

Rule 17a-13

SUPPORTING STATEMENT

A. Justification

1. Necessity For Information Collection

In the period between 1967 and 1970, the securities industry was in the midst of a prolonged and severe operational crisis. An increase in trading volume clogged the inadequate machinery for the control and delivery of securities. As a result, many broker-dealers were unable to locate securities belonging to customers. Others found themselves with substantial quantities of securities in their possession without knowing to whom they belonged. The chaotic state of affairs in many back offices of broker-dealers created the climate for the theft of securities by a number of back office personnel.

In response, on November 8, 1971, the Securities and Exchange Commission (the "Commission") adopted Rule 17a-13. Rule 17a-13 generally requires that at least once each calendar quarter, all registered broker-dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a-13 provides that under specified conditions, the securities counts, examination, and verification of the entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a-13 does not require filing a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X-17a-5, which must be filed with the Commission under Rule 17a-5. Rule 17a-13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. The Rule also does not apply to certain broker-dealers required to register only because they effect transactions in securities futures products.

Rule 17a-13 requires the recording of only those differences in the broker-dealer's records that remain unresolved seven business days after the date of the examination, count, and verification. The Commission or the self-regulatory organization ("SRO") designated as the broker-dealer's examining authority may examine these recorded discrepancies in a broker-dealer's records to determine whether they are the result of the firm's inability to maintain control of its business.

The Commission is statutorily authorized to promulgate this Rule by virtue of Sections 17(a) and 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o and 78q). These

sections authorize the Commission to provide safeguards with respect to the financial responsibility and related practices of broker-dealers, including the acceptance of custody and the use of customer securities. These sections also authorize the Commission to require the making and preservation of such records as the Commission deems appropriate for the protection of investors and in the public interest. Further statutory authority is found in Section 23(a) (15 U.S.C. §78w).

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

The information is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Any discrepancies between the security count and the broker-dealer's records alert the Commission and the SROs to those firms having problems in their back offices. Without this Rule, the Commission and the SROs would lose this important warning device to inform them when a broker-dealer might be having problems accounting for the securities for which it is responsible.

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

Since the Rule provides that firms must reconcile their books and records with their physical inventory and inventory in transit, improved information technology would not reduce the burden.

4. Efforts To Identify Duplication

Some organizations of which a broker-dealer may be a member require the broker-dealer to make similar counts of securities in the firm's possession or control. These counts, however, are used for different purposes.

5. Effects On Small Entities

To the extent that some broker-dealers covered by the Rule are small entities, the Rule would impact these entities. The impact would, however, be mitigated because many small entities do not hold securities.

6. Consequences of Less Frequent Collection

If the security counts were conducted less frequently, investors would not have the protection that the federal securities laws require. Many broker-dealers became insolvent because of their inability to account for the securities that their records showed they possessed or controlled.

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

Not applicable. The Rule 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, which affords the public an opportunity to respond to any such proposals.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The records required to be made by Rule 17a-13 are available only to Commission examination staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

Questions of a sensitive nature are not asked.

12. Estimate of Respondent Reporting Burden

Currently, there are approximately 5,700 broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with the Rule. As noted, the Rule requires a broker-dealer to account for all securities in its possession. Many broker-dealers hold few, if any, securities, while others hold large quantities. Therefore, the time burden of complying with the Rule will depend on respondent-specific factors, including size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent on the Rule is 100 hours per year. This estimate takes into account the fact that more than half the 5,700 respondents – according to financial reports filed with the Commission – may spend little or no time in complying with the Rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 570,000 hours (5,700 respondents x 100 hours/respondent).¹

¹ Previously (in 2005), the Commission estimated that there were 5,907 broker-dealers

13. Estimate of Total Annualized Cost Burden

Not applicable: (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the Rule; and (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in Item 12) to comply with the Rule.

14. Estimate of Cost to Federal Government

The staff estimates that the total time spent examining broker-dealers is approximately 268,741 hours per year and that, of that time, 1%, or 2,687 hours, is devoted to examining for compliance with Rule 17a-13. The staff estimates that the hourly cost of these reviews is \$47.25.² Therefore, the estimated cost to the Commission of this Rule is approximately \$127,000.

15. Explanation of Changes in Burden

The change in the reporting burden is due to the change in the estimated number of broker-dealers subject to Rule 17a-13.

16. Information Collection Planned for Statistical Purposes

This provision is not applicable because compliance with Rule 17a-13 will not require the employment of statistical methods. 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

Not applicable.

registered with the Commission, for a total burden of 590,700.

² GSA, Guide to Estimating Reporting Costs (1973) (which sets the value of one hour of staff time at \$35.00 + 35% overhead).