

## **Rule 10b-10 Supporting Statement**

### A. Justification

#### 1. Necessity for Information Collection

Rule 10b-10 under the Securities Exchange Act of 1934 (“Exchange Act”) requires broker-dealers to disclose basic trade information to customers regarding their securities transactions. The information required by rule 10b-10 includes: the date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity of the broker-dealer. In addition, depending on the trading capacity of the broker-dealer, the Rule requires the disclosure of commissions and, under specified circumstances, mark-up and mark-down information. For transactions in debt securities (other than U.S. savings bonds and municipal securities) the Rule requires the disclosure of redemption and yield information. For transactions in securities futures products in a futures account, the Rule permits alternative information disclosure requirements. This alternative information includes, the date the transaction was executed; the identity and number of shares bought or sold; the price, the delivery month, and the exchange on which the transaction was executed; the source and amount of broker remuneration; whether the broker received payment for order flow; and, the fact that other specified information about the execution of the transaction will be available upon written request.

Rule 10b-10 also requires broker-dealers to inform their customers if they are not members of the Securities Investor Protection Corporation (“SIPC”). The purpose of this disclosure is to ensure that customers are not led to believe that their accounts are subject to SIPC protection when they are not. In addition, the Rule requires broker-dealers to state on confirmations whether they receive payment for order flow.

The confirmation has become a customary tool in the industry, and it serves several functions: firms use it as a billing statement; it serves as a customer invoice; it informs customers of the details of a transaction allowing them to check for errors or misunderstandings; it provides consumer information, allowing investors to evaluate the cost and quality of the services provided by broker-dealers; it discloses possible conflicts of interest that may arise between the investor and broker-dealer; and it safeguards against fraud, by helping the customer to detect problems associated with a transaction.

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

The purpose of Rule 10b-10 is to ensure that investors are given the necessary information to evaluate their securities transactions and the broker-dealers effecting those transactions. In the absence of the rule's requirements, investors may not be fully informed of important information relating to their securities transactions.

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

Most customer confirmations are generated by automated systems, which allow confirmations to be generated in a fraction of the time it would take to generate a confirmation manually.

4. Efforts to Identify Duplication

Not applicable; there is no duplication of information.

5. Effects on Small Entities

The requirements of Rule 10b-10 are not unduly burdensome on smaller broker-dealers.

6. Consequences of Less Frequent Collection

One of the primary purposes of Rule 10b-10 is to provide customers with immediate written notification of their securities transactions so that they can monitor the trading activity in their accounts. Less frequent dissemination of trade information to customers would substantially lessen the rule's investor protection functions.

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

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

8. Consultation Outside the Agency

Not applicable.

9. Payment of Gift to Respondents

Not applicable.

10. Assurance 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

Rule 10b-10 potentially applies to all of the approximately 6,014 broker-dealers registered with the Securities and Exchange Commission that effect transactions for customers. It is important to note, however, that the confirmation is a customary document used by the industry for business reasons and is a matter of good business practices.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that registered broker-dealers process approximately 387 million order tickets per month for transactions on behalf of customers. Each order ticket representing a transaction effected on behalf of a customer results in one confirmation. Therefore, the Commission staff estimates that approximately 4,644 billion confirmations<sup>1</sup> are sent to customers annually.

The Commission staff estimates from information provided by industry participants that it takes about one minute to generate and send a confirmation. As a result, the Commission staff estimates that the annual burden to brokers, dealers and municipal securities dealers to comply with the confirmation delivery requirements of Rule 10b-10 would be 77.4 million hours.<sup>2</sup> The number of confirmations sent and the cost of the confirmations vary from firm to firm as smaller firms send fewer confirmations than larger firms because they effect fewer transactions.

13. Estimate of Total Annualized Cost Burden

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<sup>1</sup> (387 million confirmations/month x 12 months/year = 4,644 billion confirmations.)

<sup>2</sup> (4,644 billion confirmations at one minute per confirmation = 4,644 billion minutes; 4,644 billion minutes/60 minutes per hour = 77.4 million hours.)

Although the Commission has permitted broker-dealers to comply with Rule 10b-10 by means of electronic communications since 1996, informal discussions with securities industry representatives have indicated that broker-dealers only use electronic confirmations as their sole confirmations for approximately 10 percent of transactions. For the remaining 90 percent of transactions, we understand that broker-dealers continue to send paper confirmations.

The Commission staff calculates that, as a result, approximately 4,179,600,000 paper confirmations are mailed to customers each year.<sup>3</sup> According to information previously provided by industry participants, the Commission staff estimates that the average cost for paper confirmations, including postage, for a one-page confirmation is 91 cents.<sup>4</sup> Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and mailing paper confirmations would be \$3,803,436,000.<sup>5</sup>

As explained above, the Commission staff estimates that approximately 10 percent of confirmations generated are sent by electronic means alone. This means that approximately 464,400,000 wholly electronic confirmations are sent each year.<sup>6</sup> The Commission staff estimates that the cost of each wholly electronic confirmation is 52 cents.<sup>7</sup> Based on these calculations, the Commission staff estimates that the total annual cost associated with generating and sending wholly electronic confirmations is \$241,488,000.<sup>8</sup>

Based upon discussions with industry participants, the Commission staff estimates that the total annual cost associated with generating and

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<sup>3</sup> (90 percent of 4,644 billion is 4,179,600,000.)

<sup>4</sup> This estimate includes the increase in price of First Class stamps to 39 cents that went into effect on January 8, 2006.

<sup>5</sup> (4,179,600,000 paper confirmations at 91 cents a confirmation equals \$3,803,436,000.)

<sup>6</sup> (10 percent of 4,644 billion is 464,400,000.)

<sup>7</sup> (91 cents minus the cost of a 39 cent stamp.)

<sup>8</sup> (464,400,000 confirmations at 52 cents a confirmation equals \$241,488,000.)

delivering to investors the information required under Rule 10b-10 would be \$4,044,924,000.<sup>9</sup>

#### 14. Estimate of Cost to the Federal Government

Rule 10b-10 does not require that any documents be submitted to the federal government, thus no costs to the federal government are imposed directly by the Rule. Costs to the federal government are attributable to ensuring compliance with and enforcing the Rule. The cost to the federal government attributable to the operation of Rule 10b-10 is estimated at \$20,000 per year (500 reviews at one hour at a cost of \$40.00 per hour, including overhead). It should be noted that the National Association of Securities Dealers, Inc. and the New York Stock Exchange conduct their own examinations to determine compliance with confirmation rules.

#### 15. Explanation of Changes in Burden

The Commission staff has changed its estimate of burden because we believe the data and method we are currently using to produce our estimate are more reliable than the data and method used before. The change does not result from changes in the Commission's administration of the rule. The changes in burden are due to several factors. First, the Commission proposed new Rule 15c2-2 in 2004. Because proposed Rule 15c2-2 would have governed confirmation disclosure of purchases and sales in investment company and related securities, we proposed in 2004 to amend Rule 10b-10 to exclude those securities. This would have resulted in a significant number of transaction confirmations being delivered pursuant to Rule 15c2-2 instead of Rule 10b-10, thereby reducing the burdens of complying with Rule 10b-10. To date, the Commission has not adopted proposed Rule 15c2-2. As a result, purchases and sales of investment company and related securities continue to be confirmed pursuant to Rule 10b-10. The OMB approved the PRA for proposed Rule 15c2-2 (OMB Control Number 3235-0598). We therefore have added back investment company and related securities in calculating the Rule 10b-10 burden.

Second, an arithmetic error was made in our 2004 submission. The last three digits were inadvertently omitted from the number of responses stated in the Form 83-I. Instead of the 2,540,000 responses estimated in our 2004 submission, the actual estimate (excluding transactions in

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<sup>9</sup> (\$3,803,436,000 plus \$241,488,000 equals \$4,044,924,000.)

investment company shares that were to have been reported pursuant to Rule 15c2-2) should have been 2,540,000,000 responses.

Third, the Commission staff's estimate of the number of confirmations reflects the increased trading volumes of recent years. Finally, the Commission staff estimates that approximately 10 percent of all confirmations are sent electronically. The PRA from 2004 assumed that all confirmations were sent via paper media.

16. Information Collections Planned for Statistical Purposes

Not applicable.

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

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