

# **PAPERWORK REDUCTION ACT SUBMISSION**

## **SUPPORTING STATEMENT for the Paperwork Reduction Act Extension for Rule 611**

### A. Justification

#### 1. Necessity of Information Collection

On June 29, 2005, the Commission adopted Rule 611 as part of Regulation NMS.<sup>1</sup> Rule 611 is designed to limit the incidence of trade executions at prices inferior to a price displayed on another market. To achieve this goal, Rule 611 requires any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker, and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a protected bid or offer displayed in another market at the time of execution (a “trade-through”).

Rule 611 contains one collection of information. This collection of information is found in Rule 611(b). Rule 611(a) requires any national securities exchange or national securities association that operates an SRO trading facility, alternative trading system, exchange market maker, over-the-counter market maker and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish and maintain written policies and procedures reasonably designed to prevent the execution of a trade-through in its market, absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception.

#### 2. Purpose and Use of the Information Collection

The purpose of the collection of information is to help ensure that national securities exchanges, national securities associations, alternative trading systems, exchange market makers, over-the-counter market makers and other broker-dealers that execute orders internally and their customers, subscribers, members, and employees, as applicable, generally avoid trade-throughs, as contemplated by Rule 611. Without this collection of information, respondents would not have a means to enforce compliance with the Commission’s intention to prevent trade-throughs pursuant to the Rule 611.

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<sup>1</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

3. Consideration Given to Information Technology

Improved information technology would not reduce the burden because each respondent would still be required to establish policies and procedures reasonably designed to prevent trade-throughs suited to any available technology.

4. Duplication

Not applicable; there is no duplication of information.

5. Reducing the Burden on Small Entities

The rule's requirements are not be unduly burdensome on smaller broker-dealers. No other small entities are affected by the rule.

6. Consequences of Not Conducting the Collection

Less frequent collection of information under the Rule 611 would undermine the purpose of the rule.

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

Not applicable; the information is collected in a manner consistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011 (76 FR 15002). No comments were received.

9. Payment or Gift

The respondents receive no payments or gifts.

10. Confidentiality

Not applicable.

11. Sensitive Questions

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

12. Burden of Information Collection

The Commission staff estimates that it would take approximately 60 hours annually per respondent to ensure that the policies and procedures established are up-to-date and remain in compliance with the Commission's rule: two hours per month of internal legal time and three hours per month of internal compliance time. The annual aggregate burden for all respondents combined for this collection of information is estimated to be 39,480 hours [658 respondents<sup>2</sup> x 60 hours annually]. The estimated cost for an in-house attorney is \$354 per hour and the estimated cost for an assistant compliance director in the securities industry is \$320 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours x 12 months x \$354) x 658] + [(3 compliance hours x 12 months x \$320) x 658] = \$13,170,528.<sup>3</sup>

13. Costs to Respondents

The annual cost burden, as required, will be zero.<sup>4</sup>

14. Costs to Federal Government

Not applicable.

15. Reason for Change

The one-time hour burden associated with developing the required policies and procedures is no longer applicable. With respect to the estimated annual hour burden, the number of respondents reflects a decrease in the number of firms that were registered equity market makers or specialists at year-end 2009, as well as a decrease in alternative trading systems, and an increase in the number of national securities exchanges that trade NMS stocks. Additionally, the total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an

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<sup>2</sup> This estimate includes thirteen national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 601 firms that were registered equity market makers or specialists at year-end 2009, as well as 43 alternative trading systems that operate trading systems that trade NMS stocks.

<sup>3</sup> The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010*, modified by Commission staff for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>4</sup> The cost burden originally consisted of one-time startup costs that are no longer applicable.

assistant compliance director. The estimate of the annualized cost burden originally consisted of one-time startup costs that are no longer applicable.

16. Information Collection Planned for Statistical Purposes

Not applicable; there is no intention to publish the information for any purpose.

17. Display of OMB Approval Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

The collections of information do not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.