

**Supporting Statement
for the Paperwork Reduction Act
Information Collection Submission for
Rule 102 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 Rules

Rule 102 covers issuers and other persons on whose behalf a distribution is being made and their affiliated purchasers ("issuer participants"). Rule 102 applies only during a "restricted period," which commences one or five business days prior to the day of the pricing of the offered security and continues until the distribution is over. The length of the restricted period is based on the trading volume of the offered security. Rule 102, unlike Rule 101 of Regulation M, does not contain a general exception for actively traded securities, although a limited exception is included for certain actively-traded reference securities.

c. Information Collection Requirements

Rule 102 requires persons participating in a distribution to collect certain information to determine whether the rule would apply, and if so, for what period of time. Regulation M 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.

(i). Exceptions from Rule 102

(a). Exclusion of Actively-Traded Securities

Rule 102 excepts reference securities with an average daily trading volume (ADTV) valued at \$1 million or more that are issued by an issuer whose common equity securities have a public float value of at least \$150 million. Rule 102 requires the ADTV to be calculated for the two full calendar months preceding the filing of the registration statement. To use this exception, a distribution participant must examine publicly available market data to calculate the ADTV.

(b). Other Securities

The ADTV of other securities remaining subject to the restrictions of Rule 102 determines the length of the restricted period for a particular security. As with excepted securities, distribution participants and issuer participants may obtain publicly available data to calculate ADTV of a particular security.

(c). "Affiliated Purchasers"

Rule 102 applies to any "affiliated purchaser" of a distribution participant, issuer, or selling security holder. Regulation M, however, provides an exception to the definition of affiliated purchaser where the distribution participant or issuer participant have certain information barriers in place. This exception requires the participant to establish, maintain, and enforce written policies and procedures to prevent the flow of information between itself and its affiliates. Such participants must also obtain an annual, independent assessment of the operation of such policies and procedures.

2. Purpose and Use of the Information Collection

A distribution participant (*i.e.*, the syndicate manager) performs ADTV calculations to determine whether a reference security is excepted from Rule 102, or to determine the applicable restricted period. This information is not used by the Commission.

A distribution participant may establish information barriers to segregate the activities of itself and its affiliates. Construction of these barriers permits the affiliates of a distribution participant, issuer or selling security holder to be excepted from Rule 102. The annual audit assures such distribution participant that the policies are effective. The Commission only examines the policy and audit in investigations of potential violations of the rule.

3. Consideration Given to Information Technology

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 102. 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 102 apply equally to all entities engaging in an offering, regardless of the entity's size. The Commission believes that the requirements of Rule 102 are not unduly burdensome on small entities.

6. Consequences of Not Conducting 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)

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. 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

a. Restricted Periods.

The syndicate manager of each secondary offering calculates the ADTV and issuer public float value to determine the restricted period, if any, that must be observed under Rules 102. In 2012, there were 795 underwritten offerings. For each of these, the Commission estimates it takes approximately one hour to calculate the ADTV and determine the applicable restricted period. Thus, in 2012, approximately 795 hours in the aggregate are required for these calculations under Rule 102. In addition, the Commission estimates that in approximately 50 self-underwritten offerings per year the issuer would calculate the ADTV. Approximately 50 hours are required annually for these calculations by issuers. In many circumstances, however, the collection of information is unnecessary because the ADTV is self-evident (i.e., the ADTV is extremely high or extremely low). This collection is a recordkeeping type of collection.

b. Information Barriers.

The Commission estimates that approximately 100 broker-dealers acting as distribution participants in offerings covered by Regulation M seek to exempt the activities of an affiliate from the regulations of Rule 102. The Commission estimates that the annual audit of the written policies and procedures concerning information barriers takes approximately 10 hours, therefore approximately 1,000 hours (10 hours times 100 broker-dealers) are required by this exemption. This collection is a recordkeeping type of collection.

c. Total Respondent Burden.

The Commission estimates that a total of 945 respondents would collect information pursuant to Rule 102 (795 respondents plus 50 self-underwritten offering respondents plus 100 affiliate exemption respondents). The Commission estimates that the total reporting burden under Rule 102 is 1,845 hours (795 hours plus 50 hours for self-underwritten offerings plus 1,000 hours to audit policies concerning affiliate information barriers). All hours in this collection are the recordkeeping type of collection.

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 salary cost to comply with Rule 102 is \$116,235.00 (\$63.00 per hour times 1,845 hours).

13. Costs to Respondents

It is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule nor is it anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rule.

14. Costs to Federal Government

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 102. The information collected by the respondents is normally reviewed only pursuant to an investigation, not as a matter of routine. There are only internal labor costs associated with Rule 102 and no additional costs to the government.

15. Changes in Burden

The increase in burden hours is due to an increase in the number of firm commitment underwritten offerings from 745 previously to 795 in 2012.

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. Collections of Information Employing Statistical Methods

This collection does not involve statistical methods.