

SUPPORTING STATEMENT

A. Justification

1. Necessity For Information Collection

Section 231 of the Gramm-Leach-Bliley Act of 1999<sup>1</sup> (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”).<sup>2</sup> In 2004, the Commission promulgated rules, including Rule 17i-5, to create a framework for the Commission to supervise SIBHCs.<sup>3</sup> 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.<sup>4</sup> The enactment of Section 17(i) of the Exchange Act was also intended to address this concern.<sup>5</sup> 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.<sup>6</sup> This would minimize duplicative regulatory burdens on broker-dealers that are active in the EU and in other jurisdictions that may have similar laws.

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.<sup>7</sup> Rule 17i-5 delineates the records that an SIBHC must make and keep current relating to its business. In addition, the Rule requires that an SIBHC preserve those and other records for certain prescribed time periods.

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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).

7 15 U.S.C. 78q(i)(3)(A).

The collections of information required pursuant to Rule 17i-5 are necessary so that the Commission can adequately supervise the activities of these SIBHCs. In addition, these collections of information are needed 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 Section 17 of the Act. Rule 17i-5 also enhances 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

The purpose of this rule is to require an SIBHC to create and maintain records that would allow the Commission to remain informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transaction among members of the affiliate group, as well as determine whether the SIBHC is in compliance with the Exchange Act and rules to which it is subject.

Without this information and documentation, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of § 17 of the Act.

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

Rule 17i-5 does not prevent an SIBHC from using computers or other mechanical devices to create or maintain the required records.

## 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,<sup>8</sup> (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.<sup>9</sup> 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.<sup>10</sup>

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

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

10 See 17 CFR 240.0-10(c).

## 6. Consequences of Less Frequent Collection

The records an SIBHC is required to make under Rule 17i-5 are generally used by prudent IBHCs to conduct their operations and to monitor and control risks internally. Failure to make these records on a current basis would likely cause operational difficulties at the SIBHC. Additionally, failure to make the records would make it difficult for Commission examiners to assess an SIBHC's affiliate activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transaction among members of the affiliate group, as well as determine whether the SIBHC is in compliance with the Exchange Act and rules to which it is subject.

## 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-5 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

The records required by Rule 17i-5 are available only to the examination staff of the Commission. Pursuant to Exchange Act Section 17(j)<sup>11</sup> and Section 552(b)(3)(B) of the Freedom of Information Act,<sup>12</sup> notwithstanding any other provision of law, the Commission cannot be compelled to disclose any information required to be reported under Section 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)."<sup>13</sup> Further, paragraph (d) of Rule 17i-5 states that all information created or maintained and obtained by the Commission pursuant to Rule 17i-5 shall be accorded confidential treatment.

In addition, pursuant to other Commission's rules,<sup>14</sup> the Commission does not generally publish or make available information contained in 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.

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11 15 U.S.C. 78o(j).

12 5 U.S.C. 552(b)(3)(B).

13 15 U.S.C. 78x(b)(2).

14 See 17 CFR 200.80(b)(4)(iii).

## 11. Sensitive Questions

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

## 12. Estimate of Respondent Reporting Burden

As of October 15, 2009 the Commission supervises one firm registered as a SIBHC. 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. The Commission still believes that additional IBHCs will file such Notices and therefore maintains the estimate of three firm respondent

Pursuant to Rule 17i-5, an SIBHC is required to make and keep records reflecting (i) the results of quarterly stress tests; (ii) that the firm had created a contingency plan to respond to certain possible funding and liquidity difficulties; and (iii) the basis for credit risk weights. Further, Rule 17i-5 requires that an SIBHC maintain these and other records for at least three years in an easily accessible place. On average, an SIBHC will spend approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year. In addition, an SIBHC will generally spend about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group. Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty.<sup>15</sup> Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records.

Consequently, the total burden relating to Rule 17i-5 is approximately 330 hours in the first year and approximately 290 hours each year thereafter for each SIBHC,<sup>16</sup> and approximately 990 hours in the first year and 870 hours each year thereafter for all three SIBHC's combined.<sup>17</sup>

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15 We estimate that, on average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, it is our understanding that firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties.

16 (40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group) + (256 hours to create a record regarding stress tests) + ((30 minutes x 20 counterparties) to create a record regarding the basis for credit risk weights) + (24 hours per year to maintain records) = 330 hours in the first year. (256 hours to create a record regarding stress tests) + ((30 minutes x 20 counterparties) to create a record regarding the basis for credit risk weights) + (24 hours per year to maintain records) = 290 hours each year thereafter.

17 (330 hours per year x 3 SIBHCs) = 990 hours. (290 hours per year x 3 SIBHCs) = 870 hours.

An SIBHC will generally require about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group at a cost of \$9,200 per SIBHC.<sup>18</sup> An SIBHC will require, on average, approximately 64 hours each quarter to create a record regarding stress tests, or approximately 256 hours each year and a cost of \$49,920.<sup>19</sup> Further, an SIBHC will establish approximately 20 new counterparty arrangements each year, and will take, on average, about 30 minutes to create a record regarding the basis for credit risk weights for each such counterparty for a cost of \$1,410.<sup>20</sup> Finally, an SIBHC will generally require about 24 hours per year to maintain the specified records for a cost of \$4,632.<sup>21</sup>

### 13. Estimate of Total Annualized Cost Burden

The information technology (“IT”) systems used by IBHCs to manage risk, make and retain records and reports, and calculate capital differ widely based on the types of business and the size of the IBHC. We believe that an IBHC will upgrade its IT systems with relation to four of the SIBHC framework Rules: Rule 17i-4 (requires an SIBHC to document its internal risk management control systems), Rule 17i-5 (requires an SIBHC to create and maintain records), Rule 17i-6 (requires an SIBHC to create and make reports to the Commission), and Rule 17i-7 (requires that an SIBHC compute allowable capital and allowances for market, credit, and operational risk). It is impossible to determine what percentage of these IT systems costs may be attributable to any particular SIBHC framework Rule, so we will allocate them equally (i.e., 25% of the total cost to each of these four Rules). We believe the costs to upgrade IT systems would be one-time costs.

These IBHCs’ IT systems may be in varying stages of readiness to meet the requirements of the rules. The staff estimated, when these rules were proposed, that it would cost an IBHC between \$1 million and \$10 million to upgrade its IT systems to comply with the SIBHC framework of rules, depending on the state of development of its IT systems. We believe this

18 We believe that an SIBHC would have a Senior Treasury Manager create this record. According to the Securities Industry and Financial Markets Association (“SIFMA”), the hourly cost of a Senior Treasury Manager is \$230, as reflected in the SIFMA’s Report on Management and Professional Earnings for 2008 (“SIFMA’s Report on Professional Earnings”), 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.  $(\$230 \times 40 \text{ hours}) = \$9,200$ .

19 We believe that an SIBHC would have a Floor Supervisor, or equivalent, create this record with an hourly cost of \$195, as reflected in SIFMA’s Report on Professional Earnings”).  $(\$195 \times 256) = \$49,920$ .

20 On average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties. We believe that an SIBHC would have an Intermediate Accountant create this record, which according to SIFMA’s Report on Professional Earnings receives an hourly rate of \$141.  $(\$141 \times ((30 \text{ minutes} \times 20 \text{ counterparties})/60 \text{ minutes})) = \$1,410$ .

21 We believe that an SIBHC would have a Programmer Analyst perform this task and according to SIFMA’s Report on Professional Earnings, a Programmer Analyst receives an hourly rate of \$193.  $(\$193 \times 24) = \$4,632$ .

estimate to be fairly sound because no commenter disagreed with it. Thus, on average, it would cost each of the three SIBHCs about \$5.5 million to upgrade their IT systems, or approximately \$16.5 million in total. As described above, we allocate approximately 25% of this cost, or \$4,125,000, as attributable to Rule 17i-5.

14. Estimate of Cost to Federal Government

There would be no additional costs to the Federal Government.

15. Explanation of Changes in Burden

There are no changes in the burden estimates; however the cost estimates have been updated to reflect the most current data available from SIFMA's Report on Professional Earnings.

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.