

SUPPORTING STATEMENT
Rule 702 of Regulation MC

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Necessity for the Information Collection

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ The Dodd-Frank Act requires the Commission to adopt rules to mitigate specified conflicts of interest.² Specifically, Section 765(a) of the Dodd-Frank Act requires the Commission to adopt rules, which rules may include numerical limits on the control of, or voting rights with respect to, any clearing agency that clears security-based swaps (“security-based swap clearing agency”), or on the control of any security-based swap execution facility (“SB SEF”) or national securities exchange that posts or makes available for trading security-based swaps (“SBS exchange”), by specified entities such as a bank holding company with total consolidated assets of \$50 billion or more, a nonbank financial company, an affiliate of such bank holding company or nonbank financial company, a security-based swap dealer, or a major security-based swap participant. Section 765(c) of the Dodd-Frank Act further provides that in adopting rules under Section 765, the Commission shall consider any conflicts of interest arising from the amount of equity ownership and voting by a single investor; the ability of owners to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest; and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.³ Section 765(b) provides that the Commission shall adopt final rules if it determines that such rules are necessary or appropriate to improve the governance of, mitigate the systemic risk, promote competition or mitigate conflicts of interest in connection with a security-based swap dealer’s or major security-based swap participant’s conduct of business with a security-based swap clearing agency, SB SEF, and SBS exchange and in which such security based swap dealer or major security-based swap participant has a material debt or equity investment.⁴ The Commission is required to adopt such rules by January 17, 2011, which is 180 days after the enactment of the Dodd-Frank Act.

Regulation MC under the Exchange Act, and Rules 700, 701, and 702 thereunder, are

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, H.R. 4173).

² See Pub. L. No. 111-203, Section 765(a).

³ See Pub. L. No. 111-203, Section 765(c).

⁴ See Pub. L. No. 111-203, Section 765(b).

intended to mitigate conflicts of interest with respect to security-based swap clearing agencies, SB SEFs, and SBS exchanges.

2. Purpose of the Information Collection

The information collection requirements of Rule 702 of Regulation MC are intended to mitigate conflicts of interest with respect to SB SEFs and SBS exchanges.

Rule 702(c) under Regulation MC would require SB SEFs and SBS exchanges or facilities of national securities exchanges that post or make available for trading security-based swaps (“SBS exchange facilities”) to have rules that would: (1) provide for an effective mechanism to divest any participant or member, as applicable, of any interest owned in excess of the proposed 20% ownership limit; (2) not to give effect to the portion of any voting interest held by one or more participants or members, as applicable, in excess of the proposed 20% voting limit; and (3) provide an effective mechanism for the SB SEF, SBS exchange or SBS exchange facility to obtain information relating to ownership and voting interests in such entity. Establishing such rules would result in a paperwork burden for a SB SEF, SBS exchange, or SBS exchange facility, as applicable. In addition, if a SB SEF, SBS exchange, or SBS exchange facility were to request to receive ownership and voting information from participants or members pursuant to Rule 702(c), which would be a collection of information. The purpose of the collection of information in proposed Rule 702(c) under Regulation MC is to enable a SB SEF, SBS exchange, or SBS exchange facility to monitor voting interests with respect to such entity, and enable the SB SEF, SBS exchange, or SBS exchange facility, as applicable, to take necessary action if the ownership or voting rights by a participant or member or group of participants or members, as applicable, exceed those allowed under proposed Rule 702(b).

Rule 702(e) under Regulation MC would require SB SEFs and SBS exchanges to establish a regulatory oversight committee (“ROC”) that is composed solely of independent directors, to oversee the SB SEF’s and SBS exchange’s obligations under Section 3D of the Exchange Act. The proposed rule would require that any recommendation of the ROC that is not adopted or implemented by the SB SEF’s or SBS exchange’s board of directors (“Board”) be reported promptly to the Commission. The purpose of the collection of information in proposed Rule 702(e) under Regulation MC is to provide the Commission with information regarding the instances in which the SB SEF or SBS exchange does not adopt or implement a recommendation of the ROC, which would help the Commission in its oversight of SB SEFs and SBS exchanges. The information collection also should promote sound regulatory policies and foster the effectiveness of the ROC by putting the SB SEF or SBS exchange on notice that the Commission must be apprised promptly of any recommendation that is made by the ROC that is not adopted or implemented.

3. Role of Improved Information Technology

SB SEFs would report information required under Rule 702(e) to an electronic mailbox at the Commission.

4. Efforts to Identify Duplication

In establishing Rule 702, the Commission has taken steps to minimize the compliance burden on SB SEFs, SBS exchanges, and SBS exchange facilities.

5. Effect on Small Entities

Not applicable.

6. Consequences of Less Frequent Collection

A less frequent collection under Rule 702 would impair the Commission's ability to take necessary action if the ownership or voting rights by a participant or member or group of participants or members in a SB SEF, SBS exchange or SBS exchange facility, as applicable, exceeded those allowed under proposed Rule 702(b), and would impair the Commission's oversight of SB SEFs and SBS exchanges when the recommendation of a ROC is not adopted or implemented under proposed Rule 702(e).

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

Not applicable.

8. Consultation Outside the Agency

Not applicable. No consultation outside the agency took place.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Other than information for which a SB SEF, SBS exchange or SBS exchange facility requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to Rules 702(c) and (e) would not be confidential and would be publicly available.

11. Sensitive Questions

Not applicable.

12. Estimate of Reporting Burden

The Commission estimates that approximately 20 SB SEFs and 15 SBS exchanges or SBS exchange facilities will have a one-time paperwork burden of 15 hours per entity associated with the drafting and implementation of any rules required under proposed Rule 702(c), for a total of 525 hours (15 hours x 35 respondents).

The Commission estimates that each SB SEF, SBS exchange, or SBS exchange facility would request information approximately 4 times per year from approximately 20 participants or members to comply with Rule 702(c).

The Commission estimates that the preparation and sending of each of the 4 requests for information would require approximately 4 hours, and reviewing the responses to each of the 4 requests for information would require 10 hours. This would result in a total annual reporting and recordkeeping burden of 56 hours ((4 requests X 4 hours) + (4 requests X 10 hours)) for each SB SEF, SBS exchange, or SBS exchange facility, as applicable, and a total annual burden for all SB SEFs, SBS exchanges, and SBS exchange facilities of 1,960 hours (56 hours X 35 respondents). The Commission estimates that each participant or member would require 1 hour to prepare and send the response to the request, for a total annual reporting and recordkeeping burden for each participant or member of 4 hours (4 requests X 1 hour) and a total annual burden for all participants or members of 2,800 hours (700 participants or members X 4 hours).

Therefore, the Commission estimates that SB SEFs, SBS exchanges and SBS exchange facilities will have a total one-time paperwork burden of 525 hours and a total annual burden of 1,960 hours to comply with the collection of information required by Rule 702(c).

The Commission estimates that SB SEF participants and SBS exchange members will have a total annual paperwork burden of 2,800 hours to comply with the collection of information required by Rule 702(c).

The Commission estimates that the preparation and sending of each of the 4 requests for information would require approximately 4 hours, and reviewing the responses to each of the 4 requests for information would require 10 hours. This would result in a total annual reporting and recordkeeping burden of 56 hours ((4 requests X 4 hours) + (4 requests X 10 hours)) for each SB SEF, SBS exchange, or SBS exchange facility, as applicable, and a total annual burden for all SB SEFs, SBS exchanges, and SBS exchange facilities of 1,960 hours (56 hours X 35 respondents). The Commission estimates that each participant or member would require 1 hour to prepare and send the response to the request, for a total annual reporting and recordkeeping burden for each participant or member of 4 hours (4 requests X 1 hour) and a total annual burden for all participants or members of 2,800 hours (700 participants or members X 4 hours).

The Commission estimates that approximately 20 SB SEFs and 15 SBS exchanges will have a total annual paperwork burden of 12 hours per entity to comply with the collection of information required by Rule 702(e). The Commission estimates that a Board of a SB SEF or SBS exchange could decide not to adopt a ROC recommendation up to 12 times per year, and that it would take a SB SEF or SBS exchange 1 hour to complete, review and prepare the notice

required by Rule 702(e) upon such occurrence. Therefore, the Commission estimates that SB SEFs and SBS exchanges will have a total annual paperwork burden of 420 hours⁵ to comply with the collection of information required by Rule 702(e).

13. Estimate of Total Annual Cost Burden

Not applicable.

14. Estimate of Cost to the Federal Government

Not applicable.

15. Explanation of Changes in Burden

Not applicable. This is the first request for approval of the collection of information for this rule.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

⁵ (35 respondents x 12 (estimated number of notices prepared annually by each SB SEFs pursuant to the proposed Rule 702(e)) x 1 hour (estimate of total time to complete, review, and prepare required notice) = 420 hours.