

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 12d2-2 and Form 25

A. Justification

1. Information Collection Necessity

Section 12(a) of the Securities Exchange Act of 1934 (“Act”),¹ generally makes it unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless the security is effectively registered on that exchange in accordance with the provisions of the Act and the rules thereunder. Section 12(d) of the Act provides that a security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange, and upon such terms as the Securities and Exchange Commission (“Commission”) may deem necessary, upon application by the issuer of the security or by the exchange to the Commission.

Rule 12d2-2 (“Rule”) and Form 25 (“Form 25”) were adopted in 1935 and 1952, respectively, pursuant to Sections 12 and 23 of the Act. The Rule sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act. The Commission adopted amendments to Rule 12d2-2 and Form 25.² Under the amended Rule, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission has also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission has adopted amendments to exempt standardized options and security futures products from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

2. Information Collection Purpose and Use

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or withdrawal from registration under Section 12(b) of the Act. Without the Rule and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

¹ 15 U.S.C. 78b et seq.

² See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

3. Consideration Given to Information Technology

A national securities exchange previously had the option of filing the Form 25 either through a paper submission or through the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") System.³ Issuers previously filed applications for delisting and/or withdrawal from registration under Section 12(b) of the Act on paper with the Commission. Currently, Rule 12d2-2 requires that national securities exchanges and issuers file a Form 25 electronically through EDGAR.⁴ These changes will minimize the burdens of filing on national securities exchanges and issuers.

4. Duplication

Not applicable.

5. Effect on Small Entities

Not applicable. Neither the national securities exchanges, who must comply with both the Rule and the Form, nor any issuer obligated to respond under the Rule, would be considered a small business as described in the OMB guidelines for completing this Submission.

6. Consequences of Not Conducting Collection

If the collection of information were conducted less frequently, the Commission would not have the timely information necessary to ensure that delisting and/or withdrawal from registration under Section 12(b) of the Act continue to be accomplished in accordance with the respective rules of the national securities exchanges and the Rule, and that such exchanges remain in compliance with Section 12(d) of the Act. Since the information required by the Rule and the Form 25, as applicable, is not otherwise available to the Commission, such Rule and Form 25 are necessary for the Commission to fulfill its statutory responsibilities.

³ See Securities Act Release No. 33-8099 (May 14, 2002) (Adopting amendments to Regulation S-T under the Securities Act of 1933, 17 CFR 232.10 *et seq.*).

⁴ The Commission notes that issuers file the Form 25 through EDGAR and exchanges file the Form 25-NSE through EDGAR. Form 25-NSE is not a separate form but rather, is a submission type in EDGAR designed to, among other things, allow the Commission to track the number of Form 25s filed by exchanges only. The submission type refers to Form variations that filers use on EDGAR to fulfill their filing obligation. Thus, the paper Form 25 is implemented on EDGAR as two different submission types including: 25 and 25-NSE. For purposes of the Paperwork Reduction Act extension to Form 25 therefore, the extension applies to both submission types since there is only one single Form 25.

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 CFR 1320.5(d)(2).

8. Consultations Outside the Commission

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

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include a name, job title and work address. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Information Collection Burden

There are 21 national securities exchanges that could possibly be respondents complying with the requirements of the Rule and Form 25.⁵ Additionally, any issuer whose security is

⁵ The staff notes that a few of these 21 registered national securities exchanges only have rules to permit the listing of standardized options, which are exempt from Rule 12d2-2 under the Act. Nevertheless, the staff counted national securities exchanges that can only list options as potential respondents because these exchanges could potentially adopt new rules subject to Commission approval under Section 19(b) of the Act, to list and trade equity and other securities that have to comply with Rule 12d2-2 under the Act. Notice registrants that are registered as national securities exchanges solely for the purposes of trading securities futures products have not been

listed on a national securities exchange which seeks to remove such security from listing and/or registration on that exchange will be subject to the requirements of subparagraph (c) of the Rule. Although the burdens of complying with the Rule and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSE American than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

In 2016, the Commission received approximately 800 responses from the national securities exchanges on Form 25s, for the purpose of delisting equity securities. Therefore, the Commission expects that under the Rule, exchanges would handle approximately 800 Form 25s for delisting applications annually. Assuming, on average, one reporting hour per response, the resultant aggregate annual reporting hour burden would be 800 annual burden hours for all exchanges (21 exchanges x an average of 38.1 responses per exchange x 1 hour per response). The internal cost of compliance is \$157,000 (\$196.25 per response⁶ x 800 responses).

In 2016, the Commission received approximately 100 responses from issuers voluntarily applying to remove their securities from listing and registration on exchanges. Therefore, the Commission expects that issuers would file approximately 100 such requests from issuers annually. The aggregate annual reporting hour burden on issuers filing a Form 25 would be, assuming on average one reporting hour per response, 100 annual burden hours for all issuers (100 issuers x 1 response per issuer x 1 hour per response), at an internal cost of compliance of \$31,400 (\$314 per response⁷ x 100 responses).

counted since, as noted above, securities futures products are exempt from complying with Rule 12d-2-2 under the Act and therefore do not have to file Form 25.

⁶ For national securities exchanges filing a Form 25, the staff has computed the average internal cost of compliance per response to be approximately \$196.25, representing one reporting hour per response, including:

quarter hour of legal work	@	\$412/hour	=	103.00
quarter hour of compliance work (Examiner)	@	\$235/hour	=	58.75
half hour of compliance work (Clerk)	@	\$69/hour	=	34.50
				\$196.25

Per-hour figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁷ For issuers filing a Form 25, the staff has computed the average cost per response to be approximately \$314.00, representing one reporting hour per response, including:

Accordingly, the total annual hour burden for all respondents to comply with the Rule is 900 hours (800 hours for exchanges + 100 hours for issuers).

13. Costs to Respondents

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the Rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost to comply with the Rule.

14. Costs to Federal Government

Based on its experience with reviewing and processing delisting notices and applications, the Commission staff believes that the operational costs to the Commission of processing a Form 25 is approximately \$18.75. Since approximately 900 responses are received by the Commission annually, the total estimated cost to the Federal Government would be approximately \$16,875. These estimates were arrived at based on computations of staff time devoted to processing these responses and related overhead costs (valued at 25 percent of the cost of staff time, in accordance with the formulas set forth in the Guide to Estimating Reporting Costs (1973)).

15. Changes in Burden

The increase in burden is a result of an increase in the number of forms filed with the Commission due to market conditions.

16. Information Collections 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.

half hour of attorney work	@	\$412/hour	=	206.00
half hour of paralegal work	@	\$216/hour	=	108.00
				<hr/>
				\$314.00

Per-hour figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.