

Supporting Statement for Rule 104 of Regulation M

A. Justification

1. Necessity of Information Collection

a. Background

Congress granted broad rulemaking authority to the Commission in Sections 9(a)(2), 10(b), and 15(c) under the Securities Exchange Act of 1934 (Exchange Act) to combat manipulative abuses in whatever form they may take. In exercising its authority, the Commission has focused on the market activities of persons participating in a securities offering and determined that securities offerings present special opportunities for manipulation that require specific regulatory attention. On December 20, 1996, the Commission adopted Regulation M, consisting of new Rules 100 through 105, which govern the activities of underwriters, issuers, selling security holders, and others in connection with a securities offering. Regulation M significantly eased regulatory burdens on offering participants by eliminating the trading restrictions for underwriters of actively traded securities; reducing the scope of coverage for other securities; reducing restrictions on issuer plans; providing a more flexible framework for stabilizing transactions; and deregulating rights offerings.

b. Overview of Rule 104

Rule 104 governs stabilizing and certain aftermarket syndicate activities in connection with an offering, and makes it unlawful for any person to stabilize, to effect any syndicate-covering transaction, or to impose a penalty bid in contravention of the rule's provisions. The purpose of Rule 104 is to permit underwriters and syndicate members to conduct stabilizing transactions in compliance with the rule's pricing and other terms for the purpose of preventing or retarding a decline in the market price of a security to facilitate an offering.

c. Information Collection Requirements

Rule 104 requires disclosure and recordkeeping of persons engaged in stabilization and certain aftermarket activities. Regulation M as a whole incorporated many previously-existing requirements of the trading practices rules, together with their information collection requirements. However, by removing many categories of activities, securities, and persons from anti-manipulation regulation, Regulation M reduced the burdens of anti-manipulation regulation.

Rule 104 requires any person who enters a bid that such person knows is for the purpose of stabilizing the price of any security to notify the market on which the bid is placed, and to disclose the purpose of such bid to the person to whom the bid is entered (e.g., the specialist or executing broker-dealer). Rule 104 also requires any person effecting a syndicate covering transaction, or placing or transmitting a penalty bid, to disclose that fact to the self-regulatory organization (SRO) that has direct oversight authority over the principal market in the United States for the security for which the syndicate covering transaction is effected, or the penalty bid is imposed. In addition, when a person subject to Rule 104 conducts transactions in securities and the price of those securities may be or has been stabilized, that person is required to send a purchaser, at or before completion of the transaction, a document containing a statement required by Item 502(d)(1)(i) of Regulations S-B and S-K. Last, any person that is subject to Rule 104 by virtue of effecting syndicate covering, stabilizing, or penalty bid transactions is also subject to the recordkeeping requirements of Exchange Act Rule 17a-2. Rule 17a-2 is covered in a separate Paperwork Reduction Act filing.

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

The records required pursuant to Rule 104 may be used by the Commission in examinations or investigations of underwriting activities and to review aftermarket activity. The disclosure required in Rule 104 is also used by investors to evaluate a security for investment purposes in light of possible stabilizing and related activities.

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

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 104. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. Efforts to Identify Duplication

The information required by each of the rules described herein does not duplicate that required by any other federal regulation. At the time Regulation M and related amendments were proposed, the Commission solicited and received comments without receiving any reference to federal regulations that may duplicate the requirements mandated by Regulation M. The Commission continues to believe that there is no duplication of the information required by the rules described herein.

5. Effects on Small Entities

The information requirements of Rule 104 apply equally to all entities, regardless of the entity's size. Although Rule 104 requires additional records concerning stabilizing bids, the Commission believes this imposes little, if any, additional burden because underwriters already are required to keep detailed syndicate account records. Further, the Commission believes that broker-dealers that act as distribution participants (and are thus subject to the rule) are unlikely to qualify as small entities. The additional disclosure in the offering materials and notification to SROs as required in the rule are generally the duty of the lead underwriter in an offering, which, due to the amount of capital necessary to act in that role, is unlikely to qualify as a small entity.

6. Consequences of Less Frequent Collection

Not applicable.

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

The collection of information requested in the rules described herein is conducted in a manner consistent with the guidelines in 5 C.F.R.1320.5(d)(2).

8. Consultations Outside the Agency

The amendments adopted by the Commission in 1996 were subject to public review and comment following the issuance of a Concept Release in 1994 and a Proposing Release in 1996.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

No questions of a sensitive nature are asked.

12. Estimates of Respondent Reporting Burden

The Commission believes that stabilizing bids rarely occur, therefore there is no basis upon which to calculate the burden of this requirement. In 2006, there were 795 firm commitment (and thus subject to Rule 104) offerings. The Commission estimates that disclosing penalty bids would require six minutes per offering. In addition, the Commission estimates that disclosure of syndicate covering transactions to also require six minutes per offering. Using 795 respondents per year, as discussed above, this disclosure would require an estimated 159 hours (12 minutes times 795 respondents divided by 60 minutes per hour) over the course of a year.

13. Estimates of Total Annualized Cost Burden

The Commission estimates that a typical employee of a broker-dealer charged to ensure compliance with Commission regulations receives annual compensation of \$117,000. This compensation is the equivalent of \$56.25 per hour (\$117,000 divided by 2,080 payroll hours per year). Based on that estimate, the Commission estimates that the annual salary cost to comply with Rule 104 is \$8,943.75 (\$56.25 per hour times 159 hours).

14. Estimated Cost to the Federal Government

The government does not experience significant costs based on the disclosure and recordkeeping requirements of Rule 104. The information collected by the respondents is normally reviewed only pursuant to an investigation, not as a matter of routine.

15. Explanation of Changes in Burden

The increase in burden hours overall is due to an increase in the amount of firm commitment offerings in 2006 from the firm commitment offering calculation used in prior years. The increase in burden hours is also attributable to the Commission including an estimate for Rule 104 for the disclosure burden relating to syndicate covering transactions. The increase in total annualized cost burden is due to inflation adjustments to the annual compensation for the typical employee charged with compliance with Commission regulations. There are no other changes in the burden.

16. Information Collection Planned for Statistical Purposes

Not applicable. There are no plans to require the publication of these records in the future.

17. Explanation of Why Expiration Date Will Not Be Displayed

Not applicable.

18. Exceptions to the Certification

Not applicable.

B. Collecting Information Employing Statistical Methods

Not applicable.