

Rule 17a-2 Supporting Statement

A. Justification

1. Necessity of Information Collection

a. Background

Congress granted broad rulemaking authority to the Commission in Sections 9(a)(2), 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. Rule 17a-2, which requires records be kept when underwriters engage in stabilizing and certain aftermarket activities, dates back to 1939, but took much of its current form in 1983 when the Commission adopted amendments which placed the recordkeeping burden on the manager of the underwriting syndicate or group. On December 20, 1996, the Commission adopted Regulation M which governs the activities of underwriters, issuers, selling security holders, and others in connection with a securities offering generally and also harmonized Rule 17a-2 with Regulation M. 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.

Rule 17a-2 and Rule 104 of Regulation M work together to regulate underwriters engaging in syndicate covering, stabilization, and penalty bid transactions. A person subject to Rule 104 is required, among other things, to keep the information and make the notification required by 17a-2. Rule 17a-2 requires managers of underwriting syndicates or groups to keep certain records when they engage in syndicate covering, stabilizing, or penalty bid transactions. Rule 17a-2 also requires that members of the underwriting syndicate or group who engage in those activities to notify the manager of the syndicate or group, who must then make the records required in the rule.

b. Information Collection Requirements

Rule 17a-2 requires managing underwriters to keep records of syndicate covering transactions and penalty bids, in addition to stabilizing information. The records must reflect the name and class of securities, the price, date, and time for each stabilizing purchase or syndicate covering transaction and whether any penalties were assessed, the names and addresses of the syndicate group members, and their respective commitments. Members of syndicates must notify the manager of their syndicate if they engage in these activities as well. If the manager receives this notification, the manager must then make the same records required as if they engaged in the activity themselves.

The Commission believes that this recordkeeping requirement imposes little, if any, additional burden as underwriters already are required to keep detailed syndicate account records.

The information is required to be maintained in a separate file, for a period of three years, the first two in an accessible place.

2. Purpose of, and Consequences of Not Requiring, the Information Collection

The records required pursuant to Rule 17a-2 are used by the Commission in examinations or investigations of underwriting activities and to review aftermarket activity.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

Improvements in telecommunication and data processing technology reduce regulatory burdens that might otherwise result from Rule 17a-2. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. Efforts to Identify 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 to Rule 17a-2 were proposed, the Commission solicited and received comments without receiving any reference to federal regulations that may duplicate the requirements mandated by Rule 17a-2. The Commission continues to believe that there is no duplication of the information required by the rules described herein.

5. Effects on Small Entities

The information requirements of Rule 17a-2 apply equally to all entities, regardless of the entity's size. Although Rule 17a-2 requires additional records concerning stabilizing bids, penalty bids, and syndicate covering transactions, 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 broker-dealers that act as distribution participants (and are thus subject to the rule) are unlikely to qualify as small entities. The majority of the recordkeeping burden in Rule 17a-2 lies with the manager of an underwriting syndicate which, due to the capital requirements necessary to maintain such a role, is unlikely to be a role an entity that could qualify as a small entity could retain.

6. Consequences of Less Frequent Collection

Not applicable.

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

The collection of information requested in the rules described herein is conducted in a manner consistent with the guidelines in 5 C.F.R.1320.5(d)(2).

8. **Consultations Outside the Agency**

The amendments adopted by the Commission in 1996 were subject to public review and comment following the issuance of a Concept Release in 1994 and a Proposing Release in 1996. Prior amendments were made in 1983, which were subject to a public review and comment following the issuance of a Proposing Release in 1982.

9. **Payment or Gift to Respondents**

Not applicable.

10. **Assurance of Confidentiality**

No assurance of confidentiality is provided.

11. **Sensitive Questions**

No questions of a sensitive nature are asked.

12. **Estimates of Respondent Reporting Burden**

The Commission estimates that creating and maintaining records pursuant to this rule requires five hours per offering, however, most of the records required pursuant to this rule are already retained as a matter of practice. In 2006, there were 795 underwritten offerings. Thus, there are 795 respondents and the recordkeeping required under the rule would require an estimated 3975 hours (five hours times 795 respondents) over the course of a year.

13. **Estimates of Total Annualized Cost Burden**

There is no cost burden to respondents other than the internal cost associated with the reporting burden.

14. **Estimated Cost to the Federal Government**

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 17a-2. The information collected by the respondents is normally reviewed only pursuant to an investigation, not as a matter of routine.

15. Explanation of Changes in Burden

The increase in burden hours overall is due to an increase in the amount of firm commitment offerings in 2006 from the underwritten offering calculation used in prior years. The increase in total annualized cost burden is due to inflation adjustments to the annual compensation for the typical employee charged with compliance with Commission regulations. There are no other changes in the burden.

16. Information Collection Planned for Statistical Purposes

Not applicable. There are no plans to require the publication of these records in the future.

17. Explanation of Why Expiration Date Will Not Be Displayed

Not applicable.

18. Exceptions to the Certification

Not applicable.

B. Collecting Information Employing Statistical Methods

Not applicable.