

Rule 17i-3: Withdrawal from Supervision as an Supervised Investment Bank Holding Company

SUPPORTING STATEMENT

A. Justification

1. Necessity For Information Collection

Section 231 of the Gramm-Leach-Bliley Act of 1999¹ (the “GLBA”) amended Section 17 of the Securities Exchange Act of 1934 (the “Exchange Act” or the “Act”) to create a regulatory framework under which a holding company of a broker-dealer may voluntarily be supervised by the Commission as a supervised investment bank holding company (or “SIBHC”).² In 2004, the Commission promulgated rules, including Rule 17i-3, to create a framework for the Commission to supervise SIBHCs.³ This framework includes qualification criteria for investment bank holding companies (“IBHCs”) that file notices of intention to be supervised by the Commission, as well as recordkeeping and reporting requirements for SIBHCs. Taken as a whole, the SIBHC framework permits the Commission to better monitor the financial condition, risk management, and activities of a broker-dealer’s parent and affiliates on a group-wide basis. In particular, it creates a formal process through which the Commission can access important information regarding activities of a broker-dealer’s affiliates that could impair the financial and operational stability of the broker-dealer or the SIBHC.

In addition, securities firms that do business in the European Union (“EU”) have indicated that they may need to demonstrate that they have consolidated supervision at the holding company level that is “equivalent” to EU consolidated supervision.⁴ The enactment of Section 17(i) of the Exchange Act was also intended to address this concern.⁵ This regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.⁶ This would minimize duplicative regulatory burdens on broker-dealers that are active in the EU and in other jurisdictions that may have similar laws.

Rule 17i-3 permits an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission. The Rule requires that an SIBHC include in its notice of withdrawal a statement that it is in compliance with Rule 17i-2(c) (regarding amendments to its Notice of Intention) to assure that the Commission has updated information when considering the SIBHC’s withdrawal request.

1 Pub. L. No. 106-102, 113 Stat. 1338 (1999).

2 See 15 U.S.C. 78q(i).

3 See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

4 See “Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002.”

5 See H.R. Conf. Rep. No. 106-434, 165 (1999).

6 See Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

The collection of information required by Rule 17i-3 is necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of § 17 of the Act. In addition, the collection is needed so that the Commission can adequately supervise the activities of these SIBHCs. Generally, these rules also enhance the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers.

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

Rule 17i-3 was designed to provide SIBHCs with a method for withdrawing from Commission supervision as an SIBHC.

The information and documents required by Rule 17i-3 are necessary to enable the Commission to evaluate whether it is necessary and appropriate in the furtherance of Section 17 of the Exchange Act for the Commission to allow an SIBHC to withdraw from supervision. Without this information, the Commission would be unable to make this evaluation.

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

Rule 17i-3 does not require that an SIBHC file information or documents via electronic submission. Further, as an SIBHC would be required to file the notice of withdrawal from Commission supervision only once, it would not be cost-effective to require that an information technology system be created for this purpose.

4. Efforts To Identify Duplication

No duplication is apparent.

5. Effects On Small Entities

An IBHC can apply to become an SIBHC only if it is not affiliated with an insured bank or a savings association,⁷ (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.⁸ In addition, pursuant to paragraph (d)(2)(i)(B) of Rule 17i-2, the Commission would not consider such supervision necessary or appropriate unless the investment bank holding company demonstrates that it owns or controls a broker or dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker or dealer maintains tentative net capital of \$100 million or more. Accordingly, neither an IBHC nor an SIBHC could be a small entity.⁹

7 Exchange Act § 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

8 Federal Reserve Act § 25A [12 U.S.C. 611].

9 See 17 CFR 240.0-10(c).

6. Consequences of Less Frequent Collection

If this information were not collected as frequently, the Commission would be unable to ascertain, on an ongoing basis, whether continued supervision of an SIBHC was necessary and appropriate in furtherance of the purposes of Section 17 of the Exchange Act.

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

The collection of information is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. This comment period is generally thirty days (but for Rule 17i-3 it was 90 days), which affords the public an opportunity to respond to the proposed rule changes.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Pursuant to Exchange Act § 17(j)¹⁰ and Section 552(b)(3)(B) of the Freedom of Information Act,¹¹ notwithstanding any other provision of law, the Commission cannot be compelled to disclose any information required to be reported under §17(i). Section 17(j) states, [f]or purposes of section 522 of title 5 United States Code [commonly referred to as the Freedom of Information Act (“FOIA”)], this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552,” and “the Commission shall designate information described in or obtained pursuant to this section as confidential information for purposes of Exchange Act § 24(b)(2).”¹²

11. Sensitive Questions

Not applicable. Questions of a sensitive nature are not asked.

12. Estimate of Respondent Reporting Burden

As of March 31, 2006, approximately 140 registered broker-dealers reported their tentative net capital as being over \$100 million.¹³ Many of these broker-dealers are affiliated with another broker-dealer that reported its tentative net capital as being more than \$100 million.

10 15 U.S.C. 78o(j).

11 5 U.S.C. 552(b)(3)(B).

12 15 U.S.C. 78x(b)(2).

13 Per March 31, 2006, FOCUS Report filings. Broker-dealers are required to file monthly and/or quarterly reports on Form X-17A-5 pursuant to Rule 17a-5(a) (17 CFR 240.17a-5(a)), commonly referred to as FOCUS Reports.

Approximately 35 could not be supervised by the Commission as an SIBHC due to the fact that each is either: (i) affiliated with an insured bank or a savings association,¹⁴ (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.¹⁵ In addition, some broker-dealers may not be active in jurisdictions that require securities firms to demonstrate that they have consolidated supervision at the holding company level that is equivalent to EU consolidated supervision, or may not find it to be cost-effective to register as an SIBHC for other reasons.¹⁶ When the SIBHC rule framework was finalized in 2004, the Commission estimated that three IBHCs would file notices of intent to be supervised by the Commission as SIBHCs. No IBHC has yet filed such a notice, however the Commission still believes that three IBHCs will file such Notices. Due to the benefits and costs associated with becoming supervised by the Commission as an SIBHC, we believe that an IBHC would carefully consider filing a Notice of Intention. For PRA purposes only, we estimate that one SIBHC may wish to withdraw from Commission supervision as an SIBHC over a ten-year period.

Each SIBHC that withdraws from Commission supervision as an SIBHC will require approximately 24 hours to draft a withdrawal notice and submit it to the Commission. An SIBHC likely would have an attorney perform this task. Further, an SIBHC likely will have a senior attorney or executive officer review the notice of withdrawal before submitting it to the Commission, which will take approximately eight hours. Thus, we estimate that the annual, aggregate burden of withdrawing from Commission supervision as an SIBHC will be approximately 3.2 hours each year.¹⁷

Each SIBHC that withdraws from Commission supervision would incur a cost of about \$12,592 to draft and review a notice or withdrawal to submit to the Commission.¹⁸ However, as

14 See note 7.

15 See note 8.

16 Broker-dealers that have more than \$1 billion in tentative net capital can elect to calculate market and credit risk capital charges using mathematical modeling techniques if their holding company volunteers to be subject to consolidated supervision by the Commission under an alternative supervisory framework (See Exchange Act Release 34-49830 (Jun. 8, 2004), 69 FR 34428 (Jun. 21, 2004)). Consequently, broker-dealers that are able to do so generally will elect that supervisory framework over the SIBHC framework. As of March 31, 2006 (See note 13), 33 broker-dealers reported having tentative net capital over \$1 billion.

17 $(1 \text{ SIBHC} / \text{every } 10 \text{ years}) \times (24 \text{ hours to draft} + 8 \text{ hours to review}) = 3.2 \text{ hours.}$

18 According to the Securities Industry Association (or "SIA"), the hourly cost of an Attorney based in New York City is \$324, and the average hourly cost of a Deputy General Counsel based in New York City is \$602, as reflected in the SIA's *Report on Management and Professional Earnings for 2005*, and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. (The SIA recently spoke with the Commission's Office of Economic Analysis to inform the Commission that the multiplier of 1.35 that the Commission has historically used was too low. The SIA informed the Commission that, with increasing health care costs, the fact that the largest firms that pay higher salaries

discussed above we further estimate that one SIBHC may withdraw from Commission supervision only once every ten years. Thus, we estimate that the total dollar cost of the paperwork burden associated with Rule 17i-3 to be approximately \$1,259.¹⁹

13. Estimate of Total Annualized Cost Burden

The estimated total annualized cost burden for Rule 17i-3 is \$0. Other than provided for in item number 12, it is not anticipated that any of the respondents will incur additional operational or maintenance costs.

14. Estimate of Cost to Federal Government

There will be no additional costs to the Federal Government.

15. Explanation of Changes in Burden

The changes in burden estimates are a result of changes to two factors included in the calculation. First, there was a change to the multiplier used to calculate the salary costs for broker-dealer employees.²⁰ Second, the salary figures for the broker-dealer employees were updated.

16. Information Collection Planned for Statistical Purposes

Not applicable. There is no intention to publish the information for any purpose.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementation of such methods reduce the burden or improve the accuracy of results.

generally fail to respond to the SIA's salary survey, and other factors, the Commission should increase its multipliers. Consequently, the Commission and the SIA worked together to determine the level at which the multipliers should be set.) ((24 hours to draft x \$324 per hour) + (8 hours to review x \$602 per hour)) = (\$7,776 + \$4,816) = \$12,592.

¹⁹ (\$12,592 / 10 years) = \$1,259.20.

²⁰ See note 18.