

Regulation AC. As a conservative estimate, however, if all SEC registered investment advisers are covered persons and on average publish as many research reports per year as the average broker-dealer (250 research reports), the estimated total number of research reports published by SEC registered investment advisers who are associated with a broker-dealer would be approximately 662,500 ( $250 \times 2,650$ ).<sup>65</sup> Therefore, the Commission estimates that the total annual analyst certification burden in hours for these investment advisers would be 11,040 hours ( $(1 \text{ minute} \times 662,500 \text{ research reports}) / 60 \text{ minutes}$ ). The Commission estimates that the annual burden in dollars of complying with the research report certification and disclosure requirements for SEC registered investment advisers is approximately \$1,341,360 per year<sup>66</sup> ( $11,040 \times \$121.50$ ). Unlike Rule 501, Rule 502 of Regulation AC (public appearances) does not apply to covered persons. We note, however, that we believe that a significant number of associated persons would not be "covered person(s)," as defined in Rule 500 of Regulation AC and, as a result, the aggregate burden for persons associated with broker-dealers to comply with the research report certification and disclosure requirements will be significantly lower.

The staff of the Commission believes that the research analyst will prepare the quarterly statement required for public appearances. The staff estimates that the average amount of time it would take a research analyst to prepare the quarterly statements regarding public appearances as required by the regulation is ten minutes per analyst. The staff of the Commission believes that, on average, approximately 519 public appearances by research analysts occur per quarter,<sup>67</sup> or about 2,076 per year. Therefore, the Commission believes that the total annual burden for broker-dealers in hours of complying

with the public appearance certification and disclosure requirements would be approximately 346 hours per year ( $(10 \text{ minutes} \times 2076 \text{ appearances}) / 60 \text{ minutes}$ ).

In cases where the broker or dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated pursuant to section 17(d) of the Exchange Act and Rule 17d-2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in Rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a-4(b)(4). Broker-dealers are also expected to have records that document the process they followed in producing each research analyst certification. The staff of the Commission believes that there will be few, if any, instances where a broker-dealer will provide notification to their examining authority, as analysts and their firms will have strong incentives to avoid having to make the type of disclosures required to be provided to their examining authority. Therefore, the total annual burden, in dollars, of complying with the public appearance certification requirements would be approximately \$42,039 ( $346 \text{ hours} \times \$121.50$ ).

The regulation requires that the records of statements regarding public appearances be preserved in accordance with Exchange Act Rule 17a-4(b)(4). Exchange Act Rule 17a-4(b)(4) requires that any communication relating to a broker-dealer's business, including inter-office communications, must be kept for at least three years. In light of the existing record preservation requirement for brokers and dealers under Exchange Act Rule 17a-4(b)(4),<sup>68</sup> the staff of the Commission believes that any additional costs to preserve the records of the certifications required by the regulation would be minimal.

Rule 500 of Regulation AC includes a definition of "covered person," which limits the scope of the regulation's application. Rule 504 of Regulation AC requires a broker-dealer to notify its associated persons that issue research reports as to whether associated persons would meet the definition of "covered persons" under Regulation AC, and, therefore, be subject to the rule.

Specifically, the broker-dealer must inform its associated persons whether the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by associated persons. Broker-dealers must also inform its associated persons whether associated persons have any officers or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.

The staff has not obtained data on the amount of time it would take for broker-dealers to make the necessary determinations and to draft and provide the notification required under Rule 504 of Regulation AC. For PRA purposes, the below calculations represent the staff's estimates of the amount of time that would be required for broker-dealers to comply with Rule 504. The staff estimates that there are approximately 2,650 investment advisers that are associated with at least one broker-dealer. The staff estimates that it would take approximately one hour per year for each of the approximately 2,650 broker-dealers to determine whether it maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by associated persons. The staff estimates that it would take approximately thirty minutes per year for each broker-dealer to determine whether its associated persons have any officers or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.<sup>69</sup>

The staff estimates that it would take fifteen minutes per year for each broker-dealer to draft and provide the required notification to its associated persons. The Commission staff expects that a compliance officer will likely be the employee primarily charged with making the necessary determinations, and drafting and providing the required notification. According to industry sources, in 2002, compliance officers,

<sup>69</sup> Broker-dealers should already have mechanisms in place to determine whether such persons exist and, if so, the identity of those persons because of NASD Rule 3030. See NASD Rule 3030.

<sup>65</sup> We believe that including all SEC registered investment advisers in calculating the paperwork burden as to covered persons is over-inclusive as to investment advisers, and that this estimate is therefore sufficient to account for other types of entities who would meet the definition of "covered person."

<sup>66</sup> The estimated total annual burden in dollars for SEC registered investment advisers to comply with the research report certification and disclosure requirements would be approximately \$1,501,518.00 if calculated using the high-end of the estimated range for the number of research reports.

<sup>67</sup> 519 is approximately 10% of the estimated 5,186 research analysts employed in the U.S., which is based on information provided by Nelson Information. One commenter believes that this estimate is low, but did not provide specific data in support of its views. See Thomson Financial.

<sup>68</sup> OMB Control No. 3235-0279.