

PAPERWORK REDUCTION ACT SUBMISSION

Rule 15a-6

SUPPORTING STATEMENT

A. Justification

1. Necessity of Information Collection

The world's securities markets rapidly are becoming international in scope. Multinational offerings have become commonplace, linkages are developing between trading markets, and U.S. and foreign broker-dealers are developing an international business, establishing offices throughout the world. Investor interest in trading in world financial markets has become widespread. Institutional investors, such as investment companies, pension funds, and major commercial banks, in particular, are active on an international basis.

As U.S. institutions increasingly invest in securities whose primary market is outside the United States, the ability of these institutions to obtain ready access to foreign markets has grown in importance. Foreign broker-dealers may offer valuable services to these U.S. investors. Foreign broker-dealers often provide opportunities to execute trades quickly in a wide range of foreign securities markets. Foreign broker-dealers also make available research reports concerning foreign companies, industries, and market environments that are major sources of information for U.S. institutional investors.

Notwithstanding the important services that may be provided by foreign broker-dealers, the Commission continues to believe that broker-dealer registration is generally necessary for foreign entities engaging in securities transactions directly with U.S. persons in U.S. markets. Registration of market professionals is a key element in the federal statutory scheme and plays a significant role in protecting investors. It promotes a baseline level of integrity among broker-dealers and their personnel dealing with investors.

In some circumstances, however, for policy reasons, the Commission believes that it is not necessary for a foreign broker-dealer effecting transactions on behalf of U.S. investors to register with the Commission. It is for this reason that the Commission adopted Rule 15a-6, the text of which is attached as Exhibit A. The rule was adopted pursuant to the Commission's exemptive authority under Section 15(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), which authorizes the Commission to issue exemptions from the broker-dealer registration requirement contained in Section 15(a)(1).

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

Paragraph (a)(3) of Rule 15a-6 provides an exemption to allow an unregistered foreign broker-dealer to effect transactions in securities with or for certain U.S. institutional investors through a U.S. registered broker-dealer, and to solicit such transactions, provided that several

conditions are complied with. Among these conditions, Rule 15a-6(a)(3)(iii)(C) requires the U.S. broker-dealer to obtain and keep a record of the information specified in Rule 17a-3(a)(12) under the Exchange Act with respect to each individual associated with the foreign broker-dealer who will be in contact with U.S. institutional investors. This requirement is intended to insure that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors. In addition, under Rule 15a-6(a)(3)(iii)(D), the U.S. broker-dealer must obtain written consents to service of process from the foreign broker-dealer and each foreign individual in contact with U.S. institutional investors, for any civil action by or proceeding before the Commission or a self-regulatory organization. Finally, Rule 15a-6(a)(3)(iii)(E) requires the U.S. broker-dealer to maintain written records of the information and consents required by the foregoing provisions, and of the trading activities of U.S. institutional investors involving the foreign broker-dealer, in an office of the registered broker-dealer located in the United States, and to make such records available to the Commission on request.

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

Not applicable.

4. Efforts to Identify Duplication

The information requested from the U.S. broker-dealer through which a foreign broker-dealer effects transactions with or for U.S. institutional investors is not duplicative, because the foreign broker-dealer is not registered as a broker-dealer with the Commission.

5. Effect on Small Entities

The rule is one of general applicability that does not depend on the size of a broker-dealer. Because the exemption is designed to apply to all registered broker-dealers that enter into arrangements with foreign broker-dealers of the type specified by the rule, the rule must apply in the same manner to small, as well as large, broker-dealers. In addition, small broker-dealers are subject to the same regulatory and recordkeeping requirements under the federal securities laws as large broker-dealers. Accordingly, the burden on small broker-dealers cannot be minimized.

6. Consequences of Less Frequent Collection

A more flexible standard of recordkeeping by U.S. broker-dealers who use the rule's exemption could jeopardize the fundamental protections that the federal securities laws provide. Moreover, because of its supervisory responsibility for the U.S. institutional investor's account, the U.S. broker-dealer is responsible for taking reasonable steps to assure itself that all transactions pursuant to the rule are solicited and effected in a manner consistent with U.S. securities laws. In this regard, for example, the U.S. broker-dealer is responsible for taking reasonable steps to assure itself that there is a reasonable basis for any recommendation made by

the foreign broker-dealer or its personnel.

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

The requirements of the rule are not inconsistent with the Guidelines of 5 CFR § 1320.5(d)(2).

8. Consultation Outside the Agency

On June 14, 1985, the Commission published for public comment a staff interpretive statement and a proposed rule addressing the broker-dealer registration requirements for foreign broker-dealers. The interpretive statement was a summary of current staff views regarding the necessity for broker-dealer registration by foreign entities. The proposed Rule 15a-6 was developed from past interpretive and exemptive positions issued by the staff.

Members of the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association ("ABA") submitted a comment letter that included an alternative formulation of proposed Rule 15a-6, which generally reflected the substance of the staff interpretive statement in an expanded rule. On September 30, 1988, shortly after receiving the ABA's comment letter, the Commission solicited comments on the proposed expanded rule.

The Commission received 32 comment letters in response to these proposals. The commentators included 3 U.S. broker-dealers, 8 foreign broker-dealers, 3 U.S. banking organizations, 2 foreign banking organizations, 3 U.S. law firms, 1 foreign law firm, members of 3 U.S. bar associations, 5 trade associations, 4 foreign securities exchanges, 1 foreign securities authority, 2 U.S. investment advisers, and 1 U.S. institutional investor. The commentators generally supported the Commission's goal of facilitating access to foreign markets by U.S. institutional investors, consistent with maintaining the regulatory safeguards afforded by broker-dealer registration. After considering these comments, the Commission adopted Rule 15a-6 on July 11, 1989, in a format similar to that suggested by the ABA in its expanded version of the proposed rule.

Public comment has not been solicited since that time.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

No assurances of confidentiality have been provided to U.S. broker-dealers. In fact, the rule would require that the U.S. broker-dealer maintain a written record of the information and consents in the United States and make such records available to the Commission upon request.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

Because U.S. registered broker-dealers are currently required by Rule 17a-3(a)(12) under the Exchange Act to maintain similar records with regard to its own registered personnel, the rule imposes minimal additional costs on U.S. registered broker-dealers. In addition, not every U.S. broker-dealer will choose to enter an arrangement with a foreign broker-dealer as contemplated by the rule. Commission staff estimates that approximately 2,000 U.S. broker-dealers are affected by the rule's requirements, and that each affected U.S. broker-dealer expends an average of 3 burden hours per year in its efforts at compliance.

The estimated costs to U.S. broker-dealers are approximately \$600,000 per year based on 2,000 affected entities and 3 hours per firm of required managerial and clerical staff time at \$100 per hour (2,000 entities x 3 hours/entity x \$100/hour = \$600,000).

Alternatively, if foreign broker-dealers desired to engage in securities transactions with U.S. persons without complying with the rule, those foreign entities could be required to comply with the broker-dealer registration requirements under the Exchange Act, resulting in significant cost to the foreign entity.

13. Estimate of Total Annualized Cost Burden

Not applicable. It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information.

14. Estimate of Cost to the Federal Government

Costs to the federal government result from Commission staff time and related overhead costs for inspection and examination for compliance with the requirements of the rule. Because the Commission inspects broker-dealers regularly, inspection for compliance with the recordkeeping requirements of this rule is part of the overall broker-dealer inspection. Thus, the Commission uses limited resources to ensure compliance with the rule. Commission staff estimates that approximately 100 hours of staff time per year are devoted to ensure compliance with the requirements of the rule at a cost of \$5,000 per year (100 hours x \$50/hour = \$5000).

15. Explanation of Changes in Burden

Not applicable.

16. Information Collections Planned for Statistical Purposes

Not applicable because the information is not used for statistical purposes.

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

Not applicable. The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

Not applicable. The Commission is not seeking an exception to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable because the collection of information does not employ statistical methods.