

SUPPORTING STATEMENT
for the Paperwork Reduction Act New Information Collection Submission for
Rule 17a-4

A. JUSTIFICATION

1. Necessity of Information Collection

All brokers and dealers in the ordinary course of their businesses need to 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 individual engaging in a securities business.

The Commission is statutorily authorized by Sections 17(a)¹ and 23(a)² of the Securities Exchange Act of 1934 (“Exchange Act”) to promulgate rules and regulations regarding the maintenance and preservation of books and records of exchange members, brokers and dealers (“broker-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 [Exchange Act].”

To standardize recordkeeping practices throughout the industry, the Commission, in 1940, adopted Rules 17a-3 and 17a-4 (one of the “Books and Records Rules”),³ which codified and specified minimum standards with respect to business records that broker-dealers must create and maintain. Rule 17a-3 requires exchange members, brokers and dealers to make and keep current certain records relating to a broker’s or dealer’s financial condition and operations. Rule 17a-4 requires broker-dealers to preserve, for prescribed periods of time, certain records required to be created under Rule 17a-3 and certain other Commission rules. In addition, Rule 17a-4 requires broker-dealers to preserve other records that may be created or received by the broker-dealer in the ordinary course of its business for prescribed periods of time.

2. Purpose and Use of the Information Collection

The purpose of requiring that broker-dealers maintain the records specified in the Rule 17a-4 is to help ensure that examiners and other representatives of the Commission, State securities regulatory authorities, and the SROs have access to the information and documents necessary to determine whether broker-dealers are in compliance with the Commission’s antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations. Without Rule 17a-4, it would be impossible for the

¹ 15 U.S.C. 78q(a).

² 15 U.S.C. 78w(a).

³ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

Commission to determine whether a broker-dealer that chose not to preserve records was in compliance with these rules. Such a situation would not be in the public interest and would be detrimental to investors and the financial community as a whole.

3. Consideration Given to Improved Information Technology

Rule 17a-4 specifically allows brokers and dealers to use electronic storage media to comply with the record-keeping requirements under the Securities and Exchange Act of 1934. In fact, because it simply sets minimum standards for the electronic storage media employed, Rule 17a-4 does not limit broker-dealers to using forms of electronic storage which may become obsolete as new technology is developed. The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens that result from Rule 17a-4.

4. Duplication

There is no duplication.

5. Effects on Small Entities

The number and complexity of records required to be preserved by Rule 17a-4 vary proportionately with the volume and complexity of the broker-dealer's business. Further, broker-dealers may choose which media (hard-copy, microfiche, electronic storage, etc.) is most appropriate given their size and the type of business they do. The books and records required under Rule 17a-4 are normally retained by small broker-dealers.

6. Consequences of Less Conducting Collection

Rule 17a-4 is a record preservation rule. Without Rule 17a-4, it would be impossible for the Commission to determine whether a broker-dealer that chose not to preserve records was in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations. Such a situation would not be in the public interest and would be detrimental to investors and the financial community as a whole.

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

Certain provisions of Rule 17a-4 require respondents to retain records for more than three years. Specifically, Rule 17a-4(a) requires broker-dealers to preserve for a period of not less than six years:

1. Purchase and sales blotters, securities and cash receipts, and disbursements blotters;
2. Ledgers of a broker-dealer's assets, liabilities, income and expense, and capital accounts;
3. Customer account ledgers;
4. Securities position reports;
5. Lists of office employees able to explain records to examiners; and

6. A record of persons responsible for establishing policies and procedures designed to ensure that the broker-dealer is compliant with applicable rules and regulations.

After the closing of any customer's account, broker-dealers must preserve for at least six years any account cards or records which relate to the terms and conditions of opening and maintaining the account. Broker-dealers are required to maintain and preserve in an easily accessible place:

1. Employment records of associated persons until at least three years after the employment has terminated;
2. Processed fingerprint cards and other related information until at least three years after the termination of employment or association;
3. All records required pursuant to paragraph (a)(15) of Rule 17a-3 for the life of the enterprise;
4. All account record information required pursuant to Rule 17a-3(a)(17) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated; and
5. Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

In addition, Rule 17a-4(d) requires that a broker-dealer maintain specified organizational documents for the life of the enterprise and any successor enterprise.

These extended retention periods are necessary with respect to the records itemized above in order to provide regulators with sufficient time to conduct comprehensive inspections and investigations. Due to budget constraints, regulators only examine broker-dealers and office locations periodically. Further, certain of these documents do not become obsolete (*e.g.*, organizational documents).

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

The Commission did not provide any payment or gift to respondents.

10. Confidentiality

The records required by Rule 17a-4 are available only to the examination staffs of the Commission, State regulatory authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission generally does not 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.

11. Sensitive Questions

There are no questions of a sensitive nature in this collection of information.

12. Burden of Information Collection

The Commission estimates that, on average, each broker-dealer spends 254 hours each year to ensure that it is in compliance with Rule 17a-4 and to produce required records promptly at an office when so required. Therefore, the Commission estimates that compliance with Rule 17a-4 requires 1,284,478 hours each year (5,057 broker-dealers x 254 hours).⁴ This decrease from the current PRA estimate of 1,752,600 hours is caused by a reduction in the number of broker-dealers. This burden is a recordkeeping burden.

The Commission believes that requirements resulting from Rule 17a-4 would be performed by individuals in a broker-dealer's compliance department. A Compliance Clerk earns an average of \$67 per hour,⁵ the dollar cost of the 1,284,478 annual hours incurred as a result of this Rule is approximately \$86.1 million (1,284,478 x \$67).

13. Costs to Respondents

Based on conversations with members of the securities industry and based on the Commission's experience in the area, we estimate that the average broker-dealer spends approximately \$5,000 each year to store documents required to be retained under Rule 17a-4. Costs include the cost of physical space, computer hardware and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. The Commission estimates that the annual reporting and record-keeping cost burden is \$25,285,000. This cost is calculated by the number of active, registered broker-dealers multiplied by the record-keeping cost for each respondent (5,057 active, registered broker-dealers x \$5,000). This is a recordkeeping cost.

14. Costs to the Federal Government

The federal government does not incur a cost for this collection of information since it relates to a recordkeeping burden for the respondents.

⁴ There were 5,057 broker-dealers as of October 1, 2010.

⁵ This figure is based on SIFMA's *Office Salaries in the Securities Industry 2010*, modified by Commission staff to account for an 1800-hour work-year multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

15. Changes in Burden

The annual recordkeeping hour burden of 1,284,478 is 468,122 hours less than the current OMB inventory of 1,752,600 hours. This decrease of 468,122 hours is due to the decline in the number of respondents (active broker-dealers) from 6,900 to 5,057.

The annual recordkeeping cost burden of \$25,285,000 of Rule 17a-4 is \$9,215,000 less than the current OMB inventory of \$34,500,000. This decrease represents an adjustment of the number of respondents from 6,900 to 5,057.

16. Information Collection Planned for Statistical Purposes

This provision is not applicable because compliance with Rule 17a-4 will not require the employment of statistical methods

17. Display of OMB Approval Date

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.