

## SUPPORTING STATEMENT

### for the Paperwork Reduction Act Information Collection Submission

#### “Rules 17h-1T and 17h-2T”

##### A. Justification

##### 1. Necessity of Information Collection

On July 16, 1992, the Commission adopted Rules 17h-1T and 17h-2T (17 CFR 240.17h-1T and 17 CFR 240.17h-2T), (the “risk assessment rules”), under the Securities Exchange Act of 1934 (“Exchange Act”) pursuant to its authority under the risk assessment provisions of the Market Reform Act of 1990 (Pub. L. No. 101-432, 104 Stat. 963 (1990)). These rules are intended to give the Commission access to information concerning the financial and securities activities of certain broker-dealer affiliates. A broker-dealer may be affected by the financial difficulties of an affiliate both directly, such as by the affiliate’s withdrawal of capital to meet the affiliate’s obligations, and indirectly, such as by the effect that the affiliate’s difficulties may have on the broker-dealer’s ability to obtain financing. This impact on a broker-dealer may be exacerbated in times of market stress. Accordingly, Rules 17h-1T and 17h-2T enable the Commission to monitor the activities of broker-dealer affiliates through its access to affiliate information and receipt of reports on a quarterly basis.

Rule 17h-1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h-2T requires a broker-dealer to file with the Commission reports concerning the information required to be maintained and preserved under Rule 17h-1T within 60-calendar days after the end of each fiscal quarter. However, Rule 17h-2T also allows a firm to file its year-end financial statements separately from the rest of its fiscal fourth quarter report, within 105 calendar days after the end of that quarter.<sup>1</sup>

The Commission is statutorily authorized by Section 17(h) of the Exchange Act of 1934 (15 USC 78q(h)) to adopt rules that require a broker-dealer to maintain and preserve risk assessment information with respect to those entities that are associated with the broker-dealer whose “business activities are reasonably likely to have a material impact on the financial and operational condition” of the broker-dealer. In addition, Section 17(h) authorizes the Commission to adopt rules that require a broker-dealer to file, no more frequently than quarterly, summary reports of the information and records maintained pursuant to the risk assessment rules. Further statutory authority is found in Section 23(a) of the Exchange Act (15 USC 78w).

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<sup>1</sup> Thus, the same information is filed with the Commission whether the broker-dealer files all the information within 60 calendar days after the end of the fiscal fourth quarter or some of the information within 60 calendar days and the rest within 105 calendar days after the end of the fiscal fourth quarter.

2. Information Collection Purpose

The information required by Rules 17h-1T and 17h-2T is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

3. Information Technology Consideration

The collection of information is collected through electronic submission, which is similar to submitting an e-mail with an attachment. The staff is presently exploring possible ways to upgrade to a more efficient system through which these reports could be collected electronically, and the data would be sorted via an established taxonomy.

4. Duplication

We are not aware of duplication of this information.

5. Effect on Small Entities

The risk assessment rules generally do not apply to small entities because a broker-dealer that maintains less than \$20 million in capital and does not carry customer accounts is exempted under the rules. Further, a broker-dealer that either restricts its business to certain mutual fund activities, certain direct participation programs or introduces accounts on a fully disclosed basis is also exempt under the rules. In addition, a broker-dealer that is owned by a natural person is exempt from the risk assessment rules under Section 17(h) of the Exchange Act.

6. Consequences of Not Conducting Collection

The risk assessment rules enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. This information is collected quarterly. If the information were to be collected less frequently, the Commission would have to rely on stale and outdated information when assessing risks to the broker-dealer. As a result, the Commission would be unable to adequately assess the potentially damaging impact of more recent activities of certain broker-dealer affiliates on the broker-dealer.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

No payment or gift is provided to respondents.

10. Confidentiality

The information required to be provided to the Commission pursuant to these risk assessment rules is deemed confidential, notwithstanding any other provision of law under Section 17(h)(5) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act.

11. Sensitive Questions

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

12. Burden of Information Collection

There are currently 325 respondents that must comply with Rules 17h-1T and 17h-2T. Each of these 325 respondents requires approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h-1T, for an aggregate annual burden of 3,250 hours (325 respondents X 10 hours).

In addition, each of these 325 respondents must make five annual responses under Rule 17h-2T (for a total of 1,625 responses per year). These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 4,550 hours (325 respondents X 14 hours).

In addition, there are approximately twenty-five new respondents per year that must draft an organizational chart required under Rule 17h-1T and establish a system for complying with the risk assessment rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the Rules requires three hours, thus requiring an aggregate of 100 hours (25 new respondents X 4 hours). Thus, the total compliance burden per year is approximately 7,900 burden hours (3,250 + 4,550 + 100).

The staff estimates that approximately 2/3 of the total compliance burden hours, or 5,293 hours, are performed by Junior Accountants at \$134.00 per hour, for a cost of \$709,262.<sup>2</sup> In

<sup>2</sup> The \$134 per hour figure for a Junior Accountant is from the Securities Industry and Financial Markets Association ("SIFMA"), publication entitled Management and Professional Earnings in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

addition, the staff estimates that approximately 1/3 of the total compliance burden hours, or 2,607 hours, are performed by Compliance Managers at \$279 per hour for a cost of \$727,353.<sup>3</sup> Thus, the estimated total internal cost of compliance per year is \$1,436,615 (\$709.262+ \$727,353).

13. Cost to Respondents

The estimated total annual cost burden for Rules 17h-1T and 17h-2T is \$0.

14. Federal Government Cost

There is no cost to the Federal Government.

15. Changes in Burden

The change in burden is a result of changes to the three factors included in the calculation, set forth in number 12 above. First, there was an increase in the number of respondents from 148 to 325. Second, more firms are expected to register and begin complying with Rules 17h-1T and 17h-2T. Third, the salary figures for the broker-dealer employees were updated.<sup>4</sup>

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. OMB Expiration Date Display Approval

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

18. Exceptions to Certification

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods.

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<sup>3</sup> See explanation at footnote 2.

<sup>4</sup> Id.