

Rule 605 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 execution information required by Rule 605 of Regulation NMS (“Rule 605”)¹, f/k/a Rule 11Ac1-5, 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 execution practices available to the public and allow investors, broker-dealers, and market centers (which include exchange markets, over-the-counter market makers, and alternative trading systems) to undertake a comparative analysis of these practices across markets. Broker-dealers may use the information to make more informed choices in deciding where to route orders for execution and to evaluate their internal order handling practices. Investors may use the information to evaluate the order handling practices of their brokers. Market centers may use the information to compete on the basis of execution quality.

If the Commission did not require market centers to disclose this information, then investors would be uninformed as to the quality of their orders executions, and there would be limited opportunities for fair competition among market centers based on the quality of their order execution services.

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

Rule 605 requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, the underlying raw data necessary to generate these reports in electronic format. Consequently, the Rule would not require substantial additional data collection burdens. Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company

¹ 17 CFR 242.605. 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 11Ac1-5 under the Exchange Act was redesignated Rule 605 of Regulation NMS. No substantive amendments were made to Rule 605. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

in the business of preparing such reports or a self-regulatory organization (“SRO”) that would generate the statistics and reports.

Market centers are not prohibited from using any technology that facilitates consumer understanding and that permits review, as appropriate, by the Commission or other appropriate regulatory authorities.

4. Efforts to identify duplication

The collections of information are unique and cover the particular circumstances of each market center. No duplication exists.

5. Effects on Small Entities

Not applicable. Neither the national securities exchanges nor any market centers that must comply with the Rule would not be considered small entities as described in the OMB guidelines for completing this Submission.

6. Consequences of Less Frequent Collection

This collection of information is intended to help investors and broker-dealers evaluate the quality of order execution of market centers. Because market conditions change frequently, a less frequent collection would not provide data that would be as timely or pertinent to the public. A monthly disclosure gives a sufficient sample of statistics to be meaningful to investors and broker-dealers in their analyses.

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

The Commission notes that market centers that are national securities exchanges or national securities associations are required to retain the collections of information required under Rule 605 for a period of not less than five years, the first two years in an easily accessible place. All other market centers are required to retain the collections of information required under Rule 605 for a period of not less than three years, the first two in an easily accessible place.

8. Consultations Outside the Agency

The Commission has consulted with market participants.

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 605 would apply to all market centers that receive covered orders in national market system securities. The Commission estimates that approximately 302 (124 market makers (not including market makers claiming an exemption from the reporting requirements of the Rule), plus 8 exchanges, 1 securities association, 111 exchange market makers, and 58 ATSSs) market centers would be subject to the collection of information obligations of Rule 605. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 605 causes respondents to spend 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 302 market centers subject to Rule 605, the total data collection cost to comply with the monthly reporting requirement is estimated to be 21,744 hours per year.

13. Estimate of Total Annualized Cost Burden

Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately \$2500 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on the \$2500 estimate, however, the monthly cost to the 302 market centers to retain service providers to prepare reports would be \$755,000, or an annual cost of approximately \$9,060,000 million.

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 market center respondents and the increase in cost burden.

16. Information Collections Planned for Statistical Purposes

These are disclosures from market centers to the general public. 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.