

**SUPPORTING STATEMENT  
for the Paperwork Reduction Act  
Information Collection Submission for  
Rule 103 of Regulation M  
(OMB Control No. 3235-0466)**

**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 certain persons participating in a securities offering and determined that certain types of securities offerings, called “distributions,” present special opportunities for manipulation that require specific regulatory attention. On December 20, 1996, the Commission adopted Regulation M, which consists of Rules 100 through 105 that govern the activities of underwriters, issuers, selling security holders, and others in connection with a securities offering. Regulation M, when compared to its predecessor rules, 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 103**

Rule 103 governs Nasdaq passive market making by distribution participants. Rule 103 permits broker-dealers to engage in market making transactions in covered securities that are Nasdaq securities without violating the provisions of Rule 101

**c. Information Collection Requirements**

Rule 103 requires notification and disclosure of passive market making activity in Nasdaq securities. Regulation M incorporated many requirements of its predecessor’s rules, together with their information collection requirements. Regulation M also eased burdens (in comparison to the predecessor rules) by removing (by definition, exception, etc.) many categories of previously covered activities, securities, and persons.

Rule 103 permits “passive market making” during a distribution of Nasdaq securities. A distribution participant that seeks to use this exception is required, among other things, 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”) or 200 shares, whichever is greater. Rule 103 requires passive market makers to notify the self-regulatory organization (“SRO”) 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.<sup>1</sup>

## **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. When 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 Rule 103 of 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).

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<sup>1</sup> The record retention requirements for broker-dealer records are in Rule 17a-4 (OMB Control No. 3235-0279). Such records must be preserved for a period of not less than three years, the first two in an easily accessible place.

**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**

In every firm commitment 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. In 2025, there were 249 secondary offerings of Nasdaq securities. The Commission estimates that it takes approximately one hour to prepare and deliver the written notice to FINRA. Thus, the Commission estimates that the total third-party disclosure burden of Rule 103 is 249 hours per year (249 secondary offerings of Nasdaq securities eligible for passive market making x 1 hour per offering).

<b>Burden Type</b>	<b>Number of Offerings</b>	<b>Number of Notices to FINRA Per Offering</b>	<b>Time Per Notice (Hours)</b>	<b>Aggregate Burden (Hours)</b>
Notice for Passive Market Making in Nasdaq Securities	249	1	1	249

The Commission estimates that a typical employee of a broker-dealer charged to ensure compliance with Commission regulations receives compensation of \$164 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.<sup>2</sup> Based on that estimate, the Commission estimates that the aggregate internal

<sup>2</sup> 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/>

cost of compliance for all of the respondents to comply with Rule 103 is \$40,836 per year (\$164 per hour x 249 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**

Rule 103 does not require that any information be submitted to the Federal government, and thus no costs to the Federal government are imposed by the rule's requirement that broker-dealers disclose information to their customers.

**15. Changes in Burden**

The decrease in annual burden hours from 428 to 249 is due to the decrease in the number of firm commitment secondary offerings of Nasdaq securities from 428 to 249.

**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.

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(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](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.