

November 06, 2009

## **Supporting Statement for Approval of Collection of Information**

### A. JUSTIFICATION

#### **1. Explain the circumstances that make this collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

A.1. Title I of the Government Securities Act of 1986 (Pub. L. 99-571) ("the GSA") added Section 15C to the Securities Exchange Act of 1934, requiring that the Secretary of the Treasury promulgate regulations concerning, among other things, financial responsibility of government securities brokers and dealers and safeguarding of customer securities and balances. The Government Securities Act Amendments of 1993 (Pub L. 103-202) ("the GSAA") permanently reauthorized Treasury's rulemaking authority. The GSA states that the rules must require every government securities broker and dealer to make reports, including annual audited financial statements, and submit them to supervisory agencies. According to the GSA, the Secretary is also required to promulgate recordkeeping requirements specifying records to be made and kept and the periods of time for which they must be maintained (Attachment A). The purpose of the regulations and the associated recordkeeping and reporting requirements continues to be the enhancement of investor protection in the government securities market, combined with the maintenance of a fair, efficient, and liquid market.

Title II of the GSA requires the Secretary to promulgate regulations concerning holdings by depository institutions of government securities for customers, as custodian, fiduciary, or otherwise (Attachment B). These regulations are designed to protect investor holdings of government securities at locations other than with brokers and dealers, thereby assuring the safety and security of investments in U.S. Treasury and other government securities.

Final regulations implementing the GSA were published in the Federal Register on July 24, 1987. Amendments to the regulations involving the collections of information have been published from time to time since the final regulations were implemented. The information collections expire January 31, 2010. The regulations, as amended, are codified at 17 CFR Chapter IV.

Two amendments to the regulations are briefly described here because of their specific focus. First, the Market Reform Act of 1990 (Reform Act) authorized the Securities and Exchange Commission (SEC) and the Treasury to promulgate risk assessment rules for diversified and municipal securities brokers and dealers and for specialized government securities brokers and dealers, respectively (Attachment C). Treasury's amendment to the GSA regulations, which incorporates the SEC risk assessment rules with only minor modifications, was published on April 26, 1995, and applies only to specialized government securities brokers and dealers (registered government securities brokers and dealers). Treasury's risk assessment rules require registered government securities brokers and dealers to maintain and file

information concerning certain of their affiliates with the SEC. The purpose of the rules is to strengthen investor confidence and the integrity of the market.

Secondly, Section 104 of the GSAA authorized Treasury to adopt rules requiring specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities, to file reports and maintain records regarding such positions (Attachment D). Treasury's large position rules, which were published on September 12, 1996, established recordkeeping and reporting requirements for entities that control large positions in certain Treasury securities. On December 18, 2002, Treasury issued final rule amendments to the large position rules. These amendments modified the formula for the large position calculation and required affected firms to identify their positions in a more detailed manner. The reporting of these positions assures the continued safety, liquidity and efficiency of the Treasury securities market.

A copy of the relevant portions of the GSA, the GSAA and the respective regulations authorizing or mandating the collection of information is attached (Attachment A through D).

## **2. Indicate how, by whom and for what purpose is this information used?**

A.2 The information collected has and will be used by the regulatory agencies with enforcement jurisdiction over government securities brokers and dealers and depository institutions, namely the SEC, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration, as well as self-regulatory organizations supervised by the SEC. The information is essential for carrying out the objectives of the GSA -- dealer financial responsibility and investor (customer) protection. A failure to collect, or an interruption in collecting the information, would result in an inability to implement the GSA through enforcement of its implementing regulations. This would frustrate the intent of Congress and could result in problems in the government securities market.

The information collected related to Treasury's risk assessment rules has and will be used by the SEC to specifically monitor the financial risk posed to specialized government securities brokers and dealers -- and to the securities markets as a whole -- as a result of certain financial and securities activities conducted by affiliates within holding company structures. The SEC will use the information collected for surveillance, enforcement and other regulatory purposes. Without the information, the SEC would not be able to monitor the impact of potentially damaging activities of affiliates on the specialized government securities brokers and dealers and the securities markets.

The information collected related to Treasury's large position rules has and will be used by the Federal Reserve Bank of New York (FRBNY), the SEC and the Treasury to better understand the possible reasons for any apparent significant price distortions and the possible causes of market shortages in certain Treasury securities. It is anticipated that the information will be collected infrequently and will be used by FRBNY and the SEC for surveillance, enforcement and other regulatory purposes. Due to the high large position reporting threshold

(minimum of \$2 billion) which will be announced in a particular request for information, it is expected very few entities will likely file large position reports. Since the large position rules became fully effective on March 31, 1997, Treasury has announced eleven calls for large position reports, (June 9, 1997; June 8, 1998; July 12, 1999; September 13, 2000; June 4, 2001; July 8, 2003; August 23, 2004; September 14, 2005; July 5, 2006; November 27, 2007; and November 7, 2008).

**3. Describe whether, and to what extent this collection of information involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology? What consideration is given to use information technology to reduce burden?**

A.3. The regulations do not prevent or discourage the development of electronic records and reports and the use of computers to generate the required records and reports. Most specialized government securities brokers and dealers employ automated systems for computing their financial responsibility requirements. Also, Treasury's large position rules specifically allow the reporting entities to develop and generate their own reports provided the reports contain all of the required information. This allows firms the opportunity to integrate the report into their existing systems. Many larger government securities market participants employ automated systems for aggregating and computing their securities positions.

On October 27, 1997, the Treasury issued two interpretive letters that permit specialized government securities brokers and dealers and financial institutions to use electronic media to deliver hold-in-custody repurchase agreement confirmations and to store records under the GSA regulations. The letter to specialized government brokers and dealers also permits certain other customer account information and certain financial reports to be sent electronically. The letter to financial institutions also allows depository institutions that are custodians of government securities to use electronic media to transmit confirmations/safekeeping receipts and to store records under the GSA rules.

Regarding the provision of electronic agency services, various Internet notification mail lists are available at Public Debt's website. There are over 2,000 members on the Government Securities Act regulation list as well as on the Large Position Reports list. Anyone signing up on these lists will receive an e-mail notifying them that Treasury has issued a proposed or final rule amendment, interpretation, or call for large position reports.

In addition, Treasury has made certain forms electronically available on its website. The "Report on Finances and Operations of Government Securities Broker-Dealers" (Parts I, II, IIA, III, and Schedule 1), the "Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer" and the "Uniform Termination Notice for Person Associated with a Financial Institution Government Securities Broker or Dealer" forms can all be accessed and downloaded electronically for ease of use.

**4. Describe efforts are used to identity duplication? Why can't any similar information already available be used or modified for use for the purposes described in Item 2 above?**

A.4. In implementing the regulations, the Treasury reduced duplication in several ways. First, registered broker-dealers are exempt from filing any of the forms or keeping almost any of the records to avoid duplication with their responsibilities under other sections of the Securities Exchange Act of 1934. The obligations of financial institutions and their government securities employees are similarly limited to prevent regulatory overlap. Second, the required records are, for the most part, those of good business practice, and in the case of registered government securities brokers and dealers, conform to SEC requirements, with which many of these firms were previously familiar. Third, the forms have been modified and are, in essence, limited versions of existing SEC and bank regulatory forms, with which virtually all the registered and noticed entities are familiar.

Also, to reduce regulatory duplication, various sections of the regulations require compliance with SEC regulations with only minor modifications. In addition, a number of the forms used are modifications or simplifications of the existing SEC forms. The recordkeeping and reporting requirements and forms are designed so that entities already filing similar information are exempt from having to re-file the same information. The requirements are applicable to entities not otherwise reporting.

Treasury's risk assessment rules provide for an exemption from all of their requirements if the specialized government securities broker or dealer has an affiliated registered broker or dealer that is subject to, and in compliance with, the SEC's risk assessment rules, provided that all of the material associated persons of the specialized government securities broker or dealer are also material associated persons of the registered broker or dealer. Specialized government securities brokers and dealers are not otherwise required to provide the information required by the risk assessment rules. The SEC, therefore, would have no assurance of receiving the information, or comparable information, in the absence of Treasury's rules.

Also, certain associated persons of specialized government securities brokers or dealers that are within the scope of Treasury's risk assessment rules are under the regulatory supervision of the Commodity Futures Trading Commission, a Federal banking agency, a state insurance commissioner or other regulators. The rules permit specialized government securities brokers or dealers to utilize, wherever possible, information required by other regulatory agencies in discharging their risk assessment recordkeeping and reporting obligations. For example, the rules permit associated persons of specialized government securities brokers or dealers that are supervised by a Federal banking agency to submit, without reformatting, copies of reports already made for the use of such banking agency. Similar provisions are provided for insurance companies that are associated with specialized government securities brokers or dealers.

In developing Treasury's large position rules, the Department examined existing securities-related recordkeeping rules of the SEC, Treasury, and the bank regulatory agencies. The Department concluded that reportable positions could be constructed relatively easily from these required records. Therefore, Treasury's large position rules do not provide for any new substantive recordkeeping rules for aggregating entities that are subject to existing federal recordkeeping requirements, and that are not designated filing entities.

On May 25, 2005, Treasury issued an amendment to the GSA regulators for the custodial holding of government securities by depository institutions to include savings associations subject to the fiduciary standards of the OTS. This change was made because the OTS had put examination procedures in place and Treasury wanted to ensure that OTS regulated savings associations are eligible for the same conditional exemptions as depository institutions regulated by other bank regulators and are not subject to duplicate requirements.

On September 15, 2006, Treasury issued a technical amendment to the GSA regulations to state explicitly that Treasury deems over-the-counter (“OTC”) derivatives dealers to be in compliance with the GSA regulations if they comply with the applicable SEC OTC derivatives dealer rules and other SEC applicable rules.

**5. If this collection of information impacts small businesses or other small entities, what methods are used to minimize burden?**

A.5. The Department does not believe the information collections have had or will have a significant impact on a substantial number of small entities. The ultimate number of small entities affected by the recordkeeping and reporting requirements is uncertain. At the time of implementation, the Department attempted to minimize the burden hours by including a series of exemptions in the regulations, and through the use of SEC-based forms, with which a number of small entities the Department was able to contact were already familiar. The Department believes that these steps have served to minimize the burden on small entities.

Specifically, with regard to Treasury’s large position rules referenced above, the rules provide for a minimum large position threshold of \$2 billion, in any particular Treasury security, for the reporting and recordkeeping requirements. The Department does not believe any small entities will control positions of such magnitude and thus, the rules are not applicable to small firms.

Further, with regard to Treasury’s risk assessment rules, Treasury estimates that all of the small entities that are specialized government securities brokers and dealers qualify for at least one of the recordkeeping and reporting exemptions in the regulations. For example, the rules provide for an exemption for specialized government securities brokers and dealers that do not carry customer accounts and maintain capital of less than \$20 million. There is also an exemption for firms that maintain capital of less than \$250,000 (regardless of whether they carry customer accounts).

**6. What consequences to Federal program or policy activities and what, if any, technical or legal obstacles to reducing burden will occur if this collection is not conducted or is conducted less frequently?**

A.6. The required recordkeeping records are essential to responsible business operations by government securities brokers and dealers. Failure to maintain these records on a regular basis would most likely cause operational difficulties. Since the financial positions of government securities dealers can change quickly, monthly filing of financial reports is essential for identification of problems, enforcement, and investor protection. Regular reporting helps to avoid having to shut down or completely liquidate a dealer by early identification of potential

problems. Less frequent, or no reporting is required for firms less at risk, such as, introducing brokers and financial institutions holding securities for customers.

Treasury's risk assessment rules parallel the SEC risk assessment rules and enable the quarterly collection of timely and complete financial information concerning the activities of affiliates of specialized government securities brokers and dealers whose activities are reasonably likely to have a material impact on the broker or dealer for surveillance and other regulatory purposes. Timely and accurate information is an essential element of the rules. Less frequent collection of the required information would reduce the regulators' ability to assess the risks to the brokers and dealers, customers and the securities markets caused by affiliates of the broker or dealer.

Treasury's large position rules require reporting only on an infrequent basis (once a year, on average), primarily in response to pricing anomalies or market shortages in a specific Treasury security. When requested by the Treasury, timely and accurate information, to be reported by holders of large positions, is essential. Large position reports are intended to provide regulators with information on concentrations of control for market surveillance purposes and for enforcement of the securities laws. The reported information will help ensure the Treasury securities market remains liquid and efficient, and is not subject to manipulation. If the collection of information is not conducted, the Treasury may not be able to take appropriate action in response to possible attempts to manipulate the government securities market.

**7. Is this collection of information conducted in a manner consistent with the guidelines of 5 CFR 1320.6?**

A.7. The need for monthly reporting is described in response to question 6. In some cases, record retention may be required for up to six years to enable any enforcement action to cover the full period under the applicable statute of limitations.

As previously described regarding Treasury's large position rules, Treasury expects that an announcement which will require holders of large positions to file the appropriate report will be an infrequent event. This would only be in response to an unusual market occurrence or condition. Although it is possible that such an unusual market condition could occur more than once in a three-month period, it is expected that requests for large position reports will occur far less frequently. Treasury intends to request large position reports at least annually to ensure that market participants remain knowledgeable of the rules, specifically as to how to calculate and report a reportable position. Respondents will submit an original report for each date that large position information is requested in an announcement by Treasury. It is possible that FRBNY or Treasury may need to occasionally conduct follow-up inquiries on some of the reported information.

When Treasury announces a call for large position reports, reports must be received by FRBNY before 12:00 noon, Eastern Time, on the fourth business day following issuance of the Treasury press release. Since the call for reports is precipitated by an unusual market event or security pricing anomaly, this relatively short response time is necessary to enable the Treasury to make better and more timely decisions regarding possible government actions that may be

needed in response to market events to ensure the safety, liquidity, and efficiency of the Treasury market.

Large position information is by its very nature proprietary trade information of those firms that deal in government securities and as such will be treated as confidential by FRBNY, the SEC and Treasury and handled accordingly in a secure fashion. The GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act at 5 U.S.C. 552(b)(3)(B). Some of the information received by the SEC related to the risk assessment rules is also proprietary and is treated by the SEC as confidential and is handled in a secure fashion.

**8. What effort was made to notify the general public about this collection of information?**

A.8. The Department published in the Federal Register on September 29, 2009 (74 FR 49915) (copy attached) a notice and request for comments concerning the extension of information collections under the regulations that were issued pursuant to the GSA. The comment period closed on November 16, 2009. No public comments were received on the notice.

The Department consults on a regular basis with other regulatory agencies collecting similar information and having jurisdiction over government securities brokers and dealers and over depository institutions, namely, the SEC, Board, OCC, FDIC and OTS. The Department also consults with the relevant self-regulatory organizations, such as the Financial Industry Regulatory Authority (FINRA), government securities brokers and dealers of all types and sizes, trade associations, professional associations, and individual professionals serving government securities brokers and dealers. In addition, the Department has and will continue to solicit comments whenever it proposes changes to the recordkeeping and reporting requirements as part of proposed amendments to the regulations, which provides an opportunity for affected parties to comment on the information collection. As part of the development of the large position rules, the Department published an Advance Notice of Proposed Rulemaking (ANPR) on January 24, 1995, in order to involve market participants and interested parties at the earliest phase of the rulemaking process. The Department has responded to numerous inquiries, oral and written, concerning the regulations and continues to do so on an on-going basis.

**9. What decision was made to provide any payment or gift to respondents, other than reenumeration of contractors or grantees?**

A.9. No payments or gifts will be provided to respondents.

**10. What assurance of confidentiality was provided to respondents and what was the basis for the assurance in statute, regulations, or agency policy?**

A.10. With the exception of the submission of financial statements, no assurances of confidentiality beyond those outlined in the Freedom of Information Act and implemented in the Department's regulations at 31 CFR Part 1 are promised. Section 405.2 of the regulations

adopts SEC Rule 17a-5 (17 CFR 240.17a-5(e)(3)), which assures the confidentiality of financial statements when filed separately.

The reports required under Treasury's risk assessment rules are made to the specialized government securities brokers' or dealers' appropriate regulatory agency, the SEC. The information required is specifically afforded confidentiality, notwithstanding any other provision of law.

The GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act at 5 U.S.C. 552(b)(3)(B).

**11. What justification is there for questions of a sensitive nature?**

A.11. No questions of a sensitive nature, (e.g., such as sexual behavior and attitudes, religious beliefs, and other matters that are generally considered private) have or will be asked.

**12. What is the estimated hour burden of this collection of information?**

A.12. The regulations contain a number of separate reporting and recordkeeping requirements, each of which is likely to be applicable to a different number of respondents. Based upon current counts and estimates of the number of respondents, plus SEC estimates of time and cost of filing, where available, for similar information and parallel forms, the burden is estimated as shown in Table 1.

Based upon current information, there are presently 4 registered government securities brokers and dealers subject to the full set of regulations. Of the 4 registered government securities brokers and dealers, none are currently subject to Treasury's risk assessment rules. There are 1734 registered broker-dealers who are required to comply with portions of the regulations relating to their government security business. These broker-dealers report to and are monitored by the SEC; therefore their hours are not counted in Treasury's totals. In addition, approximately 55 financial institutions are required to comply with portions of Subchapter A. The Department estimates that there are approximately 1,273 depository institutions required to comply with Subchapter B.

As shown in Table 1, we estimate that the annual cost to all respondents will be \$9,879,060. The cost per hour for some sections in Table 1 have been increased generally based upon SEC parallel paperwork submissions and Treasury estimates.

**13. What is the estimated total annual cost burden to respondents or recordkeepers resulting from this collection of information?**

A.13. This submission for approval by OMB is for an extension of a currently approved collection. We are not aware of start-up costs to respondents associated with this extension. As stated in response to question A.8, Treasury did not receive any public comments in response to the notice it published requesting comments on the extension of information collections under



these regulations. The identified costs associated with burden hours are addressed in questions A.12 or A.14.

**14. What is the annualized cost to the Federal Government?**

A.14. Based upon data provided by the SEC in connection with its parallel paperwork submissions and Treasury's estimates, the total annualized cost to the Federal government is estimated to be \$149,600. Cost estimates are shown in Table 1.

**15. What is the reason for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I?**

A.15. The 3,671 hour burden decrease in Item 13 of OMB Form 83-I is primarily due to the reduction in the number of government securities brokers and government securities dealers since 2007. Previously approved information collection number is 1535-0089.

**16. For collections of information whose results will be published, outline plans for tabulation and publication.**

A.16. Not applicable since there are no plans to publish this information.

**17. If seeking approval to not display the expiration date for OMB approval of this information collection, what are the reasons that the display would be inappropriate?**

A.17. It is not necessary to display an expiration date for regulations.

**18. What are the exceptions to the certification statement?**

A.18. Not applicable since there are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

**B. This collection does not employ statistical methods.**

B. Not applicable since the regulations do not employ statistical methods.