

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission for
Rule 104 of Regulation M**

A. Justification

1. Necessity of Information Collection

a. Background

Congress granted broad rulemaking authority to the Commission in Sections 9(a)(2), 10(b), and 15(c) under the Securities Exchange Act of 1934 (Exchange Act) to combat manipulative abuses in whatever form they may take. In exercising its authority, the Commission has focused on the market activities of persons participating in a securities offering and determined that securities offerings present special opportunities for manipulation that require specific regulatory attention. On December 20, 1996, the Commission adopted Regulation M, consisting of new Rules 100 through 105, which govern the activities of underwriters, issuers, selling security holders, and others in connection with a securities offering. Regulation M significantly eased regulatory burdens on offering participants by eliminating the trading restrictions for underwriters of actively traded securities; reducing the scope of coverage for other securities; reducing restrictions on issuer plans; providing a more flexible framework for stabilizing transactions; and deregulating rights offerings.

b. Overview of Rule 104

Rule 104 governs stabilizing and certain aftermarket syndicate activities in connection with an offering, and makes it unlawful for any person to stabilize, to effect any syndicate-covering transaction, or to impose a penalty bid in contravention of the rule's provisions. The purpose of Rule 104 is to permit underwriters and syndicate members to conduct stabilizing transactions in compliance with the Rule's pricing and other terms for the purpose of preventing or retarding a decline in the market price of a security to facilitate an offering.

c. Information Collection Requirements

Rule 104 requires disclosure and recordkeeping¹ of persons engaged in stabilization and certain aftermarket activities. Regulation M as a whole incorporated many previously-existing requirements of the trading practices rules, together with their information collection requirements. However, by removing many categories of activities, securities, and persons from anti-manipulation regulation, Regulation M reduced the burdens of anti-manipulation regulation.

Rule 104 requires any person who enters a bid that such person knows is for the purpose of stabilizing the price of any security to notify the market on which the bid is placed, and to disclose

¹ The recordkeeping requirement is through application of Rule 17a-2, in connection with which there is a separate PRA filing.

the purpose of such bid to the person to whom the bid is entered (e.g., the specialist or executing broker-dealer). Rule 104 also requires any person effecting a syndicate covering transaction, or placing or transmitting a penalty bid, to disclose that fact to the self-regulatory organization (SRO) that has direct oversight authority over the principal market in the United States for the security for which the syndicate covering transaction is effected, or the penalty bid is imposed. In addition, when a person subject to Rule 104 conducts transactions in securities and the price of those securities may be or has been stabilized, that person is required to send a purchaser, at or before completion of the transaction, a document containing a statement required by Item 508(l) Regulation S-K. Lastly, any person that is subject to Rule 104 by virtue of effecting syndicate covering, stabilizing, or penalty bid transactions is also subject to the recordkeeping requirements of Exchange Act Rule 17a-2. Rule 17a-2 is covered in a separate Paperwork Reduction Act filing.

2. Purpose and Use of the Information Collection

The records² required pursuant to Rule 104 may be used by the Commission in examinations or investigations of underwriting activities and to review aftermarket activity. The disclosure required in Rule 104 is also used by investors to evaluate a security for investment purposes in light of possible stabilizing and related activities.

3. Consideration Given to Information Technology

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 104. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. Duplication

The information required by each of the rules described herein does not duplicate that required by any other federal regulation. At the time Regulation M and related amendments were proposed, the Commission solicited and received comments without receiving any reference to federal regulations that may duplicate the requirements mandated by Regulation M. The Commission continues to believe that there is no duplication of the information required by the rules described herein.

5. Effect on Small Entities

The information requirements of Rule 104 apply equally to all entities, regardless of the entity's size. Although Rule 104 requires additional records³ concerning stabilizing bids, the Commission believes this imposes little, if any, additional burden because underwriters already are required to keep detailed syndicate account records. Further, the Commission believes that broker-

² Id.

³ Id.

dealers that act as distribution participants (and are thus subject to the rule) are unlikely to qualify as small entities. The additional disclosure in the offering materials and notification to SROs as required in the rule are generally the duty of the lead underwriter in an offering, which, due to the amount of capital necessary to act in that role, is unlikely to qualify as a small entity.

6. Consequences of Not Conducting the Collection

Not applicable.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 C.F.R.1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

The Commission believes that stabilizing bids rarely occur, therefore there is no basis upon which to calculate the third party disclosure burden of this requirement. In 2012, there were 795 firm commitment (and thus subject to Rule 104) offerings. The Commission estimates that disclosing penalty bids to third parties would require six minutes per offering. In addition, the Commission estimates that disclosure of syndicate covering transactions to third parties would also require six minutes per offering. Using 795 respondents per year, as discussed above, the third party disclosure would require an estimated 159 hours (12 minutes times 795 respondents divided by 60 minutes per hour) over the course of a year.

There are internal labor cost burdens associated with this rule. The Commission estimates that a typical employee of a broker-dealer charged to ensure compliance with Commission regulations receives compensation of \$63.00 per hour. The \$63.00 per hour figure for a Compliance Clerk is from *SIFMA's Office Salaries in the Securities Industry 2012*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. Based on that estimate, the Commission estimates that the annual internal cost of compliance for Rule 104 is \$10,017.00 (\$63.00 per hour times 159 hours).

13. Costs to Respondents

There are no external capital, start-up, operation, or maintenance costs associated with this rule.

14. Costs to Federal Government

The government does not experience significant costs based on the disclosure and recordkeeping requirements of Rule 104.⁴ The information collected by the respondents is normally reviewed only pursuant to an investigation, not as a matter of routine.

15. Changes in Burden

The increase in annual burden hours from 149 to 159 is due to an increase in the amount of firm commitment offerings from 745 to 795.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collecting Information Employing Statistical Methods

This collection does not involve statistical methods.

⁴ Id.