

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17a-11 Notification Provisions for Brokers and Dealers

A. Justification

1. Necessity of 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 CFR 240.17a-11) under the Securities Exchange Act of 1934 (“Exchange Act”) on July 11, 1971.¹ 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 requires a broker-dealer to give notice if its net capital declines below certain levels or of certain other occurrences related to its net capital. 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 (17 CFR 240.15c3-1e) to give notice when their tentative net capital drops below certain levels. A broker-dealer must also provide notice if it has failed to make and keep certain books and records and when it discovers or is notified by an independent public accountant of the existence of a material inadequacy. OTC derivatives dealers must also provide notice of backtesting exceptions identified pursuant to Appendix F to Rule 15c3-1 (17 CFR 240.15c3-1f).

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(c)(3) and 78q(a)). Section 15(c)(3) provides that broker-dealers must abide by rules the Commission prescribes to provide safeguards with the respect to the financial responsibility of broker-dealers. Section 17(a) provides that broker-dealers must make, keep, and furnish copies of such records and make and disseminate such reports as the Commission, by rule, prescribes. Further statutory authority is found in Section 23(a) of the Act, 15 U.S.C. §78w(a), which provides that the Commission may make such rules as are necessary or appropriate to implement Exchange Act provisions for which it is responsible.

The Commission is proposing making conforming and technical amendments to paragraph (e) of Rule 17a-11 in conjunction with its proposed amendments to Rule 17a-5.² The amendments would eliminate references to Rule 17a-5 and would correct references to Rule 17a-12.

¹ The OMB Control Number is 3235-0085.

² Exchange Act Release No. 64676 (June 15, 2011), 76 FR 37572 (June 27, 2011).

2. Purpose and Use of 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, self-regulatory organizations, and the CFTC to monitor broker-dealers experiencing financial or operational difficulties.

3. Consideration Given to Information Technology

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 self-regulatory organizations have developed systems that enable them to receive these notices electronically.

4. 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. Effect on 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 Not Conducting Collection

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

7. Inconsistencies with Guidelines in 5 CFT 1320.8(d)

There are no special circumstances. This collection is consistent with the guidelines in 5 C.F.R. 1320.8(d).

8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. The comment period for the proposing release is 60 days. This comment period will afford the public an opportunity to respond to the proposal. The proposing release solicits comment on the

new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

Not applicable. No payments or gifts were provided to respondents.

10. 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 self-regulatory organizations 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. Burden of Information Collection

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 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 annual reporting burden associated with Rule 17a-11 is 400 hours.

The Commission believes that the proposed amendments to Rule 17a-11 will not result in a change to the burden.

13. Costs to Respondents

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

14. Costs to Federal Government

There are no costs to the Federal Government associated with the information collections related to this rule.

15. Changes in Burden

The Commission does not believe that the burden associated with Rule 17a-11 would change as a result of the proposed amendments.

16. Information Collection Planned for Statistical Purposes

The Commission does not anticipate that any complex analytical techniques will be used in connection with the information collection.

17. Display of OMB Approval Date

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

B. Collections of Information Employing Statistical Methods

This collection does not involve statistical methods.