

SUPPORTING STATEMENT

A. Justification

1. Necessity For Information Collection

The Commission adopted Rule 15c2-5 (17 CFR 240.15c2-5) to counter abuses in transactions known as “equity funding” programs, which involve the sale of securities coupled with the extension of credit not subject to Regulation T (12 CFR 220). In these transactions, a broker-dealer sells securities to a customer, and the securities act as collateral for loans. The proceeds of the loans are used to fund the premiums on a life insurance policy which is sold to the customer. Prior to the adoption of Rule 15c2-5, broker-dealers offered such programs without determining and documenting their suitability for customers. In addition, customers were inadequately informed of the nature and extent of their obligations under the program, the charges to be incurred, and the risks assumed, as well as the fact that a substantial portion of the payments would go to the broker-dealer. See Securities Exchange Act Release No. 34-6851 (July 17, 1962). Although Rule 15c2-5 was prompted by the abuses associated with equity funding programs, the Rule is broadly worded to encompass other transactions that share the same characteristics as these programs.

Rule 15c2-5 prohibits a broker-dealer from arranging or extending certain loans to persons in connection with the offer or sale of securities unless, before any element of the transaction is entered into, the broker-dealer: (1) delivers to the person a written statement containing the exact nature and extent of the person’s obligations under the loan arrangement; the risks and disadvantages of the loan arrangement; and all commissions, discounts, and other remuneration received and to be received in connection with the transaction by the broker-dealer or certain related persons (unless the person receives certain materials from the lender or broker-dealer which contain the required information); and (2) obtains from the person information on the person’s financial situation and needs, reasonably determines that the transaction is suitable for the person, and retains on file and makes available to the person on request a written statement setting forth the broker-dealer’s basis for determining that the transaction was suitable.

The Commission is statutorily authorized by Section 15(c)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 USC 78o(c)(2)), to adopt rules and regulations that define and prescribe means reasonably designed to prevent acts and practices that are fraudulent, deceptive or manipulative. Further statutory authority is in Section 23(a) of the Exchange Act (15 USC 78w).

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

The information required by the Rule is necessary to execute the Commission’s mandate under the Exchange Act of preventing fraudulent, manipulative, and deceptive acts and practices by broker-dealers. In addition, the information required by the Rule provides a potential investor in an equity funding program, or similar transaction, with the opportunity to determine whether the investment is prudent and suitable.

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

The collection of information is done on an individual transactional basis. Thus, improved technology would not reduce the burden.

4. Efforts To Identify Duplication

Not applicable; there is no duplication of information.

5. Effects On Small Entities

To the extent that some broker-dealers covered by the Rule are small entities, the Rule would impact these entities. The impact would, however, be mitigated by the lower number of Rule 15c2-5 transactions these firms execute. Moreover, a prudent businessperson would comply with the Rule in the ordinary course of business.

6. Consequences of Less Frequent Collection

The information is collected as each transaction warrants, and therefore the collection cannot be less frequent without undermining the purpose of the Rule.

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

The collection of information is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. This comment period is generally thirty days, which affords the public an opportunity to respond to any such proposals.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

No assurances of confidentiality are provided in the Statute or the Rule. The records required by Rule 15c2-5 would be available only to the Commission staff, state securities authorities, and Self Regulatory Organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)),

the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

Not applicable; questions of a sensitive nature are not asked.

12. Estimate of Respondent Reporting Burden

The Commission estimates that there are approximately 50 respondents that require an aggregate total of 600 hours to comply with the rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hour to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is \$40.00 for clerical labor,¹ resulting in a total compliance cost of \$24,000 (600 hours @ \$40.00 per hour).

13. Estimate of Total Annualized Cost Burden

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule; and (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in Item 12 above) to comply with the rule.

14. Estimate of Cost to Federal Government

The Commission staff estimates that there is no annual cost to the federal government associated with Rule 15c2-5.

15. Explanation of Changes in Burden

The total compliance cost of \$24,000 in Item 12 is \$9,000 more than the current OMB inventory of \$15,000. This increase represents an adjustment in the cost of clerical labor from \$25.00 per hour to \$40.00 per hour.

16. Information Collection Planned for Statistical Purposes

¹ This figure is based on the SIFMA Report on Office Salaries in the Securities Industry 2007 and is the average annual salary for a General Clerk modified by Commission staff to account for an 1,800-hour work year multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

Not applicable; the Commission does not publish information collected pursuant to Rule 15c2-5.

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

Not applicable.

B. Collection of Information Employing Statistical Methods

Not Applicable.