

PAPERWORK REDUCTION ACT SUBMISSION

EXTENSION OF RULE 17a-1

SUPPORTING STATEMENT

A. Justification

1. Necessity for Information Collection

The Securities Exchange Act of 1934, as amended (“Act”),¹ provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board, have primary responsibility for regulating their members or participants. The role of the Securities and Exchange Commission (“Commission”) in this framework is primarily one of oversight; the Act charges the Commission with the responsibility for assuring that each of these self-regulatory organizations complies with and advances the policies of the Act.

Rule 17a-1 under the Act² requires that every national securities exchange, national securities association, registered clearing agency, and the Municipal Securities Rulemaking Board (collectively, “SROs”) keep on file for a period of not less than five years, the first two years in an easily accessible place, at least one copy of all documents that they make or receive respecting their self-regulatory activities, and that all such documents be made available for examination by the Commission and its representatives. Rule 17a-1 is important to the Commission’s oversight responsibility with respect to SROs, in that it enables the Commission to review documents required to be kept by the SROs during reasonable periodic, special, or other examinations. Rule 17a-1 also permits the Commission’s staff to temporarily remove such documents for reproduction.

Rule 17a-1 was adopted on May 17, 1974, pursuant to Sections 17(a) of the Act³ and 23(a) of the Act,⁴ and was most recently amended on November 21, 1980.⁵

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

The Commission uses the information provided pursuant to Rule 17a-1 in its self-regulatory oversight program. The information provided pursuant to Rule 17a-1 allows the Commission to maintain accurate records with respect to the SROs, and to determine whether an SRO is operating in compliance with the Act and is carrying out its statutory oversight obligations under the Act. It

¹ 15 U.S.C. 78a *et seq.*

² 17 CFR 240.17a-1.

³ 15 U.S.C. 78q(a).

⁴ 15 U.S.C. 78(w)(a).

⁵ See Securities Exchange Act Release No. 17321 (November 21, 1980), 45 FR 79426 (December 1, 1980).

would be extremely difficult for the Commission's staff to oversee SROs if the records were not maintained. In addition, the Commission uses the information collected under Rule 17a-1 to monitor the accuracy of the determinations made pursuant to Rule 3a55-1 under the Act⁶ by national securities exchanges, including national securities exchanges that are notice-registered pursuant to Section 6(g) of the Act,⁷ as to whether a security index is narrow-based.

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

Rule 17a-1 is a recordkeeping rule. Records may be kept electronically, provided they remain accurate and accessible to Commission representatives.

4. Efforts to Identify Duplication

Not applicable. There is no duplication.

5. Effect on Small Entities

Not applicable. The SROs that are required to make and preserve the records to be available for examination under Rule 17a-1 are not small businesses.

6. Consequences of Less Frequent Collection

The information required to be collected under Rule 17a-1 increases the ability of the Commission to ensure that each SRO is operating in compliance with the Act and is carrying out its statutory oversight obligations under the Act. If the information is not collected or is collected less frequently, the Commission would be limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

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

Not applicable. No consultation outside the agency took place.

9. Payment or Gift to Respondents

Not applicable. No payments or gifts are required to be made or are made to respondents.

⁶ 15 U.S.C. 3a55-1.

⁷ 15 U.S.C. 78f(g).

10. Assurance of Confidentiality

The Freedom of Information Act (“FOIA”), 5 U.S.C. 552, generally provides for the disclosure of information to the public. Rule 83 of the Commission’s Rule of Information and Request, 17 C.F.R. 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under FOIA.

11. Sensitive Questions

Not applicable. No inquiries of a sensitive nature are made.

12. Estimate of Respondent Reporting Burden

a. SROs Required to Comply with Rule 17a-1

Commission staff believes that the average number of hours currently necessary for an SRO to comply with the requirements of Rule 17a-1 is 50 hours per year. Currently, there are 22 SROs required to comply with Rule 17a-1: 14 national securities exchanges registered under Section 6(a) of the Act,⁸ 1 national securities association, 6 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for the 22 SROs to comply with Rule 17a-1 is 1,100 annually, based on 50 hours per year and 22 SROs. The estimated cost to these respondents associated with this hours burden is currently \$2,950 per year, based on \$59 per hour⁹ of respondents’ time and 50 hours a year of recordkeeping. The total estimated annualized cost associated with the hours burden for these respondents to comply with Rule 17a-1 is \$64,900, based on \$2,950 per year per respondent and 22 SROs.

b. Notice-Registered National Securities Exchanges

Additionally, the Commission staff anticipates that 4 national securities exchanges notice-registered pursuant to Section 6(g) of the Act will list or trade futures contracts on narrow-based security indexes and therefore will be required to preserve records of determinations made under Rule 3a55-1. The Commission staff anticipates that it will take each of these 4 notice-registered exchanges 1 hour annually to retain any documents made or received by them in determining whether an index is a narrow-based security index. The total number of hours required for the 4 notice-registered exchanges to comply with Rule 17a-1 is 4. The estimated cost associated with the hours burden for the 4 notice-registered national securities exchanges to retain determinations made

⁸ 15 U.S.C. 78f(a).

⁹ \$59/hour figure for a Compliance Clerk is from the SIFMA’s Office Salaries in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

under Rule 3a55-1 is \$236, based on \$59 per hour of the respondent's time, 1 hour per year of recordkeeping per respondent and 4 respondents.

c. Total Burden

The total number of hours for all respondents to comply with Rule 17a-1 is 1,104 hours annually, based on 1,100 hours for the 22 SROs required to comply with the rule, plus an additional 4 hours for the 4 notice-registered national securities exchanges to preserve records of determinations made under Rule 3a55-1. Accordingly, the total annualized cost associated with this hours burden for all respondents is \$65,136 based on \$64,900 per year for the 22 SROs and an additional \$236 for the 4 notice-registered exchanges.

13. Estimates of Total Annualized Cost Burden

Not applicable. It is not anticipated that respondents will have or incur any capital and start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information.

14. Estimate of Cost to Federal Government

Not applicable. The government does not incur any costs as a result of Rule 17a-1, a recordkeeping rule.

15. Explanation of Changes in Burden

The current approved time burden of 69 hours appears to be an error, as it does not coincide with numbers that are reflected in our 2007 records (with the exception of the 83-I), which indicate a total annual time burden of 1,103 hours. We believe that the numbers reflected in ROCIS and the 83-I to have been an error. Accordingly, the Commission has utilized the annual time burden previously approved in 2004 (and reflected in our 2007 notices and justification statement) to determine and explain the change in annual time burden.

The number of registered clearing agencies has decreased from a previous figure of 10 to the current count of 6. The number of securities exchanges registered pursuant to Section 6(a) of the Act has increased from 10 to 14. The number of national exchanges notice-registered pursuant to Section 6(g) of the Act has increased from 3 to 4. These changes account for the change in the hours burden estimate from 1,103 hours to 1,104 hours. In addition, the total estimated annualized cost associated with this hours burden has increased from \$55,510 to \$65,136 due to both an increase in the number of respondents and an increase in the hourly estimated rates for professional clerical work.¹⁰

The estimate of total annualized cost has been reduced to zero, as the cost information

¹⁰ See supra note 9.

previously included in this section in the Commission's 2007 request to extend the current collection of information for Rule 17a-1 actually reflected the cost of the burden measured in hours and was, therefore, being "double counted".

16. Information Collections Planned for Statistical Purposes

Not applicable. The information collected is not used for tabulation, statistical analysis or publication.

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

Not applicable. The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

Not applicable. The Commission is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Methods

Not applicable. This collection does not involve statistical methods.