

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Form Custody

A. Justification

1. Necessity of Information Collection

Section 17(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that broker-dealers must make and keep records, furnish copies of the records, and make and disseminate reports as the Securities and Exchange Commission (“Commission”), by rule, prescribes.

The Commission has adopted Rule 17a-5 (17 CFR 240.17a-5), which is the basic financial reporting rule for broker-dealers.¹ Rule 17a-5(a) requires the filing of Form X-17A-5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) and certain additional reports by broker-dealers that compute certain capital charges in accordance with Appendix E to Rule 15c3-1 (17 CFR 240.15c3-1e).

The Commission is proposing amendments to Rule 17a-5.² The amendments to Rule 17a-5(a) would, among other things, require a broker-dealer to file proposed Form Custody (17 CFR 249.1900) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual report if that date is not the end of a calendar quarter. Form Custody would be designed to elicit information about broker-dealer custody of customer assets.

2. Purpose and Use of the Information Collection

The purpose of Form Custody is to provide information about the custodial activities of broker-dealers that can serve as a starting point for securities regulators to undertake more in-depth reviews of these activities as they deem appropriate.

3. Consideration Given to Information Technology

The Commission believes that Form Custody would generally be filed electronically with the broker-dealer’s designated examining authority.

4. Duplication

The Commission is not aware of duplicative reporting.

5. Effect on Small Entities

¹ Rule 17a-5 is subject to a separate Paperwork Reduction Act filing (OMB Control Number 3235-0123).

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

The Commission believes that the burden associated with Form Custody would generally be substantially smaller for smaller broker-dealers. There are relatively few small broker-dealers that clear transactions or carry customer accounts. A broker-dealer that does not clear transactions or carry customer accounts would generally not need to enter detailed information on the Form.

6. Consequences of Not Conducting Collection

If the required reports were not made, it would impair the Commission's and the self-regulatory organizations' ability to protect customers. Further, if the required collections were conducted less frequently, the information in the reports would become outdated.

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

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

8. Consultations Outside the Agency

With respect to the proposal, 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>. Several commenters stated that they believed that the Commission had underestimated the costs associated with the proposal. Although the comment period has now closed, 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

No payments or gifts were provided to respondents.

10. Confidentiality

Pursuant to Rule 17a-5(a)(3), Form Custody would be deemed to be confidential.

11. Sensitive Questions

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

12. Burden of Information Collection

The Commission estimates that, on average, it would take a broker or dealer an average of approximately 12 hours to complete Form Custody, for an industry-wide annual third party disclosure burden of approximately 242,736 hours (5,057 brokers or dealers x 4 times per year = 20,228 annual responses times 12 hours = 242,736 hours).

13. Costs to Respondents

The Commission does not believe that proposed Form Custody would impose external costs on broker or dealers.

14. Costs to Federal Government

The Commission does not believe that proposed Form Custody would result in costs to the Federal government.

15. Changes in Burden

Not applicable. This is a new collection of information.

16. Information Collection Planned for Statistical Purposes

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

17. Display of OMB Approval Date

The Commission requests authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable. This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Methods

Not applicable. This collection does not involve statistical methods.