

PAPERWORK REDUCTION ACT SUBMISSION

Rule 12a-5 and Form 26

SUPPORTING STATEMENT

A. Justification.

1. Necessity of Information Collection.

Section 12(a) of the Securities Exchange Act of 1934 (“Act”) generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a-5 (“Rule”) under the Act and Form 26 (“Form”) were adopted by the Commission in 1936 and 1955, respectively, pursuant to Sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 12a-5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of Section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a-5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the Rule, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a-5, including: (1) the name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

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

The Commission generally oversees the national securities exchanges. This mission requires that, under Section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a-5. Without the Rule and the Form, the Commission would be unable fully to implement these statutory responsibilities.

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

The Commission and the national securities exchanges continue to improve their systems for information gathering and compilation through increasing use of computer technology. While the burden associated with complying with the requirements of Rule 12a-5 and Form 26 is small, the Commission staff believes that increasingly sophisticated information technology has played a significant role in minimizing the exchanges' reporting burden.

4. Efforts to Identify Duplication.

Duplication of information is not a concern; the reported information is not duplicated elsewhere.

5. Effect on Small Business.

Not applicable; the Rule and the Form are not so burdensome as to require different procedures for small entities. Furthermore, none of the national securities exchanges subject to the Rule would be considered a small business as that term applies to this Item 5.

6. Consequences of Less Frequent Collection.

Subparagraph (d) of Rule 12a-5 requires that an exchange promptly file a notification with the Commission on Form 26 after taking action to admit any security to trading under the provisions of the Rule. Because the information required by the Rule and the Form is not otherwise available to the Commission, the requirements of the Rule and the Form are necessary for the Commission to be able to comply fully with its statutory responsibilities. Any reduction in the frequency of such collection would undermine the purpose of the Rule.

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

The requirements of Rule 12a-5 and Form 26 are consistent with the general information collection guidelines imposed for public protection as set forth in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Commission.

Before adoption, Commission rules are published for notice and comment.

9. Payment or Gift to Respondents.

Not applicable; no payments or gifts are required to be made or are made to respondents.

10. Assurance of Confidentiality.

Not applicable; the Rule contains no assurance of confidentiality. The information collected is public information.

11. Sensitive Questions.

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

12. Estimate of Respondent Reporting Hour Burden.

There are currently 11 national securities exchanges subject to Rule 12a-5. The Commission staff estimates that there could be as many as one Form 26 filed every five years. Accordingly, each respondent would submit approximately .02 responses per year (1 response \div 5 years \div 11 respondents). Typically, the reporting burdens may not be spread evenly among the exchanges but, for purposes of this Item 12, the staff has assumed that each exchange files an equal number of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Therefore, the annual aggregate compliance burden for all respondents in a given year would be approximately 4 minutes (20 minutes/report \times .2 reports/year = 4 minutes),¹ and for each respondent the annual compliance burden would be approximately .36 minutes (4 minutes/year \div 11 respondents = .36 minutes), or .006 hours.

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, \$43.23 per response. The staff has computed such cost as follows:

10 minutes of professional time @ \$168/hour	=	\$28.00
10 minutes of clerical time @ \$73/hour	=	\$12.17
Printing and supplies	=	<u>\$3.06²</u>
Total:		\$43.23

Therefore, the staff estimates that the total annual related reporting cost per respondent is \$.86 (.02 responses/respondent/year \times \$43.23 cost/response), for a total annual related cost to all respondents of \$9.46 (\$.86 cost/respondent \times 11 respondents).

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; (b) it is not anticipated that the respondents will have to

¹ For administrative purposes, however, the submission to OMB will reflect 1 response per year and an annual burden of 1 hour.

² For administrative purposes, the submission to OMB will reflect an annual cost burden of 1 hour.

incur any additional operational or maintenance cost (other than as provided for in Item 12) to comply with the Rule.

14. Estimate of Cost to Federal Government.

Rule 12a-5 and Form 26 were originally developed in 1936 and 1955, respectively. There are no Commission records prior to fiscal year 1981 that would permit the Commission staff to compute the cost of developing the Rule and the Form.

Concerning ongoing costs to the federal government, based on the Commission staff's experience with reviewing and processing Form 26 notifications, the staff believes that the annual operational costs to the Commission of a typical notification should amount to approximately \$.57 (.02 responses/year x .17 hours of professional time @ \$168/hour = \$.57).

15. Explanation of Changes in Burden.

The Commission staff's estimate of the number of Forms 26 was lowered to reflect the number of Forms 26 actually filed: one since 2002. At the same time, the Commission staff's estimates of the costs of submitting and reviewing each Form 26 were increased to reflect the rate of inflation. In particular, the Commission staff applied: (a) the SIFMA Management & Professional Salaries Data (Sept. 2007) to project the labor costs; and (b) the Consumer Price Index, which calculated 13% inflation since 2005, to recalculate the cost of printing.

16. Information Collections Planned for Statistical Purposes.

Not applicable; the Commission does not publish information collected pursuant to Rule 12a-5.

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

Not applicable; the Commission does not seek authorization not to display the OMB approval expiration date.

18. Exceptions to Certification.

The supporting statement does not indicate how long records specified in the collection are to be maintained by persons required to maintain the records or state that the agency has dedicated resources to ensure the proper use and processing of the information being collected to enhance (as appropriate) the value of the information to agencies and the public because they are inapplicable.

B. Collection of Information Employing Statistical Methods.

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