

## **PAPERWORK REDUCTION ACT SUBMISSION**

### **Rule 11a1-1(T)**

### **Supporting Statement**

#### **A. Justification**

##### **1. Necessity of Information Collection**

In the Securities Act Amendments of 1975, Section 11(a) of the Securities Exchange Act of 1934 (“Exchange Act”) was amended to prohibit any member of a national securities exchange from effecting transactions on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion, subject to certain exceptions. Section 11(a) was intended to displace Exchange Act Rule 19b-2, which required each national securities exchange to adopt a rule or rules specifying that every member of the exchange must have, as the principal purpose of its exchange membership, the conduct of public securities business. Under Rule 19b-2, an exchange member would be deemed to have such a purpose if at least 80% of the volume of its exchange securities transactions effected by it during the preceding six calendar months were effected for or with persons other than affiliates or were effected pursuant to types of transaction specified in the rule.

Section 11(a)(1)(G) exempts from the operation of Section 11(a)(1) transactions of certain exchange members that are effected in compliance with rules of the Commission. These rules must, as a minimum assure that the transaction is consistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.<sup>1</sup> The Commission adopted Rule 11a1-1(T) (17 CFR 240.11a1-1(T), the “proprietary trading rule” pursuant to Section 11(a)(1)(G) under the Act. See Exchange Act Release No. 12055 (January 27, 1976) (adopting the rule).

Rule 11a1-1(T) provides that a transaction effected on a national securities exchange for the account of a member which meets the requirements of Exchange Act Section 11(a)(1)(G)(i)<sup>2</sup> shall be deemed, in accordance with Exchange Act Section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to

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<sup>1</sup> Section 11(a)(1)(G)(ii).

<sup>2</sup> Section 11(a)(1)(G)(i) requires that the member for whose account transactions are being effected be primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities. These members’ gross income also normally must be derived principally from such business and related activities.

yield priority, parity, and precedence in the execution of an order for the account of a person who is not a member or associated with members of the exchange if such transaction is effected in compliance with certain disclosure requirements.

In particular, an exchange member must disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated (Rule 11a1-1(T)(a)(1)). Moreover, any such member through whom that bid or offer is communicated must disclose to others participating in effecting the order that it is for the account of a member (Rule 11a1-1(T)(a)(1)). Finally, immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange must clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member (Rule 11a1-1(T)(a)(2)).

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

The information required by the rule is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under Section 11(a) of the Exchange Act. This general prohibition is part of the Commission's mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business. Without these requirements, it would not be possible for the exchanges and the Commission to monitor compliance with the preference requirements of the rule.

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

The compilation of this information must be done on a transaction by transaction basis. Thus, improved information technology would not reduce the burden.

4. Efforts to Identify Duplication

Not applicable; there is no duplication of information.

5. Effect on Small Entities

The rule requirements are not unduly burdensome on smaller broker-dealers.

6. Consequences of Less Frequent Collection

The information is collected as each transaction warrants and therefore there is no way to require less frequent collection without undermining the purposes of the rule.

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

This information collection is not conducted in a manner that is inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

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

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

No assurances of confidentiality are provided in the rule.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required under the rule.

12. Estimate of Respondent Reporting Burden

There are approximately 1,151 respondents that require an aggregate total of 32 hours to comply with this rule. Each of these approximately 1,151 respondents makes an estimated 20 annual responses, for an aggregate of 23,020 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 32 hours ( $23,020 \times 5 \text{ seconds}/60 \text{ seconds per minute}/60 \text{ minutes per hour} = 32 \text{ hours}$ ). The approximate cost per hour is \$519,<sup>3</sup> resulting in a total cost of compliance for the annual burden of \$16,608 (32 hours @ \$519).

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 incur any additional operational or maintenance cost to comply with the rule.

14. Estimate of Cost to Federal Government

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\$519/hour figure for a floor broker on the NYSE is from the SIFMA's *Management & Professional Earnings in the Securities Industry 2007*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

During fiscal years 2006, 2007, and 2008, staff did not issue any interpretative letters concerning the rule. There is no estimated operation costs associated with this rule.

15. Explanation of Changes in Burden

It was previously estimated that there would be approximately 1,000 respondents that would require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents would make an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response would take approximately 1 minute to complete. Thus, the total compliance burden per year would be 333 burden hours (20,000/60 minutes per hour = 333 burden hours). The approximate cost per hour is \$100, resulting in a total cost of compliance for the respondents of \$33,333 (333 hours @ \$100).

The revisions to the estimate are due to market changes over time and changes in market participant salaries. Specifically, the revised estimate is based on a revised estimated number of respondents, a revised response time, and a revised hourly cost of compliance. There are approximately 1,151 members of floor based exchanges estimated to potentially respond pursuant to the rule, which is an increase of 151 estimated respondents (1,151 – 1,000 = 151 respondents). It is estimated that each respondent makes 20 annual responses. This figure remains unchanged, but as a result of an increase in the estimated number of respondents the annual estimated number of responses increased by 3,020 (23,020 – 20,000 = 3,020 responses). It is estimated that each response takes approximately 5 seconds to complete, which is a decrease of 55 seconds per response (1 minute x 60 seconds/minute = 60 seconds; 60 seconds – 5 seconds = 55 seconds per response). In turn, the estimated annual compliance burden decreased by 301 hours (333 hours – 32 hours = 301 hours). The approximate cost per hour is estimated based on the hourly rate for a floor broker of \$519.<sup>4</sup> Although this is an increase in the approximate per hour cost, the actual estimated cost of compliance decreased by \$16,392 (\$33,000 – \$16,608 = \$16,392) because the total estimated annual hour compliance burden decreased.

16. Information Collection 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.

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See supra note 3.

19. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementations of such methods reduce the burden or improve the accuracy of results.