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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From:
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 204

SEC File No. 270-586, OMB Control No. 3235-0647

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 204 (17 CFR 242.204), under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Rule 204 requires that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately close out the fail to deliver position by purchasing or borrowing securities by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. Rule 204 is intended to help further the Commission’s goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission’s goal of addressing potentially abusive “naked” short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (“SRO”) examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a “collection of information” within the meaning of the Paperwork Reduction Act.

- I. Allocation Notification Requirement: As of December 31, 2014, there were 4,184 registered broker-dealers. Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a broker-dealer has been allocated a portion of a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the broker-dealer has to determine whether or not that portion of the fail to deliver position was not closed out in accordance with Rule 204(a). We estimate that a broker-dealer will have to make such determination with respect to approximately 2.44 equity securities per day.¹ We estimate a total of 2,572,657 notifications in accordance with Rule 204(d) across all broker-dealers (that were allocated responsibility to close out a fail to deliver position) per year (4,184 broker-dealers notifying participants once

¹ The Commission’s Division of Economic and Risk Analysis (“DERA”) estimates that there are approximately 10,208 fail to deliver positions per settlement day as of January 2015. Across 4,184 broker-dealers, the number of securities per broker-dealer per day is approximately 2.44 equity securities.

per day² on 2.44 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 411,625 burden hours (2,572,657 multiplied by 0.16 hours/notification).

II. Demonstration Requirement for Fails to Deliver on Long Sales: As of December 31, 2014, there were 175 participants of NSCC, the primary registered clearing agency responsible for clearing U.S. transactions that were registered as broker-dealers.³ If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determines that such fail to deliver position resulted from a long sale, we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 38 securities per day.⁴ We estimate a total of 1,675,800 demonstrations in accordance with Rule 204(a)(1) across all participants per year (175 participants checking for compliance once per day on 38 securities, multiplied by 252 trading days in a year). The total approximate

² Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, we believe that a broker-dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

³ Those participants not registered as broker-dealers include such entities as banks, U.S.-registered exchanges, and clearing agencies. Although these entities are participants of a registered clearing agency, generally these entities do not engage in the types of activities that will implicate the close-out requirements of the rule. Such activities of these entities include creating and redeeming Exchange Traded Funds, trading in municipal securities, and using NSCC's Envelope Settlement Service or Inter-city Envelope Settlement Service. These activities rarely lead to fails to deliver and, if fails to deliver do occur, they are small in number and are usually closed out within a day.

⁴ DERA estimates approximately 65.1% of trades are long sales as of March 2014 and applies this percentage to the number of fail to deliver positions per day. DERA estimates that there are approximately 10,208 fail to deliver positions per settlement day. Across 175 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 58 equity securities. 65.1% of 58 securities per day is approximately 38 securities per day.

estimated annual burden hour per year will be approximately 268,128 burden hours (1,675,800 multiplied by 0.16 hours/documentation).

- III. Pre-Borrow Notification Requirement: As of December 31, 2014, there were 175 participants of NSCC, the primary registered clearing agency responsible for clearing U.S. transactions that were registered as broker-dealers.⁵ If a participant of a registered clearing agency has a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the participant has to determine whether or not the fail to deliver position was closed out in accordance with Rule 204(a). We estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 58 equity securities per day.⁶ We estimate a total of 2,557,800 notifications in accordance with Rule 204(c) across all participants per year (175 participants notifying broker-dealers once per day on 58 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 409,248 burden hours (2,557,800 @ 0.16 hours/documentation).
- IV. Certification Requirement: If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased securities in accordance with the conditions specified in Rule 204(e), we estimate that a broker-dealer will have to make such determinations with

⁵ See supra note 3.

⁶ DERA estimates that there are approximately 10,208 fail to deliver positions per day. Across 175 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 58 equity securities.

respect to approximately 2.44 securities per day. As of December 31, 2014, there were 4,184 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. We estimate that on average, a broker-dealer will have to certify to the participant that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that it is in compliance with the requirements set forth in Rule 204(e), 2,572,657 times per year (4,184 broker-dealers certifying once per day on 2.44 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 411,625 burden hours (2,572,657 multiplied by 0.16 hours/certification).

- V. Pre-Fail Credit Demonstration Requirement: If a broker-dealer purchases or borrows securities in accordance with the conditions specified in Rule 204(e) and determines that it has a net long position or net flat position on the settlement day on which the broker-dealer purchases or borrows securities we estimate that a broker-dealer will have to make such determination with respect to approximately 2.44 securities per day.⁷ As of December 31, 2014, there were 4,184 registered broker-dealers. We estimate that on average, a broker-dealer will have to demonstrate in its books and records that it has a net long position or net flat position on the settlement day for which the broker-dealer is claiming credit, 2,572,657 times per year (4,184 broker-dealers checking for compliance once per day on 2.44 securities, multiplied by 252 trading days in a year). The total

⁷ See supra note 1.

approximate estimated annual burden hour per year will be approximately 411,625 burden hours (2,572,657 multiplied by 0.16 hours/demonstration).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,912,251 hours per year (411,625 + 268,128 + 409,248 + 411,625 + 411,625). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may review background documentation for this information collection at the following website: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE, Washington DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 5, 2015

Robert W. Errett
Deputy Secretary