

Rule 606 of Regulation NMS
Supporting Statement

A. Justification

1. Necessity of Information Collection

This information collection is required under Sections 11A(c)(1) and 17(a) of the Exchange Act. The order routing information required by Rule 606 of Regulation NMS (“Rule 606”),¹ f/k/a Rule 11Ac1-6, is necessary to further the national market system objectives set forth in Section 11A(a)(1)(C). These objectives include the economically efficient execution of orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors’ orders in the best market.

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

The purpose of the information collection is to make information about order routing practices available to the public. The information disclosed by Rule 606 is used by investors and broker-dealers. Investors use the information in selecting a broker-dealer and in determining whether the broker-dealers they have chosen are making sound order-routing decisions. Broker-dealers use the information to compete on the basis of order routing services.

If the Commission did not require broker-dealers to disclose this information, then investors would be unable to evaluate whether their orders were being routed to a market center that provides superior executions, and there would continue to be limited opportunities for fair competition among brokers based on the quality of their order routing services.

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

Rule 606 requires broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. Broker-dealers must conduct such evaluations to fulfill the duty of best execution that they owe their customers under agency law. To comply with the Rule, however, broker-dealers would incur additional burdens in preparing the reports and disseminating them on a free Internet Web site (and responding to requests for written copies of the reports).

Broker-dealers are not prohibited from using any technology that facilitates consumer

1 17 CFR 242.606. Regulation NMS, adopted by the Commission in June 2005, redesignated the national market system rules previously adopted under Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”). Rule 11Ac1-6 under the Exchange Act was redesignated Rule 606 of Regulation NMS. No substantive amendments were made to Rule 606. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

understanding and that permits review, as appropriate, by the Commission or other appropriate regulatory authorities.

4. Efforts to identify duplication

Duplication of information is not a concern; the reported information is not duplicated elsewhere.

5. Effects on Small Entities

Under the standard for determining whether a broker-dealer is a small entity in Exchange Act Rule 0-10(b), the Commission estimates that approximately 41 broker-dealers subject to Rule 606 are small entities. If any of the 41 small entities were required to comply with the Rule, the Commission staff estimates that they would expend, on average, 32 hours to prepare quarterly reports and 2 hours to respond to eight customer requests. Assuming internal compliance costs that average \$85 per hour, the aggregate cost for each small entity to comply with the Rule is estimated to be \$2890.

6. Consequences of Less Frequent Collection

The quarterly disclosures required by Rule 606 allow customer periodically to evaluate and monitor their broker-dealer's order routing decisions. A less frequent collection would limit investors' opportunities to undertake this critical evaluation.

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

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

8. Consultations Outside the Agency

The Commission has consulted with securities industry professionals.

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 regulation.

12. Estimate of Respondent Reporting Burden

The collection of information obligations of Rule 606 applies to broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that there are currently 3120 broker-dealers that are potentially subject to the collection of information obligations of Rule 606. Each of these respondents (if engaged in the business of routing non-directed orders on behalf of customers) are required to respond to the collection of information on a quarterly basis with respect to the Rule's reporting obligations, and on an ongoing basis with respect to the Rule's requirement to respond to customer requests for order routing information. The Commission believes, however, that clearing brokers primarily bear the burden of complying with the reporting and recordkeeping requirements of the Rule on behalf of small to mid-sized introducing firms. There currently are approximately 567 clearing brokers. In addition, there are approximately 1479 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden.

The Commission staff estimates that each firm significantly involved in order routing practices will incur an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 606, or a burden of 160 hours per year. With an estimated 2046 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in Rule 606 is estimated to be 327,360 hours.

Rule 606 also requires broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally bear the burden of responding to these requests. The Commission staff estimates that an average clearing broker will incur an annual burden of 400 hours (2000 responses x 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 606. With an estimated 567 clearing brokers subject to the Rule, the total burden per year to comply with the customer response requirement in Rule 606 is estimated to be 226,800 hours.

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. Estimates of Cost to the Federal Government

Not applicable.

15. Explanation of Changes in Burden

The change in burden is a result of differences in the number of broker-dealer respondents.

16. Information Collections Planned for Statistical Purposes

These are disclosures from brokers to the general public and to specific consumers who request certain information. The Commission is not collecting data. The Commission has no information to publish and no plans to publish any data for statistical or other purposes.

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.

Not applicable.