Regulation SHO
Supporting Statement

A. Justification

1. Necessity of Information Collection

As a result of the paperwork crisis that occurred in the late 1960's, during which the number of securities transactions exceeded the securities industry's capacity to process those transactions, Congress enacted the Securities Acts Amendments of 1975.[1] The Commission has proposed Regulation SHO to replace Rules 10a-1 (17 CFR 240.10a-1), 10a-2 (17 CFR 240.10a-2) and 3b-3 (17 CFR 240.3b-3). Proposed Regulation SHO serves to prevent the market price of a security from being forced downward by unrestricted short selling. Proposed Regulation SHO would allow short sales to be executed only above the consolidated best bid, subject to certain exceptions. Proposed Regulation SHO is designed to limit short selling of a security in a declining market, by preventing short selling at successively lower prices. This reduces the ability to employ short selling as a manipulative device to accelerate a decline in the price of a security by exhausting all bids at one price level. At the same time, proposed Regulation SHO allows for relatively unrestricted short selling in an advancing market.

The Commission proposed Regulation SHO pursuant to authority under Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 17A, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k-1, 78o, 78q, 78q-1, 78w(a).

Proposed Regulation SHO, Rule 201 requires each broker-dealer that effects a sell order in any equity security to mark the order “long,” short,” or “short exempt.” Proposed Regulation SHO, Rule 201 causes a collection of information because the rule's requirement that each order ticket be marked either "long," "short," or “short exempt” is a disclosure to third parties and the public imposed on ten or more persons.

2. Purpose of, and Consequences of Not Requiring, the Information Collection

The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The purpose of the information collected is to enable regulators to monitor whether a person effecting a short sale is acting in accordance with proposed Regulation SHO. Without the requirement that each order or an equity security be marked either "long," "short," or “short exempt,” there would be no means to police compliance with Regulation SHO.

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1 ? Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

3. Role of Improved Information Technology and Obstacles to Reducing Burden

The information must be provided on an individual basis by each broker or dealer effecting a sale on an equity security. Thus, improved information technology would not reduce the burden.

4. Efforts to Identify Duplication

Not applicable; there is no duplication of information.

5. Effects on Small Entities

The rule requirements are not unduly burdensome on smaller broker-dealers.

6. Consequences of Less Frequent Collection

The information is collected as each transaction warrants and therefore there is no way to require less frequent collection without undermining the purposes of the rule.

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

The information collection is not conducted in a matter that is inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

Before adoption Commission rules are published for notice and comment.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required under the rule.

12. Estimate of Respondent Reporting Burden

Proposed Regulation SHO, Rule 201 would require all brokers or dealers to mark all sell orders appropriately as “long,” “short,” or “short exempt” for all equity securities registered under Section 12(g) of the Exchange Act. We assume that all of the approximately 6,752 registered broker-dealers effect sell orders in securities covered by proposed Regulation SHO. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that a total of 1,164,755,007 trades are executed annually.[2]

This is an average of approximately 172,505 annual responses by each respondent. Each response of marking orders "long," "short," or "short exempt" takes approximately .000139 hours (.5 seconds)[3] to complete. Thus, the total approximate estimated annual hour burden per year is 161,900 burden hours (1,164,755,007 responses @ 0.000139 hours/response). A reasonable estimate for the paperwork compliance for the proposed rules for each broker-dealer is approximately 24 burden hours (172,505 responses @ .000139 hours/response) or (161,900 burden hours / 6,752 respondents).

13. Estimate of Total Annualized Cost Burden

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rule.

14. Estimate of Cost to the Federal Government

Not applicable.

15. Explanation of Changes in Burden

No applicable.

16. Information Collections Planned for Statistical Purposes

Not applicable; there is no intention to publish the information for any purpose.

17. Explanation as to Why Expiration Date Will Not be Displayed

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

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2 In calendar year 2002 there were 545,556,000 trades on the NYSE, and 607,824,500 on Nasdaq NMS and Nasdaq SmallCap, and 11,374,507 in OTCBB, Pink Sheet, and other (gray market) securities.

3 We believe it is reasonable that it would only take 0.5 seconds or .00039 hours to mark an order "long," "short," or "short exempt."

The collection of information does not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.