

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission for
Rule 103 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

Rule 103 governs Nasdaq passive market making by distribution participants.

c. Information Collection Requirements

Rule 103 requires notification and disclosure of passive market making activity in Nasdaq securities. 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.

Rule 103 permits “passive market making” during a distribution of Nasdaq securities. A distribution participant that seeks to use this exception is required to disclose to third parties its intention to engage in passive market making. Passive market making under Rule 103 cannot exceed the purchase limitation of 30% average daily trading volume (“ADTV”) limitation or 200 shares, whichever is greater. Rule 103 requires passive market makers to notify the self-regulatory organization (“SRO”) formerly known as the NASD (now succeeded by FINRA) in advance if they intend to conduct such activity and submit information prescribed by that organization. Rule 103 also requires the disclosure pursuant to Item 508 under Regulation S-K with respect to the intended passive market making activities.

2. Purpose and Use of the Information Collection

The written notice submitted to the SRO pursuant to Rule 103 provides the SRO with the opportunity to calculate the ADTV of the security in distribution for which the potential passive market maker has been responsible. Rule 103 requires that FINRA make this calculation. The prospectus disclosure required by Rule 103 informs potential investors that passive market making may be conducted by the underwriters in the offering. Investors use this information in evaluating the offering price of the securities in distribution.

3. Consideration Given to Information Technology

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 103. 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 Rule 103 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 103 apply equally to all entities engaging in Nasdaq passive market making, regardless of the size of the entity. To the extent that Rule 103 affects small entities, the Commission believes that the burdens are minimal compared to the expanded business opportunities through passive market making now available for all Nasdaq securities.

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. 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

In every firm commitment secondary offering of a Nasdaq security, the underwriters may seek to engage in passive market making. The managing underwriter would inform FINRA, receive the data, and inform the syndicate members of their passive market making status. The Commission estimates that the written notice required to be provided to FINRA requires one hour of preparation. There were a total of 309 secondary offerings of Nasdaq securities in 2015. Assuming 309 is the number of offerings in a typical year and assuming that passive market making is available under Rule 103 for all of these offerings, the Commission estimates that the total third-party disclosure burden of Rule 103 is 309 hours per year.

There are internal compliance costs 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 \$65.00 per hour. The \$65.00 per hour figure for a Compliance Clerk is from SIFMA's Office Salaries in the Securities Industry 2013, 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 aggregate internal cost of compliance for all of the respondents to comply with Rule 103 is \$20,085.00 per year (\$65.00 per hour times 309 hours).

13. Costs to Respondents

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

14. Costs to Federal Government

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 103. 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 255 to 309 is due to the increase in the number of firm commitment secondary offerings of Nasdaq securities from 255 to 309.

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.