

will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–47 and should be submitted on or before January 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–586, OMB Control No. 3235–0647]

Submission for OMB Review; Comment Request; Extension: Rule 204

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 204 (17 CFR 242.204), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant

must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission’s goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission’s goal of addressing potentially abusive “naked” short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (“SRO”) examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a “collection of information” within the meaning of the Paperwork Reduction Act.

Allocation Notification Requirement: As of quarter four of 2023, there were 3,429 registered broker-dealers.¹ Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). The Commission estimates that

¹The Commission’s Division of Economic and Risk Analysis (“DERA”) estimates that there were approximately 3,429 registered broker-dealers as of quarter four of 2023, based on FOCUS filings data.

a broker or dealer could have to make such determination and notification with respect to approximately 2.44 equity securities per day.² The Commission estimates a total of 2,108,424 potential notifications in accordance with Rule 204(d) across all registered broker-dealers that could be allocated responsibility to close out a fail to deliver position per year (3,429 registered broker-dealers notifying participants once per day³ on 2.44 equity securities, multiplied by 252 trading days in 2023). The total estimated annual burden hours per year will be approximately 337,348 burden hours (2,108,424 multiplied by 0.16 hours/notification⁴).

Demonstration Requirement for Fails to Deliver on Long Sales: As of December 29, 2023, there were 129 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, the Commission estimates that a participant of a registered clearing agency will have to make such a determination with respect to approximately 30 securities per day.⁵ The Commission estimates a total of 975,240 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (129 participants checking for compliance once per day on 30 securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year

²DERA estimates that there were approximately 8,378 average daily fail to deliver positions during 2023. Across 3,429 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 2.44 (8,378 ÷ 3,429) equity securities.

³Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, the Commission believes that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

⁴See Amendments to Regulation SHO, Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38265 (July 31, 2009) (“Rule 204 Adopting Release”) (July 27, 2009) (making permanent the amendments to Regulation SHO contained in Interim Final Temporary Rule 204T and incorporating by reference the time estimates from the Rule 204T Adopting Release for compliance with the notification, demonstration, and certification requirements of Rule 204).

⁵DERA estimates that during 2023 approximately 46.6% of trade volume was long. DERA estimates that there were approximately 8,378 average daily fail to deliver positions during 2023. Across 129 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 65 (8,378 ÷ 129) equity securities. 46.64% of 65 equity securities per trading day equals approximately 30 securities per day.

⁵⁶ 17 CFR 200.30–3(a)(12), (59).

will be approximately 156,038 burden hours (975,240 multiplied by 0.16 hours/demonstration⁶).

Pre-Borrow Notification Requirement: As of December 29, 2023, there were 129 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether the fail to deliver position was closed out in accordance with Rule 204(a). The Commission estimates that a participant of a registered clearing agency will have to make such determination with respect to approximately 65 equity securities per day.⁷ The Commission estimates a total of 2,113,020 potential notifications in accordance with Rule 204(c) across all participants per year (129 broker-dealer participants notifying broker-dealers once per day on 65 securities, multiplied by 252 trading days in 2023). The total estimated annual burden hours per year will be approximately 338,083 burden hours (2,113,020 multiplied by 0.16 hours/notification⁸).

Certification Requirement: As of quarter four 2023, there were 3,429 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.44 securities per day.⁹ The Commission estimates that each such registered broker-dealer could have to certify to a participant that the broker-dealer has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that the broker-dealer is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 2,108,424 times per year (3,429 registered broker-dealers certifying once per day on 2.44 securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year will be approximately

337,348 burden hours (2,108,424 multiplied by 0.16 hours/certification¹⁰).

Pre-Fail Credit Demonstration Requirement: As of quarter four 2023, there were 3,429 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.44 securities per day.¹¹ The Commission estimates that the total number of times per year that such registered broker-dealers could have to demonstrate on their respective books and records that the broker-dealer has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit is 2,108,424 times per year (3,429 registered broker-dealers checking for compliance once per day on 2.44 equity securities, multiplied by 252 trading days in 2023). The total approximate estimated annual burden hours per year will be 337,348 burden hours (2,108,424 multiplied by 0.16 hours/demonstration¹²).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,506,165 hours per year (337,348 + 156,038 + 338,083 + 337,348 + 337,348).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202410-3235-002 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 27, 2025.

Dated: December 19, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-637, OMB Control No. 3235-0687]

Proposed Collection; Comment Request; Extension: Rule 239

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 239 (17 CFR 230.239) provides exemptions under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Trust Indenture Act of 1939 (U.S.C. 77aaa *et seq.*) for security-based swaps issued by certain clearing agencies satisfying certain conditions. The purpose of the information required by Rule 239 is to make certain information about security-based swaps that may be cleared by the registered or the exempt clearing agencies available to eligible contract participants and other market participants. We estimate that each registered or exempt clearing agency issuing security-based swaps in its function as a central counterparty will spend approximately 2 hours each time it provides or update the information in its agreements relating to security-based swaps or on its website. We estimate that each registered or exempt clearing agency will provide or update the information approximately 20 times per year. In addition, we estimate that 75% of the 2 hours per response (1.5 hours) is prepared internally by the clearing agency for a total annual reporting burden of 180 hours (1.5 hours per response × 20 times × 6 respondents).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

⁶ See *supra* note 4.

⁷ See *supra* note 5.

⁸ See *supra* note 4.

⁹ See *supra* note 2.

¹⁰ See *supra* note 4.

¹¹ See *supra* note 2.

¹² See *supra* note 4.