

PAPERWORK REDUCTION ACT SUBMISSION

RULE 9b-1

SUPPORTING STATEMENT

A. Justification

1. Necessity for Information Collection

In February 1979, the Commission published the Report of the Special Study of the Options Market (“Options Study”), which identified several problems arising from efforts to accommodate listed options trading within the existing framework for registering securities under the Securities Act. The Options Study found that the requirements to provide information on the mechanics and risks of options trading, as well as information about the issuer, made the prospectus lengthy and complicated and did not meet the needs of options investors, many of whom may lack the financial background needed to understand the relatively technical descriptions presented in the registration statement. The Options Study concluded that information relating to options and the trading markets for options should be separated from information about the issuer and that the information concerning listed options should be presented in a “readily understandable” manner to a reader without a financial background.

Based on these findings, the Options Study recommended that a specifically tailored Exchange Act disclosure document be developed into which certain of the information currently in the options prospectus would be moved. It was contemplated that this disclosure document would present a description of the risks and uses of options trading in a manner that would be intelligible to unsophisticated investors. Rule 9b-1 (17 CFR 240.9b-1), which was adopted in 1982 in conjunction with two other rules, implemented this Options Study recommendation.

Rule 9b-1 requires that prior to purchasing or selling a contract for a standardized option, an investor must receive a copy of the options disclosure document (“ODD”). Under this options disclosure system, the ODD, rather than a traditional prospectus, is an investor's primary source of information about standardized options. Rule 9b-1 also sets forth the specific categories of information required to be disclosed in the ODD and requires the ODD to be filed with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b-1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers.

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

The information in the ODD is intended to enhance investor understanding of standardized options by presenting all essential information about such options in a readable

form. The ODD, rather than a traditional prospectus, is an investor's primary source of information about standardized options. Investors who may be interested in more detailed information about the issuer of the options may request a prospectus from the options market(s) on which the standardized options trade.

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

In May 1996, the Commission issued an interpretive release that permits the use of electronic media to deliver, among other things, the ODD to investors.

4. Efforts to Identify Duplication

Rule 9b-1 permits two or more options markets to work together in formulating a single disclosure document covering options traded on each participating options market.

5. Effect on Small Entities

Some of the broker-dealers that are subject to Rule 9b-1 are small entities. The staff, however, believes that the rule requirements are not unduly burdensome on smaller broker-dealers. The information contained in the ODD is in a standardized format prepared by the options markets and, therefore, does not need to be generated internally by the broker-dealer. The broker-dealer is required to deliver the ODD and any amendments only once with respect to each customer. The expense of providing this information would be limited to delivery, either through postal mail or electronically.

6. Consequences of Less Frequent Collection

The ODD furnished to customers is a substitute for a prospectus. If such disclosure were less frequent, customers might not have the information necessary to properly understand standardized options prior to purchase.

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

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

8. Consultations Outside the Agency

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

9. Payment or Gift to Respondents

The respondents receive no payments or gifts.

10. Assurance of Confidentiality

There is no assurance of confidentiality provided by Rule 9b-1.

11. Sensitive Questions

No information of a sensitive nature is required to be disclosed by Rule 9b-1.

12. Estimate of Respondent Reporting Burden

There are six options markets that must comply with Rule 9b-1. These six respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately three amendments per year. The ODD is generally filed on behalf of the options markets by the options clearing corporation (“OCC”). The OCC also works on the drafts and submits the ODD amendments to the Commission.¹ The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total compliance burden for options markets per year is 144 hours (6 options markets x 8 hours per amendment x 3 amendments).

In addition, the staff estimates that there are approximately 1,500 broker-dealers subject to Rule 9b-1, and that each of these firms will process an average of three new customers for options each week. Thus, each respondent will have to furnish approximately 156 ODDs per year. The staff calculates that the furnishing of the ODD should take no more than one-half minute per customer, resulting in a total compliance burden for each broker-dealer of 78 minutes, or 1.3 hours. Thus, the total ongoing respondent burden for the broker-dealers is an aggregate annual burden is 1,950 hours (1,500 broker-dealers x 1.3 hours).

Therefore, the sum of the compliance burden for all respondents, both options markets and broker-dealers, is 2,094 hours per year (144 + 1,950).

The estimated cost of compliance for options markets is \$295 per hour for an in-house attorney,² for an annualized cost burden of \$42,480. The estimated cost of

¹ While the OCC assists the options exchanges in preparing ODD amendments and submitting them to the Commission, these hours are not included in the burden estimate because the OCC is not a “respondent” for purposes of PRA. Instead, the hours that the Commission staff estimates that the OCC spends on behalf of the options exchanges in preparing and submitting ODD amendments are incorporated in the total estimated burden hours for the options exchanges.

² The \$295/hour figure for an attorney is from SIFMA’s Management & Professional Earnings in the Securities Industry 2007, modified by the 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.

compliance for broker-dealers is \$40 per hour for a general clerk,³ for an annualized cost burden of \$78,000. The sum of the compliance costs for all respondents, both options markets and broker-dealers, is \$120,480 per year. These figures were computed in the following manner:

144	hours of legal work of the options exchanges	@	\$295 = \$42,480
1,950	hours of administrative work of broker-dealers (general clerk)	@	\$40 = \$78,000
			\$120,480

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 Rule 9b-1; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in Item No. 12 above) to comply with the Rule.

14. Estimate of Cost to Federal Government

Cost to the federal government results from appropriate regulatory agency staff time and related overhead cost devoted to assuring compliance by broker-dealers with the requirements of the rule and reviewing any ODDs and amendments filed by OCC on behalf of the options markets. The staff estimates that approximately 165 hours of staff time per year is devoted to this activity, at a cost of \$50 per hour, for a total cost of \$8,250 for staff time. This amount was based upon our computation of the value of staff time devoted to this activity and the related overhead. This estimate was computed based upon GSA, Guide to Estimating Reporting Costs (1973).

15. Explanation of Changes in Burden

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 estimated number of amendments to the ODD per year, and a revised hourly cost of compliance.

First, the estimated number of ODD amendments prepared by the options markets per year increased from one to three. It is estimated

³ The \$40/hour figure for a general clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.92 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

that each options market will spend approximately eight hours on the preparation and filing of each amendment. Thus, the previous compliance burden estimate was 48 hours (6 options markets x 8 hours per amendment x 1 amendment per year). This compliance burden has increased by 96 hours for a total compliance burden of 144 hours (6 options markets x 8 hours per amendment x 3 amendments per year).

In addition, there are currently approximately 1,500 broker-dealers and 6 options markets that must comply with the rule. This figure represents a decrease of 500 respondents who must comply with the rule, specifically a decrease of 500 broker-dealers.⁴ It is estimated that each of these broker-dealer respondents will process an average of three new customers for options each week and therefore have to furnish approximately 156 ODDs per year. The delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden of 1.3 hours per broker-dealer. These figures remain unchanged, but as a result of a decrease in the estimated number of broker-dealer respondents, the annual estimated total compliance burden decreased by 650, equaling a total compliance burden of 1,950 hours per year.

Thus, the current estimated total compliance burden for all respondents under this rule (both options markets and broker-dealers), is 2,094 hours per year (144 + 1,950). This estimated total compliance burden has decreased by 554 hours (2,648 hours - 2,094).⁵

The approximate cost per hour is estimated based on the hourly

⁴ It was previously estimated in the Form 83-I that there were a total of 2000 respondents. However, the staff believes that this figure mistakenly omitted the options markets respondents, counting only the broker-dealer respondents. Thus, the total number of respondents should have been 2006, while the current estimated total number of respondents is 1506, resulting in a decrease of 500 respondents.

⁵ The staff notes that it believes that the total number of annual responses set forth in the last PRA extension on Form 83-I was incorrect. The figure provided was 160 total annual responses. However, the staff believes that that figure should have been 312,006 total annual responses [(2000 broker dealers x 156 ODDs per year) + (6 options markets x 1 ODD amendment per year)]. The current estimated total annual responses is 234,018 [(1500 broker dealers x 156 ODDs per year) + (6 options markets x 3 ODD amendments per year)]. Thus, the total estimated number of responses per year has decreased by 77,988.

rate for an attorney of \$295 (previously estimated at \$100/hour) and an hourly rate for a general clerk of a broker-dealer of \$40 (previously estimated at \$10/hour). This is an increase in the approximate per hour cost, and therefore the actual estimated cost of compliance increased by \$89,680 ($\$120,480 - \$30,800 = \$89,680$).

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.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods.