

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 31 and Form R31 under the Exchange Act
OMB Control Number 3235-0597

A. Justification

1. Necessity of Information Collection

Pursuant to Section 31 of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78ee), the Securities and Exchange Commission (“SEC”) is required to collect fees and assessments from national securities exchanges and national securities associations (collectively, “self-regulatory organizations” or “SROs”) based on the volume of their securities transactions. To collect the proper amounts, the SEC in 2004 adopted Rule 31 (17 CFR 240.31) and Form R31 (17 CFR 249.11) under the Exchange Act whereby each SRO must report to the SEC the volume of its securities transactions and the SEC, based on those data, calculates the amount of fees and assessments that each SRO owes pursuant to Section 31. Rule 31 and Form R31 require each SRO to provide these data on a monthly basis. Without this rule, the SEC would not be able to satisfy its obligations under Section 31.

3. Consideration Given to Information Technology

Much of the information required on Form R31 consists of data that are already compiled by respondents in electronic form. Therefore, there is only limited scope for information technology to reduce the respondents’ burden.

4. Duplication

The SEC does not believe that Rule 31 and Form R31 require any duplicative filing requirements.

5. Effect on Small Entities

Rule 31 and Form R31 have no effect on any small entity. Currently, Rule 31 and Form R31 impose duties on 28 national securities exchanges, 1 national securities association, and 2 registered clearing agencies (which are required to provide certain data in their possession needed by the SROs to complete Form R31). Based on past experience, the SEC estimates that 3 new exchanges will register and become subject to Rule 31 and Form R31 during the authorization period. Of the 31 current and 3 expected new respondents, none is a small entity.

6. Consequences of Not Conducting Collection

Obtaining monthly data on all sales of securities that are subject to Section 31 enables the SEC to calculate and book on its financial statement a monthly receivable for Section 31 fees and assessments. The SEC believes that it is appropriate to recognize and record, on its financial

statement, accounts receivable for Section 31 fees and assessments on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred. Thus, any less frequent collection could render the SEC unable to fulfill its obligations under the Accountability of Tax Dollars Act of 2002 (“Accountability Act”).

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

5 CFR 1320.5(d)(2) states that, unless an agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information that has any one of eight characteristics. Rule 31 has two of these characteristics. Nevertheless, the SEC believes that these characteristics are justified by “statutory requirements or other substantial need.” The eight characteristics are set forth below:

(i) requiring respondents to report information to the agency more often than quarterly;

Under Rule 31, each respondent is required to submit a completed Form R31 on a monthly basis. This permits the SEC to calculate the fees and assessments owed by each SRO every month, even though they are due only twice per year (on or before March 15 and September 30 of each year). The Accountability Act requires the SEC to produce audited financial statements. The SEC believes that it is appropriate to recognize and record, on its financial statement, accounts receivable on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred.

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Rule 31 requires each respondent to submit a completed Form R31 in fewer than 30 days after receiving the data that must be reported on the form. However, the SEC believes that this requirement is justified by statutory requirements or other substantial need.

The first billing cycle established under Section 31(e) of the Exchange Act¹ is from January 1 to August 31; the due date for fees and assessments incurred in that period is September 30. Thus, the first billing cycle allows only 30 days between the close of the billing period (August 31) and the date on which each SRO must pay fees and assessments based on securities transactions occurring in that period (September 30). For the SEC to bill an SRO the correct amount, issue the bill before the September 30 due date, and give the SRO reasonable time to pay the bill, the SEC must obtain the data on the SRO’s securities transactions in fewer than 30 days after August 31.

¹ 15 U.S.C. 78ee(e).

In addition, requiring each respondent to submit a completed Form R31 in fewer than 30 days after receiving the data to be reported allows the SEC to better carry out its responsibilities under Section 31(j)(2) of the Exchange Act.² Section 31(j)(2) requires the SEC to adjust the rate at which it levies fees on sales of securities if the SEC makes certain findings relating to the estimated volume of securities transactions in the fiscal year by every March 1st. Obtaining data on these transactions in less than 30 days after the respondents receive such data helps the SEC to make determinations regarding fee rate adjustments within the time frame stipulated in Section 31(j)(2).

(iii) requiring respondents to submit more than an original and two copies of any document;

Not applicable

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

Not applicable

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

Not applicable

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Not applicable

8. Consultations Outside the Agency

² 15 U.S.C. 78ee(j)(2).

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.

10. Confidentiality

Not applicable. The information to be collected on Form R31 is not confidential.

11. Sensitive Questions

The information collection collects basic personally identifiable information that may include the name, job title, and work contact information of the individual completing Form R31 on behalf of the SRO. The agency has determined that neither a privacy impact assessment nor a system of records notice are required in connection with the collection of information.

12. Burden of Information Collection

As stated in Item 5, there are currently 31 respondents with obligations under Rule 31: 28 national securities exchanges, 1 national securities association, and 2 registered clearing agencies. Of these 31 respondents, 29 are required to file Form R31 on a monthly basis; the 2 registered clearing agencies are required to provide certain data in their possession needed by the SROs to complete Form R31, although these 2 entities are not themselves required to complete and submit Form R31. The SEC estimates that the annual compliance burden of Rule 31 on the 31 current respondents collectively will be 480 hours, or 40 hours per month. This estimate is derived as follows:

FINRA (the only respondent national securities association)

- concerning FINRA (the one national securities association), the SEC estimates that FINRA will incur a compliance burden of 2 hours per month for an annual aggregate of 24 hours (1 respondent x 12 responses/year x 2 hours/response);

Two registered clearing agencies

- concerning NSCC (one of the two registered clearing agencies), the SEC estimates that NSCC will incur a compliance burden of 6 hours per month for an annual aggregate of 72 hours (1 respondent x 12 responses/year x 6 hours/response) to provide data to the exchanges for which NSCC currently serves, and is expected to serve over the authorization period, as the designated clearing agency;

- concerning OCC (one of the two registered clearing agencies), the SEC estimates that OCC will incur a compliance burden of 4 hours per month for an annual aggregate of 48 hours (1 respondent x 12 responses/year x 4 hours/response) to provide data to the exchanges for which OCC currently serves, and is expected to serve over the authorization period, as the designated clearing agency;

Existing national securities exchanges

An exchange's compliance burden will depend on whether it trades NSCC-settled products (*i.e.*, equities), OCC-settled products (*i.e.*, options), or both;

- concerning the existing 9 OCC-only exchanges, the SEC estimates that each will each incur a compliance burden of 0.5 hour per month for an aggregate of 54 hours per year (9 respondents x 12 responses/year x 0.5 hours/response);
- concerning the existing 10 NSCC-only exchanges, the SEC estimates that each will incur a compliance burden of 1.0 hour per month for an aggregate of 120 hours per year (10 respondents x 12 responses/year x 1.0 hour/response);
- concerning the existing 9 dual exchanges, the SEC estimates that each will incur a compliance burden of 1.5 hours per month for an aggregate of 162 hours per year (9 respondents x 12 responses/year x 1.5 hours/response).

The SEC also estimates that 3 new national securities exchanges will register and become subject to the reporting requirements of Rule 31 over the course of the authorization period (*i.e.*, on average, one new exchange per year). The SEC estimates that one of these exchanges will trade only OCC-settled products, one will trade only NSCC-settled products, and one will be a dual exchange. However, it is not clear exactly when these additional respondents might register as national securities exchanges; therefore, for purposes of estimating their reporting burden, the Commission amortizes evenly the rate at which they are expected to commence activities over the next 3 years (*i.e.*, the Commission expects on average that each new respondent will become active one and a half years into the three-year authorization period). Taking into account such amortization, the number of annual responses for each new respondent will be only 6 per year instead of 12 per year because each will, on average, be reporting only for 18 out of the 36 months in the authorization period. The estimated total annual burden for the 3 new respondents will be 18 hours total, derived as follows:

- concerning the one expected OCC-only exchange, the SEC estimates that this exchange will incur a compliance burden of 0.5 hour per response multiplied by 6 responses per year for an annual aggregate of 3 hours;
- concerning the one expected dual exchange, the SEC estimates that this exchange will incur a compliance burden of 1.5 hours per response multiplied by 6 responses per year for an annual aggregate of 9 hours; and

- concerning the one expected NSCC-only exchange, the SEC estimates that this exchange will incur a compliance burden of 1.0 hour per response multiplied by 6 responses per year for an annual aggregate of 6 hours.

Based on the above, the SEC estimates that Rule 31 and Form R31 will cause the 31 existing respondents to incur an annual burden of 480 hours, and the 3 expected new respondents to incur an average annual burden of 18 hours, for a total annual burden for all respondents of 498 hours.

Below is a chart summarizing the burden calculations related to Rule 31 and Form R31. All burdens are ongoing burdens

Respondent Type	Number of Respondents	Number of Annual Responses Per Respondent	Time Per Response (Hours)	Total Annual Ongoing Burden (Hours)
FINRA	1	12	2	24
NSCC	1	12	6	72
OCC	1	12	4	48
Existing OCC Only Exchanges	9	12	0.5	54
Existing NSCC Only Exchanges	10	12	1	120
Existing Dual Exchanges	9	12	1.5	162
Annual Burden for <u>Existing</u> Respondents:				480
New OCC Only Exchange	1	6*	.5	3
New Dual Exchange	1	6*	1.5	9
New NSCC Only Exchange	1	6*	1	6
Annual Burden for <u>New</u> Respondents:				18
<i>Total Aggregate Annual Burden for All Respondents (Hours)</i>				<u>498</u>

* As explained above, the SEC estimates that the new exchanges will become active one and a half years into the three-year authorization period, meaning that they will only be filing half of the responses during the three-year authorization period that they otherwise would if they were active for the entire three-year period. Therefore, the number of annual responses per respondent

for these 3 exchanges is reduced to 6 from 12 to account for 18 months of reporting instead of 36.

13. Costs to Respondents

Not applicable. The SEC does not believe that the 31 existing or 3 expected new respondents will have to incur any capital or start-up costs, or any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements imposed by Rule 31 and Form R31.

14. Costs to Federal Government

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

15. Changes in Burden

The estimated burden hours in Item 12 have increased from 450 hours to 498 hours. This is due to the increase in the number of estimated respondents. The estimated burden hours for each response type did not change. The estimate of zero costs for Item 13 did not change.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration Date

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

Not applicable. This collection does not involve statistical methods.