

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Regulation S-ID

A. JUSTIFICATION

1. Necessity for the Information Collection

Under Regulation S-ID,¹ SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags (the “Identity Theft Red Flags Rules”) and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S-ID includes the following “collection of information” requirements for each SEC-regulated entity that qualifies as a “financial institution” or “creditor” under Regulation S-ID and that offers or maintains covered accounts: (1) creation and periodic updating of an identity theft prevention program (“Program”) that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (2) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related Guidelines (this reporting requirement is set forth in the Guidelines and thus is required to be considered by an entity subject to the Program requirement);² and (3) training of staff to implement the Program. Section 248.202 of Regulation S-ID includes the

¹ Identity Theft Red Flags, Investment Company Act Release No. 30456 (Apr. 10, 2013) (“Adopting Release”); Identity Theft Red Flags, Investment Company Act Release No. 29969 (Feb. 28, 2012) [77 FR 13450 (Mar. 6, 2012)] (“Proposing Release”). Regulation S-ID includes section 248.201 (“Duties regarding the detection, prevention, and mitigation of identity theft”), section 248.202 (“Duties of card issuers regarding change of address”), and Appendix A (“Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation”) (the “Guidelines”).

² Under section 248.201(f) of Regulation S-ID, each entity that is required to implement an identity theft red flags program under section 248.201 must consider the Guidelines and incorporate them into its program, as appropriate.

following “collection of information” requirements for each SEC-regulated entity that is a credit or debit card issuer: (1) establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (2) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity’s established policies and procedures.

2. Purpose and Use of the Information Collection

Regulation S-ID, including the information collection requirements thereunder, is designed to better protect investors from the risks of identity theft. The regulation requires entities that are subject to the Commission’s jurisdiction to address identity theft in two ways. First, the Identity Theft Red Flags Rules and related Guidelines require financial institutions and creditors that offer or maintain certain accounts to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts. Second, Regulation S-ID establishes special requirements for credit and debit card issuers that are subject to the Commission’s jurisdiction, to assess the validity of notifications of changes of address under certain circumstances.

3. Consideration Given to Information Technology

The Commission’s Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”) provides for the automated filing, processing, and dissemination of full disclosure filings. The automation provides for speed, accuracy, and public availability of information, generating benefits to investors and financial markets. While EDGAR currently is limited to

disclosure and fund deregistration filings, EDGAR may be used in the future to obtain other types of information from sources outside the Commission. The Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) and the conforming amendments to recordkeeping rules under the Investment Company Act of 1940 (15 U.S.C. 80a) permit funds to maintain records electronically.

4. Duplication

In adopting Regulation S-ID, the Commission sought to avoid duplication of requirements imposed under other agencies' rules. For example, Regulation S-ID is limited to entities under the Commission's jurisdiction, and although substantially similar to regulations issued in 2007 by the Federal Trade Commission, the federal banking agencies, and the National Credit Union Association (collectively, the "Agencies"), does not apply to entities regulated by other agencies.³ In addition, the Program required under Regulation S-ID may be integrated into other identity theft prevention or privacy programs that the financial institution or creditor may already have.

5. Effect on Small Entities

The information collection requirements of Regulation S-ID apply to all covered entities subject to the SEC's jurisdiction, including those that are small entities. The information collection requirements of Regulation S-ID are necessary to help further the investor protection goals of this regulation, and the Commission therefore believes that imposing different

³ See Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 72 FR 63718 (Nov. 9, 2007) ("2007 Adopting Release"). In addition, the Commodity Futures Trading Commission ("CFTC") adopted rules for the entities it regulates at the same time the Commission adopted Regulation S-ID. See Adopting Release, *supra* note 1.

requirements on smaller entities would not be consistent with investor protection and the purposes of Regulation S-ID.

6. Consequences of Not Conducting Collection

Less frequent collection would not be consistent with the Commission's investor protection objectives.

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

None.

8. Consultation Outside the Agency

Regulation S-ID was jointly adopted with the CFTC's rules on identity theft red flags. The Commission also consulted with the Agencies, which earlier adopted substantially similar rules, in crafting Regulation S-ID. In addition, the Commission and its staff participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

The Commission requested public comment on the information collection requirement with respect to Regulation S-ID before submitting this request for extension to the Office of Management and Budget. The Commission received no comments in response to its request.

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 does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with Regulation S-ID is mandatory for each SEC-regulated entity that qualifies as a “financial institution” or “creditor” under Regulation S-ID, and certain collections of information under Regulation S-ID are mandatory for financial institutions or creditors that offer or maintain covered accounts.

SEC staff estimates of time and cost burdens represent the one-time burden of complying with Regulation S-ID for newly-formed SEC-regulated entities and the ongoing costs of compliance for all SEC-regulated entities.⁴ Staff estimates also attribute all burdens to entities

⁴ Based on discussions with industry representatives and a review of applicable law, SEC staff expects that, of the SEC-regulated entities that fall within the scope of Regulation S-ID, most broker-dealers, many investment companies (including almost all open-end investment companies and employees’ securities companies (“ESCs”)), and some registered investment advisers will likely qualify as financial institutions or creditors. Staff expects that other SEC-regulated entities described in the scope section of Regulation S-ID, such as business development companies, transfer agents, nationally recognized statistical rating organizations,

that are directly subject to the requirements of the rulemaking. An entity directly subject to Regulation S-ID that outsources activities to a service provider is, in effect, shifting to that service provider the burden that it would otherwise have carried itself. Under these circumstances, the burden is, by contract, shifted from the entity that is directly subject to Regulation S-ID to the service provider, but the total amount of burden is not increased. Thus, service provider burdens are already included in the burden estimates provided for entities that are directly subject to Regulation S-ID. The time and cost estimates made here are based on conversations with industry representatives and on a review of comments received on Regulation S-ID when it was proposed, as well as the estimates made in the regulatory analyses of the identity theft red flags rules previously issued by the Agencies.

§ 248.201 (duties regarding detection, prevention, and mitigation of identity theft)

The collections of information required by section 248.201 apply to SEC-regulated entities that are financial institutions or creditors.⁵

Initial Burden

All newly-formed financial institutions and creditors would be required to conduct an initial assessment of covered accounts, which SEC staff estimates would entail a one-time burden of 2 hours. Staff estimates that this burden would result in a cost of \$802 to each

self-regulatory organizations, and clearing agencies may be less likely to be financial institutions or creditors as defined in the rules, and therefore we do not include these entities in our estimates.

⁵ § 248.201(a).

newly-formed financial institution or creditor.⁶ To the extent a financial institution or creditor offers or maintains covered accounts, SEC staff estimates that the financial institution or creditor also would also incur a one-time burden of 25 hours to develop and obtain board approval of a Program, and a one-time burden of 4 hours to train the financial institution's or creditor's staff, for a total of 29 additional burden hours. Staff estimates that these burdens would result in additional costs of \$14,266 for each financial institution or creditor that offers or maintains covered accounts.⁷

SEC staff estimates that approximately 613 SEC-regulated financial institutions and creditors are newly formed each year.⁸ Each of these 613 entities will need to conduct an initial

⁶ This estimate is based on the following calculation: 2 hours x \$401 (hourly rate for internal counsel) = \$802. *See infra* note 7 (discussing the methodology for estimating the hourly rate for internal counsel).

⁷ SEC staff estimates that, of the 29 hours incurred to develop and obtain board approval of a Program and train the financial institution's or creditor's staff, 10 hours will be spent by internal counsel at an hourly rate of \$401, 17 hours will be spent by administrative assistants at an hourly rate of \$78, and 2 hours will be spent by the board of directors as a whole at an hourly rate of \$4,465. Thus, the estimated \$13,858 in additional costs is based on the following calculation: (10 hours x \$401 = \$4,010) + (17 hours x \$78 = \$1,326) + (2 hours x \$4,465 = \$8,930) = \$14,266.

The cost estimate for internal counsel is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for administrative assistants is derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for the board of directors is derived from estimates made by SEC staff regarding typical board size and compensation that is based on information received from fund representatives and publicly-available sources, and adjusted for inflation.

⁸ Based on a review of new registrations typically filed with the SEC each year, SEC staff estimates that approximately 1,218 investment advisers, 109 broker dealers, 96 investment companies, and 2 ESCs typically apply for registration with the SEC or otherwise are newly formed each year, for a total of 1,425 entities that could be financial institutions or creditors. Of these, staff estimates that all of the investment companies, ESCs, and broker-dealers are likely to qualify as financial institutions or creditors, and 33% of investment advisers (or 406) are likely to

assessment of covered accounts, for a total of 1,226 hours at a total cost of \$491,626.⁹ Of these 613 entities, staff estimates that approximately 90% (or 552) maintain covered accounts.¹⁰

Accordingly, staff estimates that the additional initial burden for SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts is 16,008 hours at an additional cost of \$7,874,832.¹¹ Thus, the total initial estimated burden for all newly-formed SEC-regulated entities is 17,234 hours at a total estimated cost of \$8,366,458.¹²

Ongoing Burden

Each financial institution and creditor would be required to conduct periodic assessments to determine if the entity offers or maintains covered accounts, which SEC staff estimates would entail an annual burden of 1 hour per entity. Staff estimates that this burden would result in an annual cost of \$401 to each financial institution or creditor.¹³ To the extent a financial institution or creditor offers or maintains covered accounts, staff estimates that the financial institution or

qualify. *See* Adopting Release, *supra* note 1, at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 613 total financial institutions or creditors will bear the initial one-time burden of assessing covered accounts under Regulation S-ID.

⁹ These estimates are based on the following calculations: 613 entities x 2 hours = 1,226 hours; 613 entities x \$802 = \$491,626.

¹⁰ In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate.

¹¹ These estimates are based on the following calculations: 552 financial institutions and creditors that maintain covered accounts x 29 hours = 16,008 hours; 552 financial institutions and creditors that maintain covered accounts x \$14,266 = \$7,874,832.

¹² These estimates are based on the following calculations: 1,226 hours + 16,008 hours = 17,234 hours; \$491,626 + \$7,874,832 = \$8,366,458.

¹³ This estimate is based on the following calculation: 1 hour x \$401 (hourly rate for internal counsel) = \$401. *See supra* note 7 (discussing the methodology for estimating the hourly rate for internal counsel).

creditor also would incur an annual burden of 2.5 hours to prepare and present an annual report to the board, and an annual burden of 7 hours to periodically review and update the Program (including review and preservation of contracts with service providers, as well as review and preservation of any documentation received from service providers). Staff estimates that these burdens would result in additional annual costs of \$7,874 for each financial institution or creditor that offers or maintains covered accounts.¹⁴

SEC staff estimates that there are 9,922 SEC-regulated entities that are either financial institutions or creditors, and that all of these will be required to periodically review their accounts to determine if they offer or maintain covered accounts, for a total of 9,922 hours for these entities at a total cost of \$3,978,722.¹⁵ Of these 9,922 entities, staff estimates that

¹⁴ Staff estimates that, of the 9.5 hours incurred to prepare and present the annual report to the board and periodically review and update the Program, 8.5 hours will be spent by internal counsel at an hourly rate of \$401, and 1 hour will be spent by the board of directors as a whole at an hourly rate of \$4,465. Thus, the estimated \$7,874 in additional annual costs is based on the following calculation: $(8.5 \text{ hours} \times \$401 = \$3,409) + (1 \text{ hour} \times \$4,465 = \$4,465) = \$7,874$. See *supra* note 7 (discussing the methodology for estimating the hourly rate for internal counsel and the board of directors).

¹⁵ Based on a review of entities that the SEC regulates, SEC staff estimates that, as of September 1, 2018, there are approximately 13,181 investment advisers, 3,839 broker-dealers, 1,589 active open-end investment companies, and 100 ESCs. Of these, staff estimates that all of the broker-dealers, open-end investment companies and ESCs are likely to qualify as financial institutions or creditors. We also estimate that approximately 33% of investment advisers, or 4,394 investment advisers, are likely to qualify. See Adopting Release, *supra* note 1, at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 9,922 financial institutions or creditors will bear the ongoing burden of assessing covered accounts under Regulation S-ID. (The SEC staff estimates that the other types of entities that are covered by the scope of the SEC's rules will not be financial institutions or creditors and therefore will not be subject to the rules' requirements.)

The estimates of 9,922 hours and \$3,784,800 are based on the following calculations: $9,922 \text{ financial institutions and creditors} \times 1 \text{ hour} = 9,922 \text{ hours}$; $9,922 \text{ financial institutions and creditors} \times \$401 = \$3,978,722$.

approximately 90 percent, or 8,930, maintain covered accounts, and thus will need the additional burdens related to complying with the rules.¹⁶ Accordingly, staff estimates that the additional annual burden for SEC-regulated entities that qualify as financial institutions or creditors and maintain covered accounts is 84,835 hours at an additional cost of \$70,314,820.¹⁷ Thus, the total estimated ongoing annual burden for all SEC-regulated entities is 94,757 hours at a total estimated annual cost of \$74,293,542.¹⁸

§ 248.202 (duties of card issuers regarding changes of address).

The collections of information required by section 248.202 will apply only to SEC-regulated entities that issue credit or debit cards.¹⁹ SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to the Agencies' identity theft red flags rules. Therefore, staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202, and accordingly, staff estimates that there is no hour or cost burden for SEC-regulated entities related to section 248.202.

¹⁶ See *supra* note 10 and accompanying text. If a financial institution or creditor does not maintain covered accounts, there would be no ongoing annual burden for purposes of the PRA.

¹⁷ These estimates are based on the following calculations: 8,930 financial institutions and creditors that maintain covered accounts x 9.5 hours = 84,835 hours; 8,930 financial institutions and creditors that maintain covered accounts x \$7,874 = \$70,314,820.

¹⁸ These estimates are based on the following calculations: 9,922 hours + 84,835 hours = 94,757 hours; \$3,978,722 + \$70,314,820 = \$74,293,542.

¹⁹ § 248.202(a).

As displayed in the table below, we estimate the total annual burden for all SEC-regulated entities is 111,991 hours at a total annual cost of \$82,660,000.

**Table: Summary of Annual Responses, Burden Hours, and Burden Hour Costs Estimates
for Each Regulation S-ID Information Collection (“IC”)**

IC	Regulation S-ID IC Description	No. of Responses	Burden Hours	Burden Hour Costs
IC1	Initial Burden for Newly-Formed SEC-Regulated Entities	613 (of which 552 maintain covered accounts)	17,234	\$8,366,458
IC2	Ongoing Burden for All SEC-Regulated Entities	9,922 (of which 8,930 maintain covered accounts)	94,757	\$74,293,542
	Totals for all ICs	10,535 (of which 9,482 maintain covered accounts)	111,991	\$82,660,000

13. Cost to Respondents

The rule is not estimated to impose any burdens other than those discussed in Item 12 above.

14. Cost to the Federal Government

The rule does not impose any additional costs on the federal government.

15. Changes in Burden

The estimated total annual burden hours decreased 1,235 hours, from 113,226 hours to 111,991 hours. This change in burden hours is primarily attributable to changes in the staff's estimates of the number of entities that could be financial institutions or creditors.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act

Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.