

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission for
Rule 101 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 101

Rule 101 of Regulation M governs underwriters, prospective underwriters, participating broker-dealers, and their affiliated purchasers (distribution participants). Rule 101 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 101 excludes from its coverage more actively-traded securities.

c. Information Collection Requirements for Rule 101

Rule 101 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 101

(a). Exclusion of Actively-Traded Securities

Rule 101 excepts securities with an average daily trading volume (ADTV) valued at \$1 million or more. Rule 101 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 101 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 101 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.

(d). De Minimis Exception

Rule 101 provides an exception for de minimis violations during the restricted period. This provision excepts purchases of less than two percent of the ADTV of the security in distribution. However, this exception is only available where the person making such bid or purchase subject to the exception has maintained and enforced written policies and procedures reasonably designed to achieve compliance with the other provisions of Rule 101.

2. Purpose and Use of the Information Collection

A distribution participant (i.e., the syndicate manager) performs ADTV calculations to determine whether a security is excepted from Rule 101, 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 101. 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.

A distribution participant may establish a written policy for the purpose of avoiding violations of Rule 101 and specifically to benefit from the provision of the rule that excepts de minimis violations. The Commission generally does not review a distribution participant's policy.

3. Consideration Given to Information Technology

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 101. 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 101 apply equally to all entities engaging in an offering, regardless of the entity's size. The Commission believes that the requirements of Rules 101 are not unduly burdensome on small entities.

6. Consequences of Not Conducting 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

a. Restricted Periods

The syndicate manager of each secondary offering calculates the ADTV to determine the restricted period, if any, that must be observed under Rule 101. In 2016, there were 688 firm commitment 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 2016, approximately 688 hours in the aggregate are required for these calculations under Rule 101. 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 101. 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. De Minimis Exception

The Commission estimates that approximately 712 broker-dealers annually act as distribution participants in distributions covered by Regulation M. The FOCUS reports filed with the Commission as of 12/31/2015 indicate that 712 broker-dealers were involved in activities that could qualify them as distribution participants in distributions covered by Regulation M. The Commission estimates that the written policy required for the de minimis exception from Rule 101 takes 40 hours to draft. Approximately 28,480 hours (40 hours times 712 broker-dealers) is required by this exemption. This collection is a recordkeeping type of collection.

d. Total Respondent Burden

Based on the above calculations, the Commission estimates that a total of 1,550 respondents collect information pursuant to Rule 101 (688 firm commitment respondents plus 50 self-underwritten offering respondents plus 100 affiliate exemption respondents plus 712 de minimis exemption respondents). The Commission estimates that the total annual burden under Rule 101 is 30,218 hours (688 firm commitment hours plus 50 hours for self-underwritten offerings plus 1,000 hours to audit policies concerning affiliate information barriers plus 28,480 hours to draft policies

concerning de minimus exemptions). All hours in this collection are the recordkeeping type of collection.

In addition, there are internal labor compliance 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 \$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 annual internal compliance cost to comply with Rule 101 is \$1,964,170.00 (\$65.00 per hour times 30,218 hours).

13. Costs to Respondents

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

14. Costs to the Federal Government

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 101. 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 decrease in annual burden hours from 34,525 to 30,218 is due to a decrease in the number of firm commitment offerings from 795 to 688 and a decrease in the number of respondents drafting the written policy required for the de minimis exception to Rule 101 from 817 to 712.

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 the 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.