SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission for
Rule 101 of Regulation M
(OMB Control No. 3235-0464)

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 101

Rule 101 of Regulation M governs the activities of distribution participants—which can be underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution—and their affiliated purchasers. Rule 101 applies only during a Regulation M "restricted period," which commences one or five business days prior to the day of the pricing of the offered security, depending on the subject security's average daily trading volume ("ADTV") value and its issuer's common equity securities' public float value, and continues until the completion of participation in the distribution. Rule 101 includes exceptions for certain activities and securities, as discussed below.

c. Information Collection Requirements for Rule 101

Rule 101 requires covered persons to collect certain information to determine whether the rule applies, and if so, for what period of time. 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. The record preservation requirements in Rule 101 impose "collection of information" requirements within the meaning of the Paperwork Reduction of 1995 ("PRA").

i. Exceptions from Rule 101

A. Exception for Actively-Traded Securities

Rule 101(c)(1) provides a conditional exception for securities with an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million, provided that such securities are not issued by the distribution participant or an affiliate of the distribution participant. Due to how the term ADTV is defined in Rule 100 of Regulation M, Rule 101 requires the ADTV to be calculated for the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement (or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to Rule 415, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price). To use the actively-traded securities exception in Rule 101, a distribution participant must examine publicly available market data to calculate the ADTV value.

B. Exception for Certain Nonconvertible Debt and Preferred Securities

Rule 101(c)(2)(i) provides an exception from Rule 101 for certain nonconvertible debt and preferred securities (together "Nonconvertible Securities"). To use the exception, the distribution participant acting as the lead manager (or in a similar capacity) of a distribution is required to determine and document an estimate for the issuer's probability of default. This requirement created a new collection of information.[1]

C. Other Securities

The ADTV value of other securities remaining subject to the restrictions of Rule 101 determines the length of the restricted period for the particular security.

D. Affiliated Purchasers

Rule 101 applies to any affiliated purchaser of a distribution participant. Rule 100(b)(3) however, provides an exception to the definition of affiliated purchaser where the distribution participant maintains and enforces written policies and procedures reasonably designed to prevent the flow of information between itself and its affiliates. Such distribution participants must also obtain an annual, independent assessment of the operation of such policies and procedures.

E. Exception for De Minimis Transactions

[1] *See Removal of References to Credit Ratings From Regulation M*, Rel. No. 34-97657 (June 7, 2023), 88 FR 39962 (June 20, 2023).

Rule 101(b)(7) provides a conditional exception for inadvertent de minimis violations during the restricted period. This provision excepts a distribution participant's (other than a passive market maker's) purchases during the restricted period that total less than two percent of the ADTV of the security being purchased, or unaccepted bids. This exception is available only 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 Regulation M.

2. Purpose and Use of the Information Collection

A distribution participant must perform an ADTV value calculation to determine whether the distribution is for excepted securities under Rule 101(c)(1), or to determine the applicable restricted period as referenced in Rule 101(a). This information is not used by the Commission.

A distribution participant acting as the lead manager must document, in writing, an estimate for the probability of default for certain Nonconvertible Securities to determine if the distribution is for excepted securities under Rule 101(c)(2)(i). This information is not used by the Commission.

Information barriers can serve to restrict the flow of non-public information that might inappropriately influence an affiliated purchaser's transactions in covered securities. The definition of "affiliated purchaser" under Rule 100(b) therefore excludes a distribution participant, issuer, or selling security holder that, among other things, satisfies certain information barrier requirements. The annual audit of the policies and procedures to prevent the flow of information between the distribution participant and its affiliates helps to ensure that the policies and procedures are effective. The Commission generally only examines the policies and annual audit in investigations of potential violations of the rule.

A distribution participant may establish written policies and procedures for the purpose of avoiding violations of Rule 101 and specifically to benefit from the rule's de minimis transactions exception under Rule 101(b)(7). The annual review of such policies and procedures can help ensure that they remain reasonably designed to achieve compliance with the provisions of the exception. The Commission generally only examines the policies in investigations of potential violations of the rule.

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 CFR1320.5(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

a. Restricted Periods

In 2025, there were 1,095 total offerings (including firm commitment offerings, self-underwritten offerings, and all other types of offerings).[2] Consistent with its prior estimate,[3] the Commission continues to estimate that approximately 50 of the 1,095 total offerings would be self-underwritten offerings for which the issuer would calculate the ADTV. For each offering the Commission estimates it would take approximately one hour to calculate the ADTV value and determine the applicable restricted period or availability of the actively-traded securities exception.[4] Thus, assuming for purposes of these burden estimates that all offerings meet the definition of "distribution" under Rule 100 of Regulation M and that covered persons under Rule 101 are themselves making restricted period calculations, the Commission estimates **a total burden of approximately 1,045 annual burden hours** (1,045 offerings x 1 hour per offering) for non-self-underwritten offering restricted period calculations, and **a total burned of approximately 50 annual burden hours** (50 offerings x 1 hours per offering) for self-underwritten offering restricted period calculations. In many circumstances, however, the collection of information is likely to be unnecessary because the ADTV is self-evident (i.e., the ADTV is extremely high or extremely low). This collection of information is a recordkeeping type of collection.

b. Information Barriers

The Commission estimates that annually approximately 100 broker-dealers who are distribution participants determine whether they meet the definition of affiliated purchaser under Rule 100 and need to comply with the prohibitions of Rule 101 (or rely on an applicable exception).[5] The Commission estimates that each annual audit of the written policies and procedures concerning information barriers that is required for such determinations takes approximately 10 hours. Therefore, the Commission estimates **an industrywide total of approximately 1,000 annual burden hours** (100 broker-dealers x 10 hours per audit) for this information collection. This collection of information is a recordkeeping type of collection.

c. De Minimis Exception

[2] This estimate is derived from Global New Issues data from SDC Platinum available in LSEG Workspace. The data includes issues with master deal type of Euro & Foreign Common Stock, Euro & Foreign Convertible Debt, US Common Stock, US Convertible Debt, US Convertible Preferred Stock, by issuers whose domiciles are US, Bermuda, Cayman Islands, or Puerto Rico. The data includes offerings that meet LSEG's global standard inclusion criteria.

[3] *See* Supporting Statement, Rule 101 of Regulation M, OMB Control No. 3235-0464, approved Aug. 11, 2023, *available at* https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202302-3235-002 ("2023 Supporting Statement"), at 4.

[4] *See* 17 CFR 242.101(c)(1). *See also* 17 CFR 242.101(a) (prohibiting certain activities in connection with a distribution of securities "during the applicable restricted period"). *See also* 17 CFR 242.100(b) (defining the terms "ADTV," "distribution," and "restricted period").

[5] *See* 17 CFR 242.101(a) (applying the rule's restrictions to "a distribution participant or affiliated purchaser of such person"). *See also* 17 CFR 242.100(b) (defining the term "affiliated purchaser").

The Commission estimates that approximately 583 broker-dealers annually are distribution participants in distributions covered by Regulation M.[6] The Commission estimates that the written policies and procedures required by Rule 101(b)(7) for compliance with the de minimis exception would take approximately 10 hours to review and update annually.[7] Therefore, the Commission estimates **an industrywide total of approximately 5,830 annual burden hours** (583 broker-dealer distribution participants x 10 hours per annual review) for this information collection. This collection of information is a recordkeeping type of collection.

d. Nonconvertible Securities Exception

As described in more detail below, Rule 101(c)(2)(i) results in two information collections: initial and ongoing recordkeeping burdens related to gathering the data serving as the inputs and then performing the analysis necessary to calculate the probability of default of the issuer whose securities are the subject of the distribution to meet the conditions of the exception. These information collections apply to lead managers that choose to make probability of default determinations in order to rely on the exception in Rule 101(c)(2)(i). The Commission estimates that there were 166 lead managers in 2024.[8] Therefore, the Commission estimates that 166 respondents will be subject to PRA burdens under Rule 101(c)(2)(i).

Initial Burden

As discussed above, lead managers relying on the exception in Rule 101(c)(2)(i) are required to make a probability of default determination. This process is likely to be highly automated, and respondents will initially comply with this requirement by reprograming systems to create a means to calculate electronically the probability of default based on manually gathered and entered inputs for financial modeling. To the extent there are new (in relation to the previous estimates) respondents making probability of default determinations pursuant to Rule 101(c)(2)(i), the Commission estimates that the rule will impose an initial burden of 3 hours per respondent for configuring systems to make probability of default estimates. Assuming that all 166 respondents are new entrants[9] to the Nonconvertible Securities markets and need to configure their systems to

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[6] This estimate is based on data obtained from FOCUS reports filed with the Commission as of 12/31/2025.

[7] This methodology differs from prior estimates for this PRA information collection. Specifically, prior estimates used a metric of 40 hours for the burden of drafting policies and procedures to fulfill the requirements of the de minimis exception. However, the Commission estimates that broker-dealers would incur approximately 10 hours to review and update existing de minimis exception policies and procedures, which is consistent with the 10-hour estimate for broker-dealers to audit policies and procedures for affiliates that satisfy certain conditions under Rule 100's definition of "affiliated purchaser."

[8] This estimate is obtained using Mergent data for relevant securities during 2024. The previous PRA burden estimates from 2023 were obtained using Mergent data from 2021.

[9] The available data does not distinguish between lead managers that are experienced market participants (who would have already been subject to the initial burdens for this information collection) and those that are new entrants (to whom the initial burdens would apply). Therefore, the Commission estimates that all 166 lead managers are new entrants, with no overlap with the estimated 201 lead managers in the 2023 Supporting Statement, in order to provide a conservative estimate of the applicable initial burdens.

make probability of default determinations pursuant to Rule 101(c)(2)(i) (i.e., because they have not already done so), the Commission estimates that the **total annual industrywide initial burden for this requirement is 166 hours**.[10]

Ongoing Burden

The Commission estimates that there were 46,338 offerings of Nonconvertible Securities in 2024,[11] for which the commission estimates there were 166 lead managers. The Commission estimates that it takes a lead manager respondent approximately one hour per distribution of Nonconvertible Securities to determine and document, in writing, the probability of default for the issuer. Accordingly, the Commission estimates that calculating the probability of default pursuant to Rule 101(c)(2)(i) will result in **an industrywide total of approximately 46,338 annual burden hours**.[12] This collection of information is a recordkeeping type of collection.

e. Total Respondent Burden

Based on the above calculations, the Commission estimates that 2,110 respondents[13] would incur an estimated total annual burden of approximately 54,429 hours responding to Rule 101's collections of information.[14] All hours in this collection are the recordkeeping type of collection.

Burden and Type	Number of Respondents	Annual Responses Per Respondent	Approximate Burden Hours Per Response	Total Burden Hours
Restricted Period ADTV Calculation; Recordkeeping	1,045	1	1	1,045
Self-Underwritten Offering ADTV Calculation	50	1	1	50

[10] 166 respondents × 3 hours = 498 hours for the total initial burden. As we plan to request a three-year approval period, we divide 498 by 3 to get 166 hours per year.

[11] This estimate is based on data from LSEG Mergent via WRDS. The estimate includes the following nonconvertible bond types: Foreign Currency Debenture, US Corporate Debentures, US Corporate MTN, US Corporate MTN Zero, US Corporate Paper, US Corporate Pass Thru Trust, US Corporate PIK Bond, US Corporate Zero, and Preferred Security. The estimate is based on an offer date between 1/1/2024 and 12/31/2024. Some agents were reported as performing two or more functions, for example as an underwriter and as a lead underwriter.

[12] 46,338 offerings of Nonconvertible Securities x 1 hour per offering = 46,338 hours for the total ongoing burden.

[13] 1,045 non-self-underwritten offering ADTV calculation respondents + 50 self-underwritten offering ADTV calculation respondents + 100 affiliate information barrier policy respondents + 583 de minimis exception policy respondents + 166 probability of default initial burden respondents + 166 probability of default ongoing burden respondents = 2,110 total respondents.

[14] 1,045 hours for non-self-underwritten offering ADTV calculations + 50 hours for self-underwritten offering ADTV calculations + 166 hours for new entrants to configure probability of default systems for nonconvertible securities offerings + 46,338 hours to make a record of the probability of default for Nonconvertible Securities offerings + 1,000 hours to audit policies and procedures for affiliate information barriers + 5,830 hours to review policies for the de minimis exception = 54,429 total burden hours.

Audit of WSPs for Info Barriers with Affiliates; Recordkeeping	100	1	10	1,000
Firm Commitment Underwritten Offerings de minimis policy reviews; Recordkeeping	583	1	10	5,830
Gathering data and performing analysis to calculate the probability of default; Recordkeeping (Initial Burden)	166	1	1 (3 burden hours per response ÷ 3 years)	166
Gathering data and performing analysis to calculate the probability of default; Recordkeeping (Ongoing Burden)	166	279.145	1	46,338
Total Aggregate Burden Hours				**54,429**
Total Aggregate Respondents	**2,110**			
Average Burden Hours Per Respondent (54,429 / 2,110)				**25.796**

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 $133.00 per hour. The Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics program of the Bureau of Labor Statistics for "Bookkeeping, Accounting, and Auditing Clerks." Based on that estimate, the Commission estimates that the annual internal cost to assume Rule 101's PRA burdens discussed above is $7,239,057.[15]

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

Rule 101 of Regulation M 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] $133.00 per hour times 54,429 total aggregate PRA burden hours = $7,239,057.

15. Changes in Burden

There is a net decrease in estimated total industrywide burden hours from the previous OMB-approved estimate of 61,900 burden hours[16] to the current estimate of 54,429 burden hours. There is an increase in the estimated ongoing burden for gathering data and performing analysis to calculate the probability of default due to an increase in the estimated number of responses per year, which is based on a recent increase in the number of offerings of Nonconvertible Securities. However, other changes in the estimated burdens decreased and are due to: 1) a decrease in the estimated number of total ADTV calculation respondents from 1,211[17] to 1,095,[18] 2) a decrease in the estimated initial burden hours for respondents configuring probability of default systems from 201 hours[19] to 166 hours, 3) a decrease in the number of respondents reviewing de minimis exception written policies and procedures from 641[20] to 583, and 3) a decrease in the estimated burden per response for de minimis exception policies and procedures from 40 hours[21] to 10 hours.

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.

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[16] *See* Supporting Statement Partial Revision, Rule 101 of Regulation M, OMB Control No. 3235-0464, approved Oct. 16, 2023, *available at* https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202308-3235-023 ("2023 Supporting Statement Partial Revision"), at 10.

[17] *See* 2023 Supporting Statement, at 4 (estimating 1,211 annual burden hours for secondary offerings and 50 annual burden hours for self-underwritten offerings, for a total of 1,261 total ADTV calculation burden hours).

[18] 1,045 non-self-underwritten offerings + 50 self-underwritten offerings = 1,095 estimated total ADTV calculation respondents.

[19] *See* 2023 Supporting Statement Partial Revision, at 8 n.11 (erroneously calculating 603 ÷ 3 as 301 burden hours, which should be 201 burden hours). There was a decrease of 35 lead managers from the prior estimate of 201 lead managers. *See* 2023 Supporting Statement Partial Revision, at 8.

[20] *See* 2023 Supporting Statement, at 4.

[21] *See* 2023 Supporting Statement, at 4.