

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 605 of Regulation NMS

A. Justification

1. Necessity of Information Collection

This information collection is required under Rule 605 and Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"). The order execution information required by Rule 605 of Regulation NMS ("Rule 605")¹, f/k/a Rule 11Ac1-5, is necessary to further the national market system objectives set forth in Section 11A(a)(1)(C). These objectives include the economically efficient execution of orders, fair competition among broker-dealers and among markets, the availability to broker-dealers and investors of information with respect to transactions in securities, and the practicability of brokers executing investors' orders in the best market.

2. Purpose and Use of the Information Collection

The purpose of the information collection is to make information about order execution practices available to the public and allow investors, broker-dealers, and market centers (which include exchange markets, over-the-counter market makers, and alternative trading systems) to undertake a comparative analysis of these practices across markets. Broker-dealers may use the information to make more informed choices in deciding where to route orders for execution and to evaluate their internal order handling practices. Investors may use the information to evaluate the order handling practices of their brokers. Market centers may use the information to compete on the basis of execution quality.

If the Commission did not require market centers to disclose this information, then investors would be uninformed as to the quality of their orders' executions, and there would be limited opportunities for fair competition among market centers based on the quality of their order execution services.

3. Consideration Given to Information Technology

Rule 605 requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format. Consequently, the Rule would not require substantial additional data collection burdens. Once the necessary data is collected, market centers could either program their systems to generate the

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

statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or a self-regulatory organization) that would generate the statistics and reports.

Market centers are not prohibited from using any technology that facilitates consumer understanding and that permits review, as appropriate, by the Commission or other appropriate regulatory authorities.

4. Duplication

The collections of information are unique and cover the particular circumstances of each market center. No duplication exists.

5. Effect on Small Entities

Not applicable. Neither the national securities exchanges nor any market centers that must comply with the Rule would be considered small entities as described in the OMB guidelines for completing this Submission.

6. Consequences of Not Conducting Collection

This collection of information is intended to help investors and broker-dealers evaluate the quality of execution they received for their order at different market centers. Because market conditions change frequently, a less frequent collection would not provide data that would be as timely or pertinent to the public. A monthly disclosure gives a sufficient sample of statistics to be meaningful to investors and broker-dealers in their analyses.

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

The Commission notes that market centers that are national securities exchanges or national securities associations are required to retain the collections of information required under Rule 605 for a period of not less than five years, the first two years in an easily accessible place. All other market centers are required to retain the collections of information required under Rule 605 for a period of not less than three years, the first two in an easily accessible place.

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

Not applicable.

11. Sensitive Questions

Not applicable; no information of a sensitive nature is required under the regulation. The information collection does not collect any Personally Identifiable Information (PII).

12. Burden of Information Collection

The collection of information obligations of Rule 605 would apply to all market centers that receive covered orders in national market system securities. The Commission estimates that approximately 132 (71 market makers, plus 18 exchanges, 1 securities association, and 42 ATs) market centers would be subject to the collection of information obligations of Rule 605. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 605 causes respondents to spend 6 hours per month to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 132 market centers subject to Rule 605, the total data collection time burden to comply with the monthly reporting requirement is estimated to be 9,504 hours per year.

13. Costs to Respondents

Based on discussions with industry sources, the Commission staff estimates that an individual market center could retain a service provider to prepare a monthly report for approximately \$2,978 per month. This per-respondent estimate is based on the rate that a market center could expect to obtain if it negotiated on an individual basis. Based on the \$2,978 estimate, the monthly cost to the 132 market centers to retain service providers to prepare reports would be \$393,096, or an annual cost of approximately \$4,717,152.

14. Costs to Federal Government

Not applicable.

15. Changes in Burden

The reduction in the total estimated time and cost burdens on industry respondents is due to a reduction (from 366 to 132) in the estimated number of market centers subject to the collection of information requirements of Rule 605.

16. Information Collection Planned for Statistical Purposes

These are disclosures from market centers to the general public. The Commission is not collecting data. The Commission has no information to publish and no plans to publish any data for statistical or other 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

Not applicable.

B. Collection of Information Employing Statistical Methods.

Not applicable.