(b) of the Exchange Act. In order to approve a rule change proposing a new trading system, the SEC would be required to find that, among other things, the trading system will serve to promote the public interest and help to remove impediments to a free and open securities market in accordance with the requirements of Section 6(b)(5) of the Exchange Act.⁷ Further, pursuant to Section 3(f) of the Exchange Act,⁸ the SEC would have to consider whether the proposed trading system would, in addition to the protection of investors, promote efficiency, competition, and capital formation.

Rule 19b-5 permits an SRO to operate a pilot trading system immediately, without requiring any SEC findings, provided that such system is in compliance with the conditions set forth in Rule 19b-5. For the SEC to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b-5, an SRO must file a Form PILOT in conjunction with the operation of a new pilot trading system, providing the SEC with at least 20 days' notice before commencing operations of the pilot trading system. In addition, for the SEC to determine whether an SRO is operating a pilot trading system in compliance with the Exchange Act and is carrying out its statutory oversight obligations under the Exchange Act, the SRO must submit quarterly reports of the system's operation and amendments describing material changes to the system to the SEC on Form PILOT. The SEC will review SRO compliance with Rule 19b-5 and other provisions of the Exchange Act through its routine inspections and examinations.

An SRO operating a pilot trading system pursuant to Rule 19b-5 also must notify the SEC on Form PILOT of changes to the pilot trading system and to make quarterly reports of its operations. Without such information, the SEC might not have sufficient information to ensure that the pilot trading system continued to operate in a manner consistent with the Exchange Act.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78c(f)

3. Consideration Given to Information Technology

The compilation and filing of the information required about a pilot trading system reflects the complexity of the SROs' businesses and is read and reviewed by SEC staff. Thus, improved technology would not reduce the burden.

4. Duplication

Not applicable. The SEC believes that no duplication of the requirements of Rule 19b-5 exists. Additionally, the SEC notes that Rule 17a-1 under the Exchange Act⁹ currently imposes recordkeeping requirements on SROs. Although Rule 19b-5 does not create new recordkeeping obligations for SROs, paragraph (e)(9) of Rule 19b-5¹⁰ reiterates the SROs' existing recordkeeping obligations under Rule 17a-1.

5. Effect on Small Entities

Not applicable. The SROs that are required to respond to the collection of information are not small entities.

6. Consequences of Not Conducting Collection

Rule 19b-5 requires that information describing a pilot trading system be filed prior to the SRO's operation of such system, and that subsequent information regarding the system be provided on a quarterly basis thereafter and whenever any material change is made to the system. Any less frequent collection of this information would impede the SEC's ability to fulfill its statutory obligations to maintain fair and orderly markets and protect investors.

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

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

8. Consultations Outside the Agency

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

9. Payment or Gift

Not applicable. No payments or gifts are required to be made or are made to respondents.

⁹ 17 CFR 240.17a-1.

¹⁰ 17 CFR 240.19b-5(e)(9).

10. Confidentiality

The information required by Rule 19b-5 is available only for examination by the SEC, other agencies of the federal government, and state securities authorities. Subject to the provisions of the Freedom of Information Act (“FOIA”)¹¹ and the SEC’s rules thereunder, the SEC generally will not publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

The information collection collects basic personally identifiable information that may include the name, job title, work phone number, and fax number of the individual completing the form on behalf of an SRO. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act, because information is not retrieved by a personal identifier. A Privacy Impact Assessment is also not required.

12. Burden of Information Collection

Initial Reports

Based on recent experience, the SEC is reducing its estimate of the number of responses to one (1) initial report on Form PILOT each year. The SEC estimates that the reporting burden for an SRO that files an initial report on Form PILOT prior to operating a pilot trading system would be approximately 24 hours (16 hours of professional legal work and 8 hours of clerical work). Collectively, this would be an aggregate annual burden of 24 hours (1 responses x 24 hours per response) for the one respondent. The Commission estimates that the related internal compliance cost for an SRO to complete an initial report on Form PILOT would be \$7,360, calculated as follows:

16 hours of in-house professional legal work at \$428/hr ¹²	\$ 6,848
8 hours of clerical work at \$64/hr ¹³	<u>\$ 512</u>
	\$ 7,360

Thus, the aggregate annual internal cost of compliance for all SROs to file initial reports would be \$7,360 (\$7,360 x 1 respondent). This burden is a one-time burden.

¹¹ 5 U.S.C. 522.

¹² \$428/hour figure for an Attorney is from the SIFMA’s *Management & Professional Earnings in the Securities Industry 2013*, 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.

¹³ \$64/hour figure for a General Clerk is from the SIFMA’s *Office Salaries in the Securities Industry 2013*, 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.

Quarterly Reports

The SEC anticipates receiving as many as four (4) quarterly reports per year, one per quarter from the sole estimated respondent. The SEC estimates that the reporting burden for an SRO that files a quarterly report on Form PILOT would be approximately 3 hours per report (2 hours of professional legal work and 1 hour of clerical work). Therefore, the collective annual burden would be 12 hours (4 responses x 3 hours per response) for the sole respondent. The Commission estimates that the related annual internal compliance cost for the sole SRO respondent to file four quarterly reports would be \$3,628 ($\$428 \times 2 + \$64 \times 1 = \920; $\$920 \times 4 = \$3,680$). Thus, the aggregate annual internal cost of compliance for the sole SRO respondent to file quarterly reports would be \$3,680 ($\$3,680 \times 1$). This is an ongoing burden.

Material Systems Changes Reports

The SEC anticipates receiving as many as two (2) notices of material systems changes per year from the one estimated respondent. The SEC estimates that the reporting burden for an SRO that files a notice of a material systems change on Form PILOT would be approximately 3 hours per notice (2 hours of professional legal work and 1 hour of clerical work). Therefore, the collective annual burden would be 6 hours (2 responses x 3 hours per response) for the one respondent. The Commission estimates that the related annual internal compliance cost for an SRO to file notices of material systems changes would be \$1,814 ($\$428 \times 2 + \$64 \times 1 = \920; $\$920 \times 2 = \$1,840$). Thus, the aggregate annual internal cost of compliance for the sole SRO respondent to file notices of material systems changes would be \$1,840 ($\$1,840 \times 1$). This is an ongoing burden.

Summary

There are currently 24 SROs which could avail themselves of the exemption provided by Rule 19b-5. The SEC estimates that each year, one of these SROs would avail themselves of the exemption and be required to file Form PILOT. The collective annual time burden for this respondent would be 42 hours (24 hours of one-time burdens and 18 hours of ongoing burdens). As detailed above, this aggregate figure consist of: (i) 24 hours for the initial report on Form PILOT (one filing for the estimated one respondent requiring 24 hours of work per filing); (ii) 12 hours for quarterly reports on Form PILOT (four filings for the sole estimated respondent requiring 3 hours of work per filing); and (iii) 6 hours for notices of material systems changes on Form PILOT (two filings for the sole estimated respondent requiring three hours of work per filing). The estimated aggregate annual internal cost of compliance for the sole respondent would be \$12,880 ($\$7,360 + \$3,680 + \$1,840$).¹⁴

¹⁴ An average of approximately \$306.67 per hour.

Below is a chart summarizing the hour burdens related to Rule 19b-5 and Form PILOT.

Response Type	Number of Respondents	Number of Annual Responses Per Respondent	Time Per Response (Hours)	Total Annual Burden (Hours)
Initial Reports (One-Time Burden)	1	1	24	24
Quarterly Reports (Ongoing Burden)	1	4	3	12
Material Systems Changes Reports (Ongoing Burden)	1	2	3	6
<i>Total Annual Burden for All Respondents (Hours)</i>				<u>42</u>

13. Costs to Respondents

The SEC estimates that the sole SRO respondent would incur printing, supplies, copying, and postage expenses of \$2,287 per year for filing initial reports on Form PILOT, \$1,142 per year for filing quarterly reports on Form PILOT, and \$571 per year for filing notices of material systems changes on Form PILOT, for a total annual cost burden of \$4,000.

Additionally, the SEC notes that Rule 19b-5 does not in itself impose new recordkeeping burdens on SROs, though it relies on existing requirements imposed pursuant to Rule 17a-1 under the Exchange Act.

Below is a chart summarizing the cost burdens related to Rule 19b-5 and Form PILOT.

Respondent Type	Dollar Cost for Printing, Supplies, Copying, and Postage
Initial Reports	\$2,287
Quarterly Reports	\$1,142
Material Systems Changes Reports	\$ 571
<i>Total Annual Burden for All Respondents (Dollars)</i>	<u>\$4,000</u>

14. Costs to Federal Government

Not Applicable. Processing of reports and notices filed pursuant to Rule 19b-5 is done by existing staff as part of their regular duties.

15. Changes in Burden

The estimated burden hours in item #12 decreased by a factor of three from 126 hours to 42 hours. Based on recent experience, the SEC has reduced its estimate of the number of respondents from three (3) per year to one (1) per year, resulting in a proportionate uniform reduction in the burden hours. The estimated costs in item #13 decreased by \$6,670 from \$10,670 to \$4,000. The decrease is due to the reduction in the estimated number of respondents from three (3) to one (1). The costs did not decrease by a full factor of three however because of an increase in the per respondent cost estimates due to inflation.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

The SEC requests 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. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.