

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Current Information Collection Submission for
“Rule 104 of Regulation M”**

**(OMB Control No. 3235-0465)
Extension**

A. Justification

1. Necessity of Information Collection

a. Background

Congress granted broad rulemaking authority to the Commission in Sections 9(a), 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 104

Rule 104 governs stabilizing and certain aftermarket syndicate activities in connection with a securities offering, and makes it unlawful for any person to stabilize, to effect any syndicate-covering transaction, or to impose a penalty bid, in contravention of the rule’s provisions. The rule provides a framework for underwriters and syndicate members to conduct stabilizing transactions for the purpose of preventing or retarding a decline in the market price of a security to facilitate an offering.

c. Information Collection Requirements

Rule 104 requires disclosure and recordkeeping¹ of persons engaged in stabilization and certain aftermarket activities. Regulation M as a whole 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.

¹ The recordkeeping requirements under Rule 104 are through the application of Exchange Act Rule 17a-2, for which there is a separate Paperwork Reduction Act filing.

Rule 104 requires any person who enters a bid that such person knows is for the purpose of stabilizing the price of any security to notify the market on which the bid is placed, and to disclose the purpose of such bid to the person to whom the bid is entered (e.g., the specialist or executing broker-dealer). Rule 104 also requires any person effecting a syndicate covering transaction, or placing or transmitting a penalty bid, to disclose that fact to the self-regulatory organization (SRO) with direct oversight authority over the principal market in the United States for the security for which the syndicate covering transaction is effected, or the penalty bid is imposed. In addition, when a person subject to Rule 104 conducts transactions in securities and the price of those securities may be or has been stabilized, that person is required to send a purchaser, at or before completion of the transaction, a document containing a statement required by Item 508(l) of Regulation S-K. Lastly, any person subject to Rule 104 by virtue of effecting syndicate covering, stabilizing, or penalty bid transactions is also subject to the recordkeeping requirements of Exchange Act Rule 17a-2. Rule 17a-2 is covered in a separate Paperwork Reduction Act filing.

2. Purpose and Use of the Information Collection

The records required pursuant to Rule 104² may be used by the Commission in examinations or investigations of underwriting activities and to review aftermarket activity. The disclosure required in Rule 104 is also used by investors to evaluate a security for investment purposes in light of possible stabilizing and related activities.

3. Consideration Given to Information Technology

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 104. 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 104 apply equally to all entities, regardless of the entity's size. Although Rule 104 requires additional records³ concerning stabilizing bids, the Commission believes this imposes little, if any, additional burden because underwriters already are required to keep detailed syndicate account records. Further, the Commission believes that

² See *supra* note 1.

³ See *supra* note 1.

broker-dealers that act as distribution participants (and are thus subject to the rule) are unlikely to qualify as small entities. The additional disclosure in the offering materials and notification to SROs as required in the rule are generally the duty of the lead underwriter in an offering, which, due to the amount of capital necessary to act in that role, is unlikely to qualify as a small entity.

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 CFR 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

The Information Collection does not collect information about individuals, therefore, a PIA, SORN, and PAS are not required.

12. Burden of Information Collection

The Commission believes that stabilizing bids rarely occur, therefore there is no basis upon which to calculate the third party disclosure burden of this requirement. In 2025, there were 634 firm commitment (and thus subject to Rule 104) offerings. The Commission estimates that disclosing penalty bids to third parties would require six minutes per offering. In addition, the Commission estimates that disclosure of syndicate covering transactions to third parties would also require six minutes per offering. Using 634 respondents per year, as discussed above, the third party disclosure would require an estimated 127 hours (12 minutes times 634 respondents divided by 60 minutes per hour = 126.8 hours rounded up to 127) over the course of a year.

Type of Burden	Number of Respondents	Annual Time Burden Per Respondent (Hours)	Aggregate Annual Time Burden (Hours)
Third Party Disclosure	634	0.2	127

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 \$164.00 per hour. The Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for “Bookkeeping, Accounting, and Auditing Clerks,” which includes the previously used SIFMA designation of Compliance Clerks.⁴ Based on that estimate, the Commission estimates that the aggregate internal cost of compliance for all of the respondents to comply with Rule 104 is \$20,828 per year (\$164.00 per hour x 127 hours). The internal compliance cost per respondents is approximately \$32.85 (i.e., \$20,828 / 634 respondents).

13. Costs to Respondents

There are no external labor costs or other cost burdens associated with this rule.

14. Costs to Federal Government

Not applicable as the information collection is a third-party disclosure requirement.

15. Changes in Burden

The decrease in estimated total burden hours from 242 to 127 hours is due to a decrease in the number of firm commitment offerings from 1,211 previously to 634 in 2025.

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.

⁴ See *Occupational Employment and Wage Statistics*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/oes/>; see also *Standard Occupational Classification*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/soc/> (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), available at https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. See *Employment Cost Index*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/eci/>. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis’s annual gross output data for the NAICS number to total annual wages across all occupations for the NAICS number in the OEWS data.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collecting Information Employing Statistical Methods

This collection does not involve statistical methods.