

Rule 17a-11

SUPPORTING STATEMENT

A. Justification

1. Necessity for Information Collection

In response to an operational crisis in the securities industry between 1967 and 1970, the Securities and Exchange Commission (“Commission”) adopted Rule 17a-11 (17 C.F.R. 240.17a-11) under the Securities Exchange Act of 1934 (“Exchange Act”) on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer’s designated examining authority (“DEA”), and the Commodity Futures Trading Commission (“CFTC”) if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a-11 is an integral part of the Commission’s financial responsibility program, which enables the Commission, a broker-dealer’s DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer’s financial or operational condition.

Rule 17a-11 also requires over-the-counter (“OTC”) derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3-1 to notify the Commission when their tentative net capital drops below certain levels. OTC derivatives dealers must also provide notice to the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3-1 (17 C.F.R. 15c3-1f).

The Commission is statutorily authorized to promulgate Rule 17a-11 under Sections 15(c)(3) and 17(a) of the Exchange Act (15 U.S.C. §§78o and 78q). These sections authorize the Commission to provide safeguards with respect to financial responsibility and to request that such records be made and kept as are necessary or appropriate in the public interest. Further statutory authority is found in Section 23(a) of the Act, 15 U.S.C. §78w.

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

The information obtained under Rule 17a-11 is used to monitor the financial and operational condition of a broker-dealer by the Commission staff, by the broker-dealer’s DEA, and by the CFTC. This information alerts the Commission, the DEA, and the CFTC of the need to increase surveillance of the broker-dealer’s financial and operational condition and to assist the broker-dealer to comply with the Commission’s rules. No similar information is already available to use or modify for purposes of complying with Rule 17a-11 because the disclosures required by the rule are

unobtainable until the early warning mechanisms are triggered. Only the most up-to-date information will help the Commission, SROs, and the CFTC to monitor broker-dealers experiencing financial or operational difficulties.

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

Broker-dealers required to provide notice under Rule 17a-11 may give or transmit such notice by telegraphic notice or facsimile transmission. Reports required by Rule 17a-11 may be transmitted by overnight delivery. Certain SROs have developed systems that enable them to receive these notices electronically.

4. Efforts to Identify Duplication

Duplication of information is not a concern because the reporting requirements are only applicable to those broker-dealers triggering the early warning mechanisms of Rule 17a-11.

5. Effects on Small Business or Other Small Entities

To the extent that some broker-dealers that are required to give notice under the Rule are small entities, the Rule will impact these entities. However, information is collected from small registered broker-dealers only when they are required to provide notice under the Rule.

6. Consequences of Less Frequent Collection

Only broker-dealers having financial or operational problems must give notice under the Rule. Less frequent notification would result in the Commission, SROs, and the CFTC not receiving notification of broker-dealers' financial or operational problems.

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

The collection of information required by Rule 17a-11 is conducted in a manner consistent with the guidelines in 5 C.F.R. 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 30 days, which affords the public an opportunity to respond to any such proposals.

9. Payment or Gift to Respondents

Not applicable.

10. Assurances of Confidentiality

The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a-11. The Commission believes that information obtained under Rule 17a-11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry SROs responsible for the regulation or supervision of financial institutions.

11. Sensitive Questions

No questions of a sensitive nature are asked by Rule 17a-11.

12. Estimate of Respondent Reporting Burden

Only broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems have a reporting burden under Rule 17a-11. In 2008, the Commission received approximately 400 notices under this Rule. The Commission did not receive any Rule 17a-11 notices from OTC derivatives dealers or broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3-1.

The Commission estimates that each broker-dealer reporting pursuant to Rule 17a-11 will spend approximately one hour preparing and transmitting the notice required by the Rule. Accordingly, the total estimated annualized burden under Rule 17a-11 is 400 hours.

13. Estimate of Total Annualized Cost Burden

The Rule does not impose any costs other than costs associated with the burden described in Item 12 above.

14. Estimate of Cost to Federal Government

The annual operational costs incurred by the federal government in enforcing compliance and reviewing the notices required by Rule 17a-11 amount to approximately \$7,843. This amount is based upon the calculation of the value of 166 hours of staff time devoted to these activities, plus the related overhead expenses. These estimates have been computed based on the GSA, Guide to Estimating Report Costs (1986).

15. Explanation of Changes in Burden

The change in the reporting burden is due to a change in the number of notices filed by broker-dealers pursuant to Rule 17a-11 from 2005 to 2008.

16. Information Collection Planned for Statistical Purposes

This provision is not applicable because compliance with Rule 17a-11 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.

B. Collection of Information Employing Statistical Methods

Not applicable.