

PAPERWORK REDUCTION ACT SUBMISSION

SUPPORTING STATEMENT

*Rules 17a-3(a)(16) and 17a-4(b)(11)*

**A. Justification**

1. Necessity of Information Collection

The Commission is statutorily authorized by Sections 17(a) and 23(a) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> to promulgate rules and regulations regarding the maintenance and preservation of books and records of brokers and dealers. Section 17(a)(1) provides in pertinent part:

“[all members of a national securities exchange and registered brokers and dealers] shall make and keep for prescribed periods such records ... as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the [Act].”

Brokers and dealers in the ordinary course of their businesses maintain certain books and records reflecting, among other things, income and expenses, assets and liabilities, daily trading activity and the status of customer and firm accounts. These books and records are, for the most part, standard and would be kept by any prudent broker-dealer engaging in a securities business.

Rule 17a-3, in effect, requires exchange members, brokers and dealers to make and keep current certain records relating to the broker-dealers’ financial condition as well as records reflecting certain employee and principal information. Rule 17a-4 requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made by Rule 17a-3. In addition, Rule 17a-4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, canceled checks, bills receivable and payable, originals of communications, and descriptions of various transactions.

In December 1998, the Commission eliminated Rule 17a-23 and transferred the recordkeeping and preservation requirements to Rules 17a-3(a)(16) and 17a-4(b)(10). Rule 17a-4(b)(10) was subsequently renumbered

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<sup>1</sup> 15 U.S.C. 78 et seq.

17a-4(b)(11). The amendment to Rule 17a-3 requires certain records to be kept in conjunction with the operation of an internal broker-dealer system. Certain internal broker-dealer systems are not included within the definition of an exchange, as set forth in Rule 3b-12. These systems would continue to be regulated under the broker-dealer regulatory scheme and the amendments to Rules 17a-3 and 17a-4 are substantially similar to the requirements under Rule 17a-23 that were eliminated. The Commission believes that these recordkeeping requirements continue to be valuable for the oversight and inspections of internal broker-dealer systems by the Commission and the Financial Industry Regulatory Authority (“FINRA”) (f/k/a the National Association of Securities Dealers (“NASD”)).

Additionally, Rules 17a-3(a)(16) and 17a-4(b)(11) represent a codification of standard recordkeeping practices of broker-dealers. Rule 17a-3(a)(16) identifies the records that broker-dealers operating internal broker-dealer systems are required to make. Rule 17a-4(b)(11) describes the record preservation requirements for those records, including how such records must be kept and for how long.

## 2. Purpose of Use of the Information Collection

The information contained in the records required to be preserved by the rule would be used by examiners and other representatives of the Commission, state securities regulatory authorities and the self-regulatory organizations (“SROs”) to enable the Commission to carry out its statutory obligations by ensuring that broker-dealers are in compliance with the Commission’s requirements for operation of trading systems and to improve the protection of investors.

## 3. Consideration Given to Information Technology

The Commission believes that improvements in automation and data processing technology may reduce any burdens that result from the rule. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

## 4. Duplication

Because Rule 17a-23 was eliminated and the recordkeeping and record preservation requirements of that rule were transferred to Rules 17a-3 and 17a-4 there is no duplication.

## 5. Effects on Small Entities

The recordkeeping and preservation requirements of Rules 17a-3 and 17a-4 apply equally to all registered broker-dealers operating internal broker-dealer systems. Therefore, the Rules could apply to small businesses. Pursuant to 17 CFR 240.0-10(c), the term “small business” or “small organization” when used in reference to a broker-dealer means a broker-dealer that has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d) or, if not required to file such statements, a broker-dealer that had total capital of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0-10. The Commission staff has estimated that nine broker-dealers are small entities as defined by the Act.

#### 6. Consequences of Less Frequent Collection

If the required collections of information were to be conducted less frequently, the Commission would be unable to comply with its statutory obligations and protections afforded to the public would be lessened through the decreased ability of the Commission, state securities authorities and the SROs to examine such broker-dealers.

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

The information collection is not conducted in a manner that is inconsistent with 5 CFR 1320.5(d)(2).

#### 8. Consultations Outside the Agency

All Commission rules are published in the Federal Register for a comment period lasting at least 30-60 days. This comment period allows the public an opportunity to respond to the proposal. For this Extension submission, the required 60 day and 30 day Federal Register notices were published. The Commission received no comments pertaining to this information collection.

#### 9. Payment or Gifts

The respondents receive no payments or gifts.

#### 10. Assurances of Confidentiality

The records required by the rule are available only for the examination by the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 ("FOIA"), 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

Not applicable; no information of a sensitive nature is required under the regulation.

12. Burden of Information Collection

The Commission estimates that 30 hours need to be allotted to recordkeeping under Rules 17a-3(a)(16) and 17a-4(b)(11), and should be distributed as follows: 27 hours for Rule 17a-3(a)(16) and 3 hours for Rule 17a-4(b)(11). The Commission estimates that each respondent would spend an

average of approximately 27 hours complying with Rule 17a-3(a)(16) making the required record. The Commission also estimates that each respondent would spend an average 3 hours to comply with Rule 17a-4(b)(11) to preserve the required records.

The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Rule 17a-3(a)(16) receives annual compensation of \$238,000. This compensation is the equivalent of \$119 per hour (\$238,000 divided by 2,000 payroll hours per year). Thus, the average cost estimated for each respondent would be \$3,213:

Rule 17a-3(a)(16) Recordkeeping requirements 27 hours at \$119/hr =  
\$3,213

The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Rule 17a-4(b)(11) receives annual compensation of \$238,000. This compensation is the equivalent of \$119 per hour (\$238,000 divided by 2,000 pay roll hours per year). Thus, the average cost estimated for each respondent would be \$357.00:

Rule 17a-4(b)(11) Record preservation requirements 3 hours at \$119/hr =  
\$ 357

Accordingly, the annual aggregated hour burden for each broker-dealer required to comply with Rules 17a-3(a)(16) and 17a-4(b)(11) would be \$3,570: (\$3213 + \$357 = \$3570).

### 13. Costs to Respondents

Not applicable; the Commission expects no additional cost for respondents to comply with the rule (other than provided for in item no. 12).

### 14. Federal Government Costs

There will be no additional costs to the Federal Government.

### 15. Explanation of Changes in Burden

Though there has not been any change in the burden for this collection (3150 hours), the previous collection did not have the correct information entered, and therefore due to the error, an increase of 2,835 hours is noted in this request.

### 16. Information Collections Planned for Statistical Purposes

Not applicable. The information is not published for statistical use.

17. Display of OMB Approval Date

The SEC is not seeking approval to not display the expiration date.

18. Exceptions to Certification

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

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods.