

Rule 611

SUPPORTING STATEMENT

1. Necessity for Information Collection

On June 29, 2005, the Commission adopted Rule 611 as part of Regulation NMS.¹ Rule 611 is designed to limit the incidence of trade executions at prices inferior to a price displayed on another market. To achieve this goal, Rule 611 requires any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker, and any other broker-dealer that executes orders internally by trading as principals or crossing orders as agent, to establish, maintain, and enforce policies and procedures reasonable designed to prevent the execution of a transaction in its market at a price that is inferior to a protected bid or offer displayed in another market at the time of execution (a “trade-through”).

Rule 611 contains one collection of information. This collection of information is found in Rule 611(b). Rule 611(b) requires any national securities exchange or national securities association that operates an SRO trading facility, alternative trading system, exchange market maker, over-the-counter market maker and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish and maintain policies and procedures reasonably designed to prevent the execution of trade-through in its market, absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception.

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

The purpose of the collection of information is to help ensure that national securities exchanges, national securities associations, alternative trading systems, exchange market makers, over-the-counter market makers and other broker-dealers that executes orders internally and their customers, subscribers, members, and employees, as applicable, generally avoid trade-throughs, as contemplated by Rule 611. Without this collection of information, respondents would not have a means to enforce compliance with the Commission’s intention to prevent trade-throughs pursuant to the Rule 611.

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

Improved information technology would not reduce the burden because each respondent would still be required to establish policies and procedures reasonably designed to prevent trade-throughs suited to any available technology.

4. Efforts to Identify Duplication

¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Not applicable; there is no duplication of information.

5. Effects on Small Entities

The rule's requirements are not be unduly burdensome on smaller broker-dealers. No other small entities are affected by the rule.

6. Consequences of Less Frequent Collection

Less frequent collection of information under the Rule 611 would undermine the purpose of the rule.

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

Not applicable; the information is collected in a manner consistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

Not applicable. The proposed rule was published for notice and comment by members of the public.

9. Payment or Gifts to Respondents

Not applicable.

10. Assurances of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable; no questions of a sensitive nature are asked.

12. Estimate of Respondent Reporting Burden

The Commission staff estimates that it would take approximately 60 hours annually per respondent to ensure that the policies and procedures established are up-to-date and remain in compliance with the Commission's rule: two hours per month of internal legal time and three hours per month of internal compliance time. The annual aggregate burden for all respondents

combined for this collection of information is estimated to be 47,280 hours² [788 respondents³ x 60 hours annually]. The estimated cost for an in-house attorney is \$295 per hour and the estimated cost for an assistant compliance director in the securities industry is \$301 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours x 12 months x \$295) x 788] + [(3 compliance hours x 12 months x \$301) x 788] = \$14,117,808.⁴

13. Estimate of Total Annualized Cost Burden

The annual cost burden, as required, will be zero.⁵

14. Estimate of Cost to Federal Government

Not applicable.

15. Explanation of Changes in Burden

The one-time hour burden associated with developing the required policies and procedures is no longer applicable. With respect to the estimated annual hour burden, the number of respondents reflects an increase in the number of automated trading systems and firms that were registered equity market makers or specialists at year-end 2006, and an increase in the number of national securities exchanges that trade NMS stocks. Additionally, the total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. The estimate of the annualized cost burden originally consisted of one-time startup costs that are no longer applicable.

16. Information Collections Planned for Statistical Purposes

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

² Please note that the 60 Day Notice to extend the effectiveness of Rule 611 stated the annual hour burden as 36,540, which does not reflect the increase in the number of respondents; see Securities and Exchange Commission Proposed Collection; Comment Request, 73 FR 5600 (January 30, 2008).

³ This estimate includes nine national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 731 firms that were registered equity market makers or specialists at year-end 2006, as well as automated trading systems that operate trading systems that trade NMS stocks.

⁴ The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2007*, adjusted by the SEC staff for an 1800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. See Securities Exchange Act Release No. 50870 (Dec. 16, 2004), 69 FR 77424 (Dec. 27, 2004) at notes 427, 428 and accompanying text.

⁵ The cost burden originally consisted of one-time startup costs that are no longer 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 collections of information do not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.