

Rule 609 and Form SIP

Supporting Statement

A. Justification

1. Necessity for Information Collection

Section 11A(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> as added by the Securities Acts Amendments of 1975,<sup>2</sup> generally makes it unlawful for any exclusive processor directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a Securities Information Processor (“SIP”) unless it is registered with the Securities and Exchange Commission (“Commission”) or exempted from registration by the Commission.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. 78k-l(b)(1).

<sup>2</sup> Pub. L. No. 94-29 (June 4, 1975).

<sup>3</sup> Section 3(a)(22)(A) of the Act, (15 U.S.C. 78c(a)(22)(A)) defines the term “securities information processor” as used in Section 11A(b) of the Act, as follows:

The term “securities information processor” means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations.... [The provision goes on specifically to exclude certain categories of persons who otherwise would meet the definition of a SIP.]

Section 3(a)(22)(B) of the Act, (15 U.S.C. 78c(a)(22)(B)) defines the term “exclusive processor” as used in Section 11A(b) of the Act, as follows:

The term “exclusive processor” means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

Section 11A(b)(3) of the Act<sup>4</sup> requires the Commission, upon filing of an application for SIP registration, to publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning the application. Within 90 days of the date of publication of the notice, the Commission must either grant the application or institute proceedings to determine whether registration should be denied. The Commission is required to approve the application if it finds that the SIP is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP, carry out its functions in a manner consistent with Section 11A of the Act, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently.

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

Commission Rule 609<sup>5</sup> (formerly Rule 11Ab2-1) and Form SIP<sup>6</sup> which were originally adopted by the Commission in 1975<sup>7</sup> pursuant to its authority under Sections 2, 3, 11A and 23 of the Act,<sup>8</sup> establish the procedures by which SIPs may amend their registration statements to correct inaccurate information. The information filed with the Commission pursuant to Rule 609 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public who may wish to comment on the information provided. Without the information, the Commission is not able to determine whether the SIP has the capacity to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP, and to carry out its functions in a manner consistent with Section 11A of the Act.

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

Not applicable.

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<sup>4</sup> 15 U.S.C. 78k-l(b)(3).

<sup>5</sup> 17 CFR 242.609. Regulation NMS redesignated the Commission's National Market System rules. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>6</sup> 17 CFR 249.1001.

<sup>7</sup> See Securities Exchange Act Release No. 11673 (September 23, 1975), 40 FR 45422 (October 2, 1975).

<sup>8</sup> 15 U.S.C. 78b, 78c, 78k, and 78w.

4. Efforts to Identify Duplication

Not applicable; SIPs need to register with the Commission only once.

5. Effects on Small Entities

Not applicable.

6. Consequences of Less Frequent Collection

The Commission's receipt of information is dependent upon the SIP applicant and therefore could not be collected less frequently.

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

Not applicable. The Rule is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

No consultation was attempted because there are no pending SIP registrants and all data on previously approved SIP registrants is viewed as accurate and current. The public was given an opportunity to comment before the SIP requirements were approved.

9. Payment or Gifts to Respondents

Not applicable.

10. Assurances of Confidentiality

The information collected is generally not confidential. A respondent may request that some of the information provided be confidential, in such case it will be treated as such if appropriate under the Freedom of Information Act.

11. Sensitive Questions

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

12. Estimate of Respondent Reporting Burden

Under Rule 609 and the instructions to Form SIP, applicants for registration as a SIP must file four copies of Form SIP with the Commission. If any information reported in items 1-13 or item 21 of Form SIP, or in any amendment, is or becomes inaccurate, whether before or after registration has been granted, the SIP must promptly file an amendment on Form SIP correcting the information. The amendment need contain only the facing page, the signature

page, and any pages on which an answer is being amended, together with any exhibits that are being amended.

There are currently only two SIPs registered with the Commission. We do not anticipate other SIPs registering in the foreseeable future. Nonetheless, we have assumed the burden of information collection is estimated to involve approximately 1 respondent application for registration making 1 response per year and that it takes an estimated 400 hours to comply with the registration requirements.<sup>9</sup>

### 13. Estimate of Total Annualized Cost Burden

Based on our communications with previous applicants for registration, it appears that the cost of registration may range from approximately \$10,000 to \$15,000, with the average cost being approximately \$12,000. These figures were computed in the following manner:

150	hours of professional work	@	\$50 =	7,500.00
250	hours of clerical work	@	\$15 =	3,750.00
	printing and supplies		=	1,000.00
				\$12,250.00

### 14. Estimate of Cost to Federal Government

On an annual basis, the Commission received approximately one Form SIP filed pursuant to Act. Rule 609 and Form SIP were developed by the Commission in 1975. There are no agency records prior to Fiscal Year 1980 that would permit us to compute the cost of developing the Rule and Form. Based on our experience with reviewing and processing Form SIPs, we believe that the operation costs of a typical application should amount to approximately \$5,400. This figure includes the cost per hour for the 72 hours of staff labor. For purposes of this estimate, we have valued related overhead at 35 percent of the value of staff time. This estimate has been computed based on the GSA, Guide to Estimating Reporting Costs (1986).

### 15. Explanation of Changes in Burden

Not applicable.

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<sup>9</sup> ? We have not included in these estimates the burden hours or cost of amending a Form SIP because we have already overstated the compliance burdens by assuming that we receive one initial registration pursuant to Rule 609 on Form SIP a year. We estimate the cost of amending Form SIP to be minimal at less than \$1,000 per year.

16. Information Collections Planned for Statistical Purposes

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

17. Explanation as to Why Expiration Date will not be displayed

Not applicable.

18. Exceptions to Certification

Not applicable.